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**DEBATES IN CONGRESS.**



**REGISTER**  
**OF**  
**DEBATES IN CONGRESS,**

**COMPRISING THE LEADING DEBATES AND INCIDENTS**

**OF THE FIRST SESSION OF THE TWENTY-FIRST CONGRESS:**

**TOGETHER WITH**

**AN APPENDIX,**

**CONTAINING**

**IMPORTANT STATE PAPERS AND PUBLIC DOCUMENTS,**

**AND**

**THE LAWS ENACTED DURING THE SESSION:**

**WITH A COPIOUS INDEX TO THE WHOLE.**



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**VOLUME VI.**

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**WASHINGTON:**

**PRINTED AND PUBLISHED BY GALE AND SEATON.**

**1830.**



GALES & SEATON'S

# Register of Debates in Congress.

## TWENTY-FIRST CONGRESS...FIRST SESSION:

FROM DECEMBER 7, 1829, TO MAY 31, 1830.

## DEBATES IN THE SENATE.

MONDAY, DECEMBER 7, 1829.

At noon, the Honorable SAMUEL SMITH, of Maryland, President *pro tempore* of the Senate, took the chair. The roll of Senators having been called over by WALTER LOWRIE, Esq. Secretary of the Senate, it appeared that thirty-five members were present.

The usual message was sent to the House of Representatives, notifying that a quorum of the Senate had assembled.

Mr. WHITE and Mr. SANFORD were then appointed a committee to join the committee of the House of Representatives, to inform the President of the United States that quorums of the two Houses had assembled, &c.

TUESDAY, DECEMBER 8, 1829.

Mr. WHITE reported from the Joint Committee, that they had, according to order, waited on the President of the United States, who replied that he would, to-day, at 12 o'clock, make a communication to each House of Congress.

Soon after which, a written message (which will be found in the Appendix) was received from the President of the United States, by Mr. DONALDSON, his Secretary.

The message was read, and, on motion by Mr. ROWAN, it was

*Resolved*, That four thousand five hundred copies of the message, with one thousand five hundred copies of the documents accompanying it, be printed for the use of the Senate.

WEDNESDAY, DECEMBER 9, 1829.

The Senate, this day, elected its several standing committees: and on motion of Mr. SANFORD, it was

*Resolved*, That a select committee be appointed to consider the state of the current coins, and to report such amendments of the existing laws concerning coins, as may be deemed expedient.

### HONORS TO THE DEAD.

Mr. ELLIS having announced the death of his colleague, the Honorable THOMAS B. REED, of Mississippi, submitted the following resolutions, which were unanimously agreed to:

*Resolved*, That the members of the Senate, from a desire of showing every mark of respect to the memory of the Honorable THOMAS B. REED, deceased, late a Senator

of this body, from the State of Mississippi, will go into mourning for one month by wearing crape on the left arm.

*Resolved*, That, as an additional evidence of respect to the memory of the Honorable THOMAS B. REED, the Senate do now adjourn.

[From the 10th to the 22d of December, inclusive, there was no business transacted to give rise to debate. The Senate was principally occupied in receiving and referring petitions, and disposing of motions for inquiry, &c.]

WEDNESDAY, DECEMBER 23, 1829.

### INTEREST DUE TO CERTAIN STATES.

The bill providing for the allowance of interest to certain States therein mentioned, on such advances made by them to the United States, during the late war, as have been or may hereafter be refunded to them, with the amendments of the Committee on the Judiciary to the bill, were taken up in Committee of the Whole. The amendments, viz: To provide for the payment of interest due to the States of Rhode Island and New Hampshire, were agreed to; and, on motion of Mr. IREDELL, the bill was further amended by inserting the State of North Carolina; and the question being on ordering the bill to be engrossed for a third reading—

Mr. BENTON expressed some repugnance at voting for the bill, until he was better informed of the consequences which might attend that vote, and how far the accounting officers of the Government might be authorized to go under the bill. Formerly great rigor and exactness were observed in the investigation of claims on the Government before Congress ordered their allowance. It was a good practice, and he should be sorry to see a different and looser mode introduced. For himself, he did not know that the United States owed a debt to a single State, and if the bill proposed to authorize the accounting officers to ascertain the fact of the existence of debt to the States, and allow interest thereon, without other examination, he could not consent to it. He should himself like to see the accounts, whether for advances made in money, or for services rendered, and know whether they were rendered by order or against order, and judge of their validity. At present he was in the dark as to the whole subject of the bill; he had seen no report on it, and knew not if there was any. He desired further information.



Mr. MARKS adverted to certain documents in his possession which would elucidate the principle of the bill, but not anticipating the consideration of the bill to-day, he had not brought the papers to the House with him. He, therefore, moved to lay the bill on the table for the present, but withdrew his motion at the request of

Mr. SMITH, of Maryland, who said that the bill did not contemplate the admission of any claims for advances, or the examination of any accounts; there were none to be rendered—they had all been settled and paid—and the bill is for the allowance of interest on those claims which have been settled and paid. Instead of laying the bill on the table, he preferred postponing it to Monday, and making it the order of the day; which motion he made, and it was carried.

THURSDAY, DECEMBER 24, 1829.

The Senate were engaged to-day in receiving and referring petitions and reports of committees. Adjourned to Monday.

MONDAY, DECEMBER 28, 1829.

There was no debate in the Senate to-day.

TUESDAY, DECEMBER 29, 1829.

#### MILITARY PEACE ESTABLISHMENT.

The Senate proceeded to the special order of the day on the bill explanatory of the act to reduce and fix the military peace establishment of the United States, passed March 2, 1821.

The bill is as follows:

"Whereas doubts have arisen in the construction of the act of Congress, passed the second day of March, one thousand eight hundred and twenty-one, entitled "An act to reduce and fix the military peace establishment of the United States," which have hitherto prevented it from being carried into execution, so far as relates to the arrangement of a colonel to the second regiment of artillery: And whereas it was the true intent and meaning of the said act, that the vacancy aforesaid should be filled by arranging to it one of the colonels in the army of the United States at the time of the passage thereof: And whereas, in the execution of said act, Daniel Bissell, then a colonel in the line, and a brevet Brigadier General in the army of the United States, was ordered to be discharged as a supernumerary officer, which order, as it affected the said Daniel Bissell, and some other officers, was held by the Senate to be illegal and void: And whereas the President of the United States has since nominated the said Daniel Bissell to be colonel of the second regiment of artillery aforesaid, which nomination the Senate have not acted upon, because they hold the said Colonel and Brevet Brigadier General Daniel Bissell to be in the army, and to need no new appointment: Now, therefore, to put an end to all doubt and disagreement upon this subject, and to enable the President to carry said act of March second, one thousand eight hundred and twenty-one, into execution:

"Be it enacted, &c. That the President be, and he is hereby, authorized to fill the vacancy in the second regiment of artillery, by arranging Daniel Bissell thereto."

Mr. BENTON, in support of the passage of the bill, read the report of the Committee on Military Affairs, to whom was referred that part of the President's message to Congress in 1826, which relates to this subject.

Mr. SANFORD moved to expunge the preamble from the bill. He considered it wholly unnecessary, and stated that there was no instance in our Government in which a preamble to a bill was employed as a vehicle of the reasons why the bill itself ought to be passed. It was, he repeated, wholly unusual and unnecessary; and, in the present case, especially unnecessary, since all the reasons

why the bill ought to be passed, were explained more at length in various other documents.

Mr. BENTON, in reply, said, that he would be sorry to be the occasion of introducing any innovations into the proceedings of this body; but if it was any innovation, he considered the present instance of sufficient importance to authorize a departure from the usual practice. It was a case, he said, which stood alone, and which, in his opinion, not only justified, but required a preamble. The object of the preamble was to explain the nature and the end of the act itself. The necessity for the preamble in this particular case, was, that the reasons for the act only existed in the secret Executive records of the Senate, and could not be known to the public or the other House unless stated in this way. There was no danger to be apprehended of its growing into precedent, nor of our bills being loaded with unnecessary preambles. He therefore hoped that the motion of the gentleman from New York would not prevail.

Mr. SMITH, of Maryland, said that precedents arise, and only arise, from the repetition of particular cases, which increase gradually till at length they become common usage. Thus, if it be acceded to in the present instance, it would be quoted hereafter in support of a repetition of it. He considered it wrong to follow the English practice in this respect, as the reports of our Committees, with which all bills are accompanied, supply the place of preambles.

Mr. HOLMES deemed a preamble nothing but an apology for legislation; and for apologies he thought there was no necessity. His chief objection to preambles was, that they rendered legislation complex instead of elucidating it.

Mr. HAYNE said, that in the good olden times, when people were not ashamed to tell the truth, bills were preceded by preambles always. They were used to set forth the object of the bill, and the means by which that object was to be obtained. It now happens that the practice is changed, and preambles have come into disuse because legislative bodies are less candid. So much for precedent, which has led us to dispense with the use of preambles. He knew cases in which it would have been well to have retained the old practice. He knew a case in which a preamble would have been of infinite advantage—he meant the Tariff law. A preamble to that act would have stated its true objects—that it was for the purpose, not of raising revenue, but for the protection of the manufacturing interests. As to the apprehensions of the gentleman from Maryland [Mr. SMITH] he [Mr. H.] would say that there was no danger of its becoming a precedent—on the contrary, the only danger to be dreaded was, that we may be left without a precedent for stating the grounds of our legislation. The gentleman not only objects as to the danger of its becoming a precedent for future action, but he also says that it is not proper to spread our reasons for legislating upon record. This very case, he [Mr. H.] contended, required that the reasons should go with the act. Suffer it to go to the world naked, and what will it appear? Why, that Colonel Bissell is assigned to the command of the second regiment of artillery by an act of Congress. This would seem out of course, and what, he would ask, would be the consequences? Why, that Congress undertakes to fill vacancies in the army by special acts. But this is an extraordinary case, and to prevent the possibility of its being misunderstood, we state the reasons of passing the bill in a preamble to it. Unless these reasons were spread upon record, he would hesitate much whether he should vote for the passage of the bill, as he was not disposed to search for the reasons amongst the public documents of the Senate, or the Executive archives of the Senate. He hoped, therefore, the reasons for this act would go with it, and speak for themselves to all future time. The preamble of a bill,

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he said, was the key to unlock the motive which induced its passage.

Mr. FOOT said that this bill required no key to unlock it. The bill was perfectly simple, and easily understood; it reads, "that the President be, and is hereby, authorized to fill the vacancy in the second regiment of artillery, by arranging Daniel Bissell thereto." As to assigning reasons for the passage of a bill he thought there was no necessity for it. He was opposed to making apologies for our public acts—he would make no apology. As the gentleman from Maryland had well observed, the reports accompanying the bills contain the reasons of our legislation.

Mr. KANE said there was some difficulty with him about this matter. The necessity which gave rise to the bill was a different construction being given to the act of 1821 by the President and the Senate. The President thought that he had not the power to arrange General Bissell to the command of the second regiment of artillery, and the Senate, on the contrary, thought he had the authority to do so. A bill has been formed for the purpose of settling the difficulty. If the bill pass in the proposed form, without the preamble, we call upon the President to sign a bill stating that to be right which he has declared or believed to be wrong; we call upon him to sign against his conviction. As he stated before, the President denies that he has the authority which the bill supposes. He moved to amend the motion of the Senator from New York, by striking out all from the word "artillery" to the words "And whereas," exclusive.

Mr. SMITH said that this very motion showed the impropriety of introducing preambles into bills. The Senator from South Carolina [Mr. HAYNE] considered a preamble necessary to show the intent and meaning of an act; and he said that if a proper preamble had been placed before the tariff bill, the objects set forth would be widely different from what was there stated. His opinion was, that the preamble was wholly unnecessary; if it prevail in one case it must prevail in all, and the result will be that, instead of discussing bills, we will be employed in the consideration of preambles.

Mr. DICKERSON said he would vote against striking out the preamble in this particular case, though he objected to the general use of it. In reply to the gentleman from South Carolina [Mr. HAYNE] who expressed his regret that a preamble was not introduced into the Tariff bill, Mr. D. read the preamble of the act of 1789, laying duties, which was as follows:

"Whereas it is necessary for the support of Government, for the discharge of the debts of the United States, and the encouragement and protection of manufactures, that duties be laid on goods, wares, and merchandises, imported."

Mr. HAYNE said the gentleman had given the best reason why the practice ought not to be dispensed with. If the real object of the Tariff act of 1828 had been prefixed to it, we could then have gone to the judiciary and tested the constitutionality of that law.

Mr. KANE, with the consent of the Senate, so modified his amendment as to read, "And whereas it was decided by the Senate to be the true intent and meaning," &c.

This amendment was agreed to—Ayes 21, Noes 15. The question on striking out the whole preamble was next taken, and negatived—Ayes 19, Noes 20.

Mr. SMITH, of Maryland, inquired whether the person referred to in the bill would be entitled to his pay for the time from which he was deranged to the time when he is to be arranged.

Mr. BENTON replied that each officer was obliged to give a certificate of honor that he was employed, and had incurred the usual expenses, during the time for which he claims pay, before he is entitled to any emolument.

The question of engrossing the bill for a third reading being stated,

Mr. BIBB asked the yeas and nays. He said he was equally opposed to the principle of the preamble and the bill. He thought the decision of the President right and this bill wrong. He was also opposed to paying any man a sum of perhaps fifteen thousand dollars, who had rendered no service for it.

The yeas and nays were ordered.

Mr. SMITH moved to lay the bill on the table. He thought the bill could be amended by the insertion of a clause, providing against the payment of this individual for the time he has been out of service.

The motion was agreed to.

WEDNESDAY, DECEMBER 30, 1829.

#### NATIONAL CURRENCY.

The following resolution, submitted yesterday by Mr. BARTON, was taken up:

"Resolved, That the Committee on Finance be instructed to inquire into the expediency of establishing a uniform national currency for the United States, and to report thereon to the Senate."

Mr. BARTON said that, in offering this resolution to the Senate, his chief object was to produce inquiry into the subject, which he viewed as one of importance. If the resolution was adopted, he should move to refer some documents in relation to the subject to the Committee on Finance.

Mr. BENTON said the resolution was a very important one, and he therefore hoped that the gentleman who had moved it would state what objects he had in view in offering it.

Mr. BARTON was proceeding in compliance with the request of his colleague, to state his reasons for offering this resolution, which he said he would do in general terms, when—

Mr. BENTON rose and stated that he had mistaken the nature of the resolution proposed. His impression was, that it was the resolution proposed yesterday by the gentleman from Connecticut, [Mr. FOOT] in relation to the public lands, which was under consideration.

Mr. SANFORD hoped that the gentleman from Missouri [Mr. BARTON] would still proceed to state his object.

Mr. BARTON declined this for the present. He thought a better opportunity would be afforded for this in a report from the Committee, and any explanatory observations he had to make would be more appropriate when the subject should come to be considered by the Senate. In the mean time, he would state that although he was one of those who believed in the advantage of a well regulated paper currency, he did not claim the merit of originating this proposition. As respected it he was merely the disciple of others.

The question on the adoption of the resolution was carried in the affirmative, *nem. con.*

Mr. BARTON then moved to refer to the Committee a volume containing sundry printed papers on the subject of a national currency, among them a memorial signed by Thomas Law, Esq. of this city, Walter Jones, Esq. and others, some years ago presented to Congress, and an essay on the subject, addressed to the Columbian Institute, by Mr. Law.

The motion was agreed to, and the papers were referred accordingly.

#### THE PUBLIC LANDS.

The following resolution, offered yesterday by Mr. FOOT, was taken up for consideration:

"Resolved, That the Committee on Public Lands be instructed to inquire into the expediency of limiting for a certain period the sales of the public lands to such lands only as have heretofore been offered for sale, and are subject to entry at the minimum price. And also, whether

"the office of Surveyor General may not be abolished without detriment to the public interest."

The resolution having been read,

Mr. BENTON hoped that the gentleman from Connecticut, [Mr. Foor] would take notice of the request he had made to another gentleman, [Mr. BAXTON] but which was intended for him.

Mr. FOOT replied, he certainly would take notice of the challenge given by the gentleman from Missouri, [Mr. BAXTON] although he had hoped the very terms of the resolution would be sufficiently explanatory of its purport. He had, he said, been induced to offer that resolution from the circumstance of having examined the report of the Commissioner of the Land Office, at the last session, by which he ascertained that the quantity of land which remained unsold at the minimum price of \$1 25 per acre, exceeds 72,000,000 of acres. In addition to this inducement, he was actuated by another: On examining the report of the Land Commissioner, made during the present session, in which he found the following words: "There is reason to believe there will be an annual demand of about one million acres land, which will probably be increased with the progress of population and improvement, &c. That the cash sales in one district in Ohio, where the lands were of inferior quality, and not more than three or four hundred thousand acres for sale, amounted to \$35,000, and in other places, where there are immense quantities, and of very superior quality, the sale, during 1828, amounted to only \$2,000."

From this statement of the Commissioner, Mr. F. said, he was induced to institute an inquiry into the expediency of stopping, for a limited time, this indiscriminate sale of public lands, and whether the public interest did not demand that an end should be put to it. His own State, every State in the Union, was interested in it, since these lands are the common property of the United States. If the fact was as it was stated in the Commissioner's report, the subject was worthy of inquiry. Mr. F. thought it was better to confine the sales merely to those lands which have been already brought into market; an inquiry into the expediency of which was all that his resolution proposed. As the gentleman from Missouri [Mr. BAXTON] had observed, this was a subject which involved important interests; the whole United States have a deep interest in it; and as such, he hoped that he had a right to make the proposed inquiry. These were the reasons, which he said he stated briefly, why he was induced to offer the resolution.

Mr. HOLMES made an inquiry as to that part of the resolution relating to the propriety of abolishing the office of surveyor general. There were, he said, five survey districts in the United States; one northwest of the Ohio, one south of Tennessee, one in Missouri, one in Alabama, and another in Florida. These officers in the districts he had mentioned, were known by different names, some were called surveyors, and others surveyors general. He wished to know, did the gentleman from Connecticut mean to extend his inquiry to all these States.

Mr. FOOT said, he was not aware of any difference in the names of the officers when he submitted his resolution. His object was to inquire if the office of surveyor ought not to be discontinued, if it should appear that surveys were no longer necessary. He wished his resolution to include surveyors as well as surveyors general. His object was to abolish the office, if the quantity of land already surveyed was considered sufficient for the demand.

Mr. BENTON said, that he did not challenge the right of the Senator from Connecticut [Mr. Foor] to offer resolutions. He, himself, was not opposed to resolutions: on the contrary, he thought they presented the best mode of presenting subjects for discussion. They presented the principle, or object aimed at, in its simplest form, unconnected with the details which trammel and encumber it in

a bill. It was then debated on its own merits. If, after discussion, it went to a committee, it went with the advantage of being illuminated by all the light which the intelligence of the whole body could shed upon it. He was willing to discuss this resolution. He wished to do so. It was one of infinite moment to the new States in the West. It was a question of checking the emigration to them. To stop the surveys, to suspend the sales of fresh lands, was an old and favorite policy with some politicians. It had often been attempted. The attempts were as old as the existence of the Government. He wished to have a full debate, and a vote of the Senate upon that policy. He knew the mover of the resolution [Mr. Foor] to be a direct man, who would march up firmly to his object. He would, therefore, suggest, that he had better change the form of his resolution; give it an imperative character; make it a resolution of instruction instead of inquiry. He paused to give the Senator an opportunity to say whether he would thus modify his resolution.

Mr. FOOT acknowledged the kindness of the gentleman from Missouri, but he must say that he had not the vanity to pretend to understand this subject, and therefore could not consent to give the resolution that peremptory character which he [Mr. B.] wished for. His object was inquiry—to obtain information. When the committee shall have reported on the subject, then would be the time for gentlemen to submit their views on it. He was not disposed to alter the phraseology of his resolution. He preferred to act upon it as it was.

Mr. BENTON said that the refusal of the gentleman to modify his resolution could not prevent him from treating it as a resolution of instruction. He could still oppose it, and give his reasons for doing so. It was not usual [Mr. B. said] to oppose the reference of resolutions of inquiry; but this was a resolution to inquire into the expediency of committing a great injury upon the new States in the West, and such an inquiry ought not to be permitted. It was not a fit subject for inquiry. It was immaterial to him what the design or object of the mover might be, the effect was what he looked at, and it was clear that the effect, if the resolution should lead to correspondent legislation, would be to check emigration to the Western States. Such would be its inevitable effect. [Mr. Foor here shook his head.] The Senator from Connecticut shakes his head, but he cannot shake the conviction out of my head, [said Mr. B.] that a check to Western emigration will be the effect of this resolution. The West is my country; not his. I know it; he does not. I know the practical effect of his resolution would be to check emigration to it; for who would remove to a new country if it was not to get new lands? The idea of checking emigration to the West was brought forward openly at the last increase of the tariff. The Secretary of the Treasury gave it a place in his annual report upon the finances. He dwelt openly and largely upon the necessity of checking the absorbing force of this emigration, in order to keep people in the East to work in the manufactories. I commented somewhat severely upon his report at the time. I reprobated its doctrines. I did it in full Senate, in the current of an ardent debate, and no Senator contested the propriety of the construction which I had put upon the Secretary's words. No Senator stood up to say that emigration ought to be stopped for that purpose; but systematic efforts go on, the effect of which is to stop it. The sentiment has shown itself here in different forms, at various times, and has often been trampled under foot. The resolution now before us involves the same consequence, but in a new phraseology. What are the lands to which the gentleman would limit the sales? What are they that could be sold, if his resolution should take effect? Scraps; mere refuse; the leavings of repeated sales and pickings! Does he suppose that any man of substance would remove to the West for the purpose of establishing his family on

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these miserable remnants? They are worth something to those who are there, to farmers whose plantations they adjoin, to settlers who have made some improvement upon them; but they are not the object to attract emigration. The man that moves to a new country wants new land; he wants first choice; he does not move for refuse, for the crumbs that remain after others are served. The reports of the registers and receivers show the character of these seventy millions to which the gentleman refers, and which alone would be in market under his plan, to be such as I have represented it; the good land all picked out, inferior and broken tracts only remaining, such as may be desirable for wood, or outlet, or to keep off a bad neighbor, to the farmer whose estate they adjoin, or to a poor family, but no object to induce emigrants to come from other States. So much [said Mr. B.] for checking emigration. But I have another objection to the gentleman's plan. It will operate unequally and partially among the Western States. It will fall heavily upon some States and not touch others. How would it operate in Ohio? Not at all. It would have no effect there; all her lands have been surveyed, all have been offered for sale, all would, therefore, still be in market, under the gentleman's plan; every acre within her limits would be open as ever to sale and settlement. How would it operate in Louisiana? I wish the Senators from that State would answer the question. It would stop the surveying where millions are yet to be surveyed; it would stop the sales where millions are yet to be sold; it would lock up twenty-five millions of acres of her soil! it would prevent twenty-five millions of acres from being surveyed and sold! Such [said Mr. B.] would be the difference of the operation of this plan in the two States of Louisiana and Ohio. The Federal Government has done nothing towards settling Louisiana, for I count as nothing the two hundred thousand acres which she has sold in a quarter of a century. The Kings of France and Spain gave the five millions of arpents which compose its settlements. For all that the Federal Government has done, that State would now be a desert; and the effect of this resolution would be to crown the policy that has held her back, by locking up twenty-five millions of her soil from further use. This, however, is a subject of too much moment to be disposed of in this brief way, or to be sent to a committee of inquiry. I have not risen to speak to it, but to make a motion—not a motion to lie on the table, for I dislike that mode of getting rid of a subject—but to move to place the resolution upon the calendar, to make it an order for some future day, that the Senate may discuss and act upon it after the holidays, when the members are all present.

Mr. NOBLE said it was unusual to vote against a resolution simply of inquiry, but the object of the one now before the Senate was too palpable to be misunderstood. When [said Mr. N.] I see such a disposition manifested on this floor, as that which dictated the resolution of the gentleman from Connecticut, I cannot be silent. He well recollected, and he supposed it was within the memory of many members of the Senate, when the governor of a State in that region of country, (alluding to New England) submitted to the Legislature of the State over which he presided, a message urging a measure similar to that embraced in the present resolution; and we as well recollect the feelings of public indignation, with which it was treated. If gentlemen were determined to press the resolution forward in its present form, they might do so; it will still be a legitimate subject for discussion after the committee shall have reported. But, as it had been observed, he would prefer to meet it at the threshold. He would move, therefore, that it be laid on the table, and made the order of the day for Monday next.

Mr. HOLMES expressed his regret, at so early a stage in the new administration, to see symptoms of an inclination to prevent inquiry. He supposed that the operation of inquiry would be certain; he had expected that it would

be necessary to institute an inquiry to discover whether any offices existed in our Government which were sinecures, in order that they might be abolished. It was not [he said] his motive, in supporting the adoption of this resolution, to check emigration to the West. When the people go there, they are still our people; the Western States are a component part of our common country, and he trusted in God they would always remain so. He was not an advocate of the exclusive or sectional legislation. But the fact here developed is, that there are seventy-two millions of acres of land at present in the market, of which it appears that only one million a year can be sold. We have, therefore, from these calculations, enough to supply the market for seventy-two years to come. If, then, at the end of seventy-two years, a similar inquiry to that now contemplated is proposed, it might then be said that the motive which induces it is a desire to check emigration to the West. Suppose, according to the reasoning of the gentleman from Missouri, [Mr. BAXTON] that it is all refuse land—all poor land; then certainly there is much need of inquiry; very much indeed. How, he would ask, has it happened that these surveyors have surveyed land which is good for nothing? How has it happened that so many thousands of dollars have been appropriated to survey lands which no one will inhabit? Does not this state of things indicate the necessity of instituting an inquiry? If this office of surveyor is a sinecure, he hoped the doctrines of the day would be extensive in their operation, and that all sinecures would be abolished. If officers have surveyed seventy-two millions of acres of bad land, of which one million only is sold every year (whereby it will last for seventy-two years) should we not inquire why it is so? Should we not inquire why this state of things has come to pass? He would ask, was it not important to institute the inquiry, even for this cause alone? He never changed his views as to the propriety and necessity of making inquiries; he was always in favor of them; he would prune wherever it was necessary; he would never spare the knife. He was an advocate of "reform" in the true and legitimate sense of that term—not of that species of "reform" which reforms a good man out of office and puts a bad one in; which removes an opponent for the purpose of substituting a favorite. When we do not want officers let us discharge them.

Mr. H. said, he recollected being a member of a committee in 1817, in the House of Representatives, to inquire into the abuses which, it was thought, had crept into the Executive Departments. That committee was supplied with large powers; they could call for persons and papers, and could issue subpoenas *ad testificandum*. So "searching" were their "operations," that they were repeatedly obliged to exercise their powers. The result of our labors was, [said Mr. H.] that the different heads of the Departments united together and gave us the basis of the act of 20th April, 1818. He was, he said, in the Senate in 1821, a member of the Committee on Finance, which was then employed in reforming abuses in the customs, and exerted his humble talents in passing the act of the 7th May, 1822. He recollected, also, being once associated with the gentleman from Missouri, [Mr. BAXTON] on other subjects of reform; he meant the control of Executive patronage, and the abolition of useless offices. The gentleman from Missouri was chairman of the committee, and made the following able report, to which he [Mr. H.] would beg leave to call the attention of gentlemen for a few minutes. Mr. H. then read the following passage:

"Mr. BAXTON, from the Select Committee to which was referred the proposition to inquire into the expediency of reducing the patronage of the Executive Government of the United States, made the following report: That, after mature deliberation, the Committee are of opinion that it is expedient to diminish or to regulate by law the Executive patronage of the Federal Government,

whenever the same can be done consistently with the provisions of the constitution, and without impairing the proper efficiency of the Government. Acting under this conviction, they have reviewed, as time and other engagements would permit them to do, the degree and amount of patronage now exercised by the President, and have arrived at the conclusion that the same may and ought to be diminished by law."

Executive patronage! From all this, and what else he had observed, he had come to the deliberate conclusion that the Executive patronage "has increased, is increasing, and ought to be diminished." Mr. H. proceeded to read a few other passages from the same report, as follows:

"The King of England is the 'fountain of honor;' the President of the United States is the source of patronage. He presides over the entire system of Federal appointments, jobs, and contracts. He has 'power' over the 'support' of individuals who administer the system. He makes and unmakes them. He chooses from the circle of his friends and supporters, and may dismiss them, and upon all the principles of human action will dismiss them, as often as they disappoint his expectations. His spirit will animate their actions in all the elections to State and Federal offices. There may be exceptions, but the truth of a general rule is proved by the exception. The intended check and control of the Senate without new constitutional and statutory provisions will cease to operate. Patronage will penetrate this body, subdue its capacity of resistance, chain it to the car of power, and enable the President to rule as easily, and much more securely, with than without the nominal check of the Senate."

"Your Committee have reported the six bills which have been enumerated. They do not pretend to have exhausted the subject, but only to have seized a few of its prominent points. They have only touched in four places the vast and pervading system of Federal Executive patronage: the Press, the Post Office, the Armed Force, and the Appointing Power. They are few, compared to the whole number of points which the system presents, but they are points vital to the liberties of the country. The Press is put foremost because it is the moving power of human action: the Post Office is the handmaid of the Press: the Armed Force its executor: and the Appointing Power the directress of the whole. If the Appointing Power was itself an emanation of the popular will, if the President was himself the officer and the organ of the people, there would be less danger in leaving to him the sole direction of all these arbiters of human fate."

Solemn language, this, said Mr. H. The Committee reported six bills, in one of which is this extraordinary provision:

"SECT. 2. *And be it further enacted*, That in all nominations by the President to the Senate, to fill vacancies occasioned by an exercise of the President's power to remove from office, the fact of the removal shall be stated to the Senate at the same time that the nomination is made, with a statement of the reasons for which such officer may have been removed."

These six bills were reported in the session of 1826, and in that session it was too late to act upon them. During the next session they were not called up. The succeeding session [Mr. H. said] he was not here, but he understood they had not been called up since.

Mr. H. said he was pleased that any subject occurred in the Senate, which enabled him to call their attention to this able report of that able chairman. He presumed that that gentleman, as he himself did, entertained the same views now as at that period. The Executive patronage is increasing, and, do what we will, it always will increase: for the more power a President assumes, the more popular will he become. Mr. H. was desirous that this inquiry should be instituted, especially in these days of reform, when the people are expecting retrenchment. The peo-

ple have been promised this, and we must fulfil that promise. We should inquire whether there are any useless officers; and if there are any, they ought to be discharged. It would seem the land surveyors had nothing to do; not at least for seventy years and upwards. He wished to see whether the land was valuable or not, and whether surveyors were any longer required. If the land is not valuable, why has it been surveyed? If these officers are useless, we ought to prune, and not to spare the knife. These facts [said Mr. H.] imperatively demand inquiry.

He would not, he said, detain the Senate any longer, as it seemed probable that the subject would come up again. He hoped that no feeling to prevent inquiry would deter gentlemen from voting for this resolution. He was against employing officers who had nothing to do: he was opposed to sinecures. Mr. H. concluded by stating, he was willing to facilitate emigration to the West, but that he was opposed to the increase of the Executive patronage, and he hoped that in this respect the gentleman from Missouri retained his former sentiments.

Mr. BENTON immediately rose, when Mr. HOLMES sat down, and said that he had seen all that before; that a newspaper had been sent to him last summer, containing the extract from his report, which the gentleman had read; also a train of remarks similar to the gentleman's, and an interrogatory like his. He had not given any answer to an anonymous writer; but since the same process was gone over in the Senate, and by a Senator in his place, he would reply to it, and say that the two years which followed the making of that report, were not favorable to his object—that it was an unpropitious season for enlarging the rights of the people. If this answer was not sufficiently explicit, Mr. B. would be more particular. [Mr. H. said the answer was sufficient.] Mr. B. proceeded to remark upon the suppression of inquiry. He denied that there was any attempt to suppress on his side, but rather on the other. He was for discussion, ample discussion in full Senate, and upon an appointed time. Does that look like suppression? Does it deprive the Senator from Maine of any right? On the contrary, does it not enlarge the exercise of his rights? For, if the resolution goes to the Committee named for it, he not being a member of that Committee, will have no share in the inquiry; but if it is discussed here, he takes his full part in the discussion. Does he call that suppression? Mr. B. returned to the resolution, not for the purpose of debating it now, but to say that he would debate it hereafter. That he would trace the progress of these measures to check emigration to the West through a series of forty-four years. Since all that time a system of measures had been pursued—he did not speak of their design, but their effect—to check emigration to the West. He was able to trace these measures, and would do it. It was time to arrest them—time to make a stand—to face about; and to fight a decisive battle in behalf of the West. He acquiesced in the motion of the Senator from Indiana [Mr. NOBLE] but wished a longer day. The young West, [he said] had been saved from an attempt to strangle it in the cradle, forty years ago, by Virginia and the South. The Senators of Virginia are now absent, engaged in paramount duties at home. He wanted their presence again, now that the old and persevering policy which would check emigration—not to Ohio, but to the further West and South West, was to have a formal decision. He would, therefore, move a longer day, to allow time for these Senators to arrive; he named Monday week.

Mr. NOBLE acquiesced in the day named.

Mr. HOLMES added a few remarks. The subject in his opinion imperatively demanded inquiry; and as he saw and knew something of surveys, he thought it required a thorough examination. He wished that a Select Committee should be appointed for the purpose. It was absolutely necessary, since it was seen that surveys had been made and large appropriations of money; and such a large quan-

JAN. 4, 1830.]

Internal Improvement.—Indian Affairs.

[SENATE.]

city of the land remained unsold. He would call the attention of the Committee to another fact. There was a district in Ohio, where the surveyor general lived three or four hundred miles from the land which he is employed to survey. He [Mr. H.] was desirous to have an inquiry made into this matter; for, he was of opinion, that the object of having a surveyor general, required that he should be where the land to be surveyed lies. He hoped, therefore, that an inquiry would be instituted, and a full report, upon which the Senate could act, would be made.

Mr. WOODBURY said he deemed it an act of comity to accede to the motion made to postpone the consideration of this resolution, especially as the mover and supporter of it had expressed a wish to have the subject debated again. But if the time required is refused, he would, with his present knowledge, be disposed to vote against any proposition tending to stop the surveys. He would treat the subject as an individual private owner would. The public lands belonged to the Union at large, and were deemed valuable property. The Indian title has now been extinguished to about one hundred millions of acres, which have not been surveyed, and individual buyers cannot make a selection out of them until the surveys are made, and the lands put in the market; with a wider field to select from, purchasers could accommodate themselves better, and would give a higher price. In addition, he considered it an act of justice to the States: for, in some, these surveys have been nearly completed, and in others much less done. To stop now would be considered favoritism. It was due to the new States equally to survey the lands: for, if they are not surveyed and offered for sale, how are they to increase their population, their wealth, and their resources? The public, also, have a deep concern, from considerations of sound political economy, that the best lands should be occupied first. Then the same quantity of labor will produce larger crops and income. Poor lands ought not to be occupied till they are the very worst uncultivated in the country. The same information which he had on this subject, and which, he thought, would govern his private conduct, would govern his public conduct, as an agent for the public. But further debate might throw new light upon the question, and from courtesy to those desiring it, he should certainly vote for the postponement.

Mr. FOOT said he had not the least objection to postpone the consideration of this resolution, although it was an unusual motion to postpone a resolution for inquiry merely, and make it the special order of a day. He agreed with the gentleman from Missouri, that the Southern and Western States were greatly interested in this question. The States of Illinois, Alabama, Missouri, Mississippi, and Louisiana, were; and from these States are all the members of the Committee to which the inquiry would go. As to preventing emigration, or any hostility to the West, he disclaimed any such intention; but he objected to this mode of disposing of the resolution.

Mr. BARTON said he approved of the suggestion to appoint a Select Committee. The question now was, whether we should go on with the surveys; whether the officers were properly arranged, or whether there were too many of them. As to going on with the surveys, the officers are already appointed for that purpose. The exploration of the country, the making of correct maps of it, rendered it important to go on with the surveys, whatever might be decided as to the details of the public lands. He said he would not vote in favor of the postponement of the resolution, but he hoped that a Select Committee would be appointed, instead of sending the inquiry to a Standing Committee.

The motion to postpone the consideration of the resolution till Monday week, and to make it the special order of the day, was then agreed to; and the resolution was postponed accordingly.

THURSDAY, DEC. 31, 1829.

## INTERNAL IMPROVEMENT.

The bill authorizing a subscription of stock in the Washington Turnpike Road Company was read the second time, and considered in Committee of the Whole.

Mr. HENDRICKS having explained the nature and object of the bill, the importance of a speedy completion of the road, in a national point of view, and the prospects of the tolls remunerating the holders of stock, by liberal dividends—

Mr. DICKERSON desired more time for deliberation, and for affording to absent Senators an opportunity of voting. After some conversation between Mr. HENDRICKS, Mr. SMITH, of Maryland, and Mr. DICKERSON, the bill was postponed to Monday week, and made the special order for that day.

[The bill authorized the Secretary of the Treasury to subscribe for four thousand five hundred shares of the stock, and appropriated ninety thousand dollars for the purpose.]

Adjourned to Monday.

MONDAY, JANUARY 4, 1830.

## INDIAN AFFAIRS.

Mr. SANFORD presented a petition from a meeting of the citizens of the city of New York, asking the protection of the United States for the Indians against injustice and oppression; and on motion of Mr. S. the petition was ordered to be referred to the Committee on Indian Affairs.

Mr. BURNET moved that the memorial be printed.

Mr. FORSYTH called for the reading of it.

The Secretary proceeded to read the memorial to the Senate; and had gone on for some time, when

Mr. BELL rose, and objected to the further reading of it.

Mr. TROUP hoped the memorial would be printed, if the reading of it were discontinued. He wished to know the contents of this document; to become acquainted with the manner in which it was written, and with the matter which it contained, before any disposition was made of it by the Senate.

Mr. BELL said he asked the discontinuance of the reading of the memorial merely with a view to save the time of the Senate. He thought that the printing of the document would enable gentlemen better to understand its contents than the cursory reading of it by the Secretary.

Mr. BURNET said he would withdraw his motion to print the memorial, for the purpose of enabling the Senate to dispose of it as they might think proper.

Mr. FORSYTH said that he believed the memorial had been ordered to be referred to the Committee on Indian Affairs. From the manner in which the memorial was presented, he was not aware of its real character. He had supposed it to be a memorial on the subject of Indian affairs generally. He now understood it, from what had been read of it, to refer particularly to the conduct of certain States towards the Indians. If that were the purport of it, he should move a reconsideration of the vote referring it to the Committee. He then moved to discharge the Committee from the further consideration of the memorial, as this appeared to him to be a better mode of effecting his object.

Mr. SANFORD said he would not oppose the motion of the gentleman from Georgia, although he did not wish to move the printing of the memorial until it was examined by a Committee.

Mr. FORSYTH repeated that he was not aware of the peculiar character of the memorial when it was first presented. He understood the gentleman from New York [Mr. SANFORD] to say that it had a general reference to all the Indians. If he now understood the memorial correctly, it was the memorial of a meeting held in a particular

of the country, whose object was the vindication of the alleged rights of the Southern Indians; if he understood it correctly, it impeached the character and conduct of the Southern States; and it did not relate to the Indians generally, but to the Indians within the Southern States alone, to the condition in which they are placed by the Southern States. It might be that the memorial was expressed in terms to which he could have no objection; but all he wished for was, that it should lie on the table, that he might have time to examine it, in order to see whether it was the case or not. If it impeached the character or conduct of the Southern States, he should object to its reference to the Committee; if not, he could not of course have any objection. As to the printing of the memorial, he was opposed to it till he examined it, and knew whether it was worthy of being printed. When, therefore, the gentleman from Ohio [Mr. BURRICK] moved to have it printed, he [Mr. F.] called for the reading of it in order to ascertain whether it was worthy of it—whether it was deserving of being spread upon the records of this body. He called for the reading, in order to ascertain its contents, which he thought was more respectful and becoming than to ask the gentleman who offered it to explain its matter. He hoped that the motion to discharge the Committee from the further consideration of the memorial would prevail, and that it should be laid on the table, that he might have an opportunity of examining it. After having examined it, he [Mr. F.] would inform the Senator who presented it whether he had any objection to the disposition of it which had been proposed.

The question on discharging the Committee from the further consideration of the memorial was put, and carried in the affirmative; and

On motion of Mr. FORSYTH, the memorial was laid on the table.

#### PRE-EMPTION RIGHTS.

The bill to grant pre-emption rights to settlers on the public lands, was read the third time, and the question was stated on its passage.

Mr. BELL said that this bill, in its operations, would produce this effect: the encouragement of future violation of the laws which regulate our public land system. This bill gives the right of pre-emption to all those who have violated our land laws by entering on the public lands, and now have actual possession of them. It gives the right to those who have thus entered these, to purchase them at the minimum price. It will confer the right on a large portion of those intruders who have entered on those new tracts of land which have been surveyed, but which have not been as yet offered for sale. It will confer the right on those who are in possession of the most eligible portions of land in the new country, and the effect will be, that when those lands are offered at public sale, the intruders who are in possession of them, will deter purchasers from bidding for them. There are many and obvious reasons, [said Mr. B.] why purchasers who already have lands, will decline interfering with the possessors of these lands when offered for sale, however eligible they may be. Compassion for the situation of these people and their families, will prevent competitors from interfering with them. There are, in fact, many other reasons to convince them of the imprudence of purchasing such tracts of land over those who have taken possession of them. These intruders then will remain in possession, and this bill gives them the right to enter these lands at the minimum price, although they might be worth four times as much. This bill, besides, allows the purchasers time which is not allowed to others; it, in effect, gives them a credit of one year. If he understood the bill, [Mr. B. said] its operations would not cease here. If its operations would end here only, the objection he had stated to the bill would still be conclusive with him; but its effects extended farther; it sanctions, [said he]

an act forbidden by the laws of the United States: it sanctions intruders on the public lands, and it will sanction this as a precedent for future intruders to act likewise. How many will it not tempt to follow the example, thus to give them a title to the public lands, at the minimum price, and on a year's credit? He would ask whether this law would not encourage other intruders to enter upon the public lands, when they can purchase them at the minimum price? We cannot, and we will not refuse them the same privilege, when they ask us, which we now propose to grant. Any person who has witnessed the effect of precedents in this body, must see that this precedent will be acted upon hereafter. Thus by holding out this encouragement, the effect will be to induce other intruders to enter upon the public lands, with the hope of finally being allowed to purchase them at the minimum price. This is the natural, the probable, and certain effect of the measure proposed. It would be better to repeal all laws on this subject, and to permit a general scramble, than to pass the present law.

Mr. BARTON said, he would state briefly the reasons which influenced the Committee in reporting the bill. There had been, heretofore, some difficulty with the Committee on this subject of pre-emption rights; but he believed no difficulty on that subject existed at present.

With respect to the prohibition of settlements on the public lands, contained in the old act of 1807, and alluded to by the gentleman from New Hampshire [Mr. BELL] that act did indeed prohibit such intrusions, (and it was proper enough for any government intending to sell the whole of its lands to make such provision) but the more particular object of that act was to prevent any difficulty in relation to the batters at New Orleans. The act, however, although intended to apply to that particular case, must necessarily have been general in its effects; and for this reason, and because of the many cases of hardship which arose from it, Congress had on various occasions deemed it necessary to depart from the provisions of the act of 1807, and grant pre-emption rights to actual settlers on the public lands. Inasmuch, then, as these various grants, made at different periods, in different sections of the country, together with the operations of the old law above alluded to, created great inequality in the conditions of the various settlers on the public lands, the object of the committee was to destroy that inequality, and place all the new States and Territories on the same footing. So far from its being the settled policy of the Government to prevent intrusions on the public land by others than actual purchasers, the general prohibition of the law of 1807 had been, as he had just observed, departed from in various instances, so that the bad precedent of reward in violation of the law, objected to by the gentleman from New Hampshire, had in fact been often set, and long ago. As to the policy or expediency of the measure recommended by the Committee, they were chiefly induced to report the bill in consequence of the operations of the public land system at the present time. If the gentleman from New Hampshire would turn to the documents on the subject, he would find that, for the last thirty years, the sales of the lands had netted to the Government but little more than the minimum price, while the actual settler had paid more; and that result was produced in this manner: among other causes, not necessary to detail, there was a kind of intermediate power interposed between the actual settler and cultivator, and the Government. Speculators formed a combination, and run up the price of the lands under sale, in some instances, but in a great many more cases, formed combinations to intimidate that class of purchasers who usually till the soil, and bought up large bodies of land for but little more than the minimum price; which they afterwards sold to them at a great profit. On consulting with the Commissioner of the General Land Office, and learning that this system of speculation had been carried on to a

JAN. 5, 1830.]

Massachusetts Claim.

[SENATE.]

very great extent, particularly in the Southwest, the question presented itself to the Committee, whether it would not be the better policy for the Government to give to the actual settler the tract cultivated by him, at the minimum price, than to give it, at the same price, to those who only purchased with a view to ultimate profit; and they had come to the conclusion that it was as much for the interest of the Government as of the cultivator and settler, that this combination of speculators should be disarmed and put down, by thus preferring the occupant. No injury could possibly accrue to the Government: for, if the only object be to put dollars into the treasury, the actual settler, under the provisions of this bill, would pay as much as the speculator; while, on the other hand, encouragement would be given to a most interesting and meritorious class of our fellow-citizens, the cultivators of the soil.

By the pre-emption policy, we would be sure to place the lands in the proper hands of those whose occupation it is to cultivate them. These are usually a class of men who have not much money or other means of competition at the public sales. Wherever this can be done without injury to the public, it should be done by every Government. As a source of revenue is by no means the most important view of our public lands, they ought, in his opinion, to be considered as a fund, with which to elevate the numerous non-freeholders of our country to the proud rank of freeholders; and to give them new interests in their country, and new motives to promote its prosperity and protect its existence. In that view, our public lands were the most important to the United States.

The supposed objection that pre-emption laws, as they are termed, gave encouragement to violators of the law, and enabled them to choose the best tracts of the public domain, was sufficiently answered [Mr. BARTON said] by the notorious fact, that it was their poverty and love of liberty, and not their disregard of the laws, or their want of patriotism, that drove them to encounter the privations of a pioneer life, and by the equally notorious and recorded fact, (which the gentleman from New Hampshire could see, by perusing, at leisure, the land documents of the United States for thirty or forty years past) that, under the operation of our land laws, our public domain had produced but a fraction over the minimum price. So that no practical injury could be done by laws which tend to place the lands in the hands of those whose occupation it is to till them, and who are generally least able to buy them, rather than in the hands of those who already have not only lands, but the means of buying more, and speculating upon the more poor and more interesting part of mankind, who actually cultivate the earth.

Mr. HOLMES said he hoped that the further consideration of this bill would be postponed, and brought up on another day. He said he would make a motion to that effect. He fully coincided in the sentiment expressed by the gentleman from Missouri, [Mr. BARTON] that the object of selling the public lands was not so much to raise revenue as to obtain settlers in the country. He could not, however, help expressing his belief that this bill, at some future period, would encourage depredations of the public lands to a greater extent than the Committee seemed to be aware of. This bill will give to the possessors the same right to the land, and at the same price, without regard to the condition in which the land may be placed, to the quality of it, or to the improvements which may have been made upon it. He need not, he thought, state to the Senate that land was worth in one place ten times as much as in another; yet the bill had no regard to this consideration. He wished to inquire—and it was for that purpose he chiefly rose—whether the Committee was able to ascertain what was the area of these lands, how many acres they embraced, how many sections were thus to be disposed of at the minimum price. He was afraid that little encouragement would be held out to purchasers at the public

sales. He hoped the Senate would consent to postpone the further consideration of this bill. Mr. H. concluded by moving to that effect, and to make the bill the special order of the day for Thursday week.

Mr. McLEAN named to-morrow week, instead of Thursday week.

Mr. HOLMES acceded to this modification of his motion.

Mr. NOBLE said that, as the subject had been brought under the consideration of the Senate, he could not remain in silence, especially on account of the expressions uttered by the gentleman from New Hampshire, that it would be better to leave the public lands to a general scramble than to pass this bill. The entering wedge [said Mr. N.] has now been introduced, and the citizens of the new States are to be left at the mercy of the tomahawk and scalping knife. The surveys of the public lands are to be checked in the first place, [alluding to Mr. Foer's proposition] and now pre-emption is denied to actual settlers; a scramble for the lands is next proposed. The history of the sale of the public lands commenced at the Congress held in New York. These lands were at one time sold at twelve and a half cents per acre, and although the possessors of them have risked their lives in settling them, yet we are told that it would be better to have a general scramble for these lands than to pass the proposed bill. He hoped that we would feel for the people thus situated, and who have risked so much in making the settlements which they ask the privilege of buying. Without money, without clothes, without bread, they have settled this country, and now they are told that the surveys of the land must cease. The partition of these lands was first commenced by forming townships, and now they are narrowed down into eighty acres. But now surveys are to cease, emigration to be checked, the actual settlers to be turned off; the plough and the sickle are to be broken into pieces. We [said Mr. N.] will resist this attempt. It is said that the people are violators of the public land laws, and would, if this bill were passed, injure the sale of these lands, by deterring purchasers from bidding for them. He, [Mr. N.] on the contrary, asserted, that, instead of diminishing, they augmented the value of these lands. He was willing that the motion to postpone should prevail, but he could not remain silent when the subject of the bill was even remotely touched upon; for our people, [said Mr. N.] whether they have schools or no schools, have common sense, and they will not suffer their members to sleep at their posts, but will call upon them to resist such measures as he had adverted to, as far as they are able.

The bill was then postponed to Tuesday week.

TUESDAY, JAN. 5, 1830.

MASSACHUSETTS CLAIM.

Mr. SILSBEE rose and said, that, agreeably to notice given yesterday, he was about to ask leave to introduce a bill, entitled "A bill to authorize the payment of the claims of the State of Massachusetts for certain militia services during the late war;" but as this claim, which had been so long in Congress, had never been before this branch of it, he was induced to accompany its introduction here by a remark or two in relation to it. The subject of this claim, he said, had been embraced in every annual message of the Chief Magistrate of Massachusetts, and had occupied a portion of the attention of every successive Legislature of that State, for some time past; that this consideration, in connexion with the interest and the feelings of the people of Massachusetts upon the subject, made it the duty of their Representatives here to press it upon the early consideration of the Senate, without waiting longer for the action of the other House upon it. Massachusetts, one of the oldest States of the Union, had presented a claim



SENATE.]

Mileage Bill.

[JAN. 6, 1830.]

upon the Government of the United States, for military expenditures in the course of the late war, to an amount exceeding eight hundred thousand dollars. This claim had been considered an equitable one, not only by that administration of the government of Massachusetts under which it originated, but by every succeeding administration of the State, from that period of time to the present one, and after twelve or thirteen years' application for a remuneration of the claim, a bill was reported, about two years ago, for two hundred and forty odd thousand dollars, or a little over one quarter of its amount. This bill [said Mr. S.] was accompanied by a report from the most scrutinizing officer of the War Department, stating this amount, at least, to be due, according to the most rigid principles which had ever been adopted in the adjustment of any similar claim whatever; and although nearly or quite two years had elapsed since that report was made, it has not been acted upon; yet, while this claim of Massachusetts had been pending before Congress, most, if not all, those of a similar character, from other States, had, he believed, been settled. Massachusetts [said Mr. S.] asks and expects the same measure of justice to be rendered to her which has been accorded to those other States; and she asks also, and asks earnestly, for a decision upon her claim. It has, therefore, in the opinion of her delegation, become their duty to urge it to a settlement, and to express their desire that an early report and decision may be had upon it in the Senate. With this explanation, he asked leave to introduce the bill.

The leave was granted, and the bill was read and ordered to a second reading.

WEDNESDAY, JANUARY 6, 1830.

## MILEAGE BILL.

Mr. WEBSTER moved that the Senate proceed to consider the bill "to establish a uniform rule for the computation of the mileage of members of Congress and for other purposes," which had been yesterday laid on the table on his motion. He said he made the motion to lay the bill on the table, in consequence of the difficulty which appeared to exist as to its proper direction. He was not disposed to suggest any particular direction for the bill, but merely to place it where he found it yesterday.

The motion was considered and agreed to.

Mr. BIBB said that there had been speculations upon former occasions about the compensation bill of members of Congress, which he was not now inclined to interfere with unnecessarily. When the public mind had become quieted on this subject, he, for his own part, felt no disposition to render it again uneasy; because he did not believe that the compensation of members of Congress was too much. As an individual, he was unwilling to see legislation transferred exclusively to those who are able to defray their expenses at the seat of Government, and going to and returning from it, out of their own private funds. Nor was he disposed, although he had great respect for many gentlemen of that fraternity, [bowing to a member across the chamber] to entrust legislation to the bachelors exclusively. Whilst these were his opinions on this subject, he must state that he would gladly see the measures as to the compensation of members of Congress rest where it was placed at the time when the ferment, into which the public mind had been formerly put respecting it, had ceased. When he read that part of the bill referring to compensation, he was strongly impressed with the idea that, according to his conception of the second section of the bill, relative to the payment of members who absented themselves from Congress, it deserved some correction. Mr. B. said (and he begged leave to call the attention of gentlemen to this particular) that the bill declared that any member of Congress, who

is not present in the House of which he may be a member, at some time every day during the session, will not be entitled to compensation for that day. To that rule he had the most serious objections; and his objections were founded not only on his experience of the present session of Congress, but of former sessions, when, many years ago, he was a member of this body. The absence of a member, he contended, was not evidence of his inattention to the public business. He was a member of a Committee of this House, and in that capacity, had, on one occasion, during the present session, to go to one of the offices for information for the Committee; yet, before he returned, the Senate had adjourned. He thought a member under such circumstances ought not to be deprived of his compensation. He went, as he had before said, to one of the public offices, to obtain information to enable him to discharge his duty more efficiently; and on his return to this House, he met a Senator, who informed him that it had adjourned. Was he, under such circumstances, at all culpable? He had therefore felt it his duty to call the attention of gentlemen to this part of the bill, in order that, if it should pass, this section might be amended. Mr. B. felt himself constrained to say, however uncourteous it might seem, that the bill was unworthy to be a subject of legislation. Yet, if the bill is to be taken up and passed, he thought he had stated enough to show gentlemen that the second section of it deserved correction. The Senate could not, yesterday, agree upon the particular Committee to which this bill ought to be referred. It appeared there was no Committee of the Senate to which it could be properly referred. For these considerations he moved its reference to a Select Committee.

Mr. NOBLE inquired of the President what was the title of the bill; and being informed, said that he thought it was entitled "An act to retrench." The word "retrenchment," he said, should have appeared on the margin of the bill at least. He thought that the reference which the gentleman from Kentucky [Mr. Bina] proposed, went against his own arguments: for, he had said that the bill was unworthy of notice; in which opinion, he [Mr. N.] fully concurred. The bill was not deserving of notice. For the last fourteen years, during which time he had been a member of this body, this was the first time that a bill had been presented, which no member was willing to receive, and which could not be properly referred to any one of the thirteen Standing Committees of the Senate. A select committee was now proposed. He [Mr. N.] was strongly induced to think, from the context of this bill, that it ought to be entitled "An act to provide materials for stump orations on the first Monday in August next." He was therefore opposed to a reference of this bill to a Select Committee; he wanted copies of it to be made, that he might send one to each of his constituents, who might then call township meetings to instruct him how he was to act. He was not afraid of the people, and he could say that the people detested the smallness of such measures as that now under consideration. Mr. N. concluded by moving to lay the bill on the table.

This motion was negative without a division.

Mr. HAYNE said, he had but one remark to make on the question before the Senate. He thought it was only respectful to the body with which the bill originated, to refer it to some Committee, in which, if it were liable to the objections stated, it might be so amended or corrected, as to remove those objections. As the Senate had agreed that there was no appropriate committee to which it could be referred, the usual course in such cases was, according to parliamentary rules, to appoint a Select Committee for it. He therefore hoped that this motion would prevail.

Mr. FORSYTH said that, as the Senate had yesterday, according to the best of his recollection, refused to refer the bill to a Select Committee, and that therefore such a

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motion was not now in order, he should move a reconsideration of that vote.

The motion to reconsider was agreed to, and the bill was referred to a Select Committee.

THURSDAY, JANUARY 7, 1830.

The Senate was occupied for the best part of this day in the discussion of bills of a private nature, particularly the bill for the relief of citizens of the United States who have lost property by the depredations of certain Indian tribes. Adjourned to Monday.

MONDAY, JANUARY 11, 1830.

The Senate spent nearly the whole of this day's sitting in considering the bill which was before them on Thursday last, as above noticed.

TUESDAY, JANUARY 12, 1830.

#### EXECUTIVE POWERS.

Mr. BARTON rose and said, that, considering all discussions of the relative constitutional powers of the President and Senate, upon matters of displacing, as well as of appointing federal officers in their native public; and that no rule or order of the Senate made such subjects secret; he gave notice that, at the next executive session of the Senate, he would move to transfer the discussion of that question from the executive to the legislative journal of the Senate, with a view of giving to it that publicity which the importance of the subject merits.

Mr. KING said he rose to express his surprise at the course pursued by the Senator from Missouri. It is a course so entirely novel, [said Mr. K.] that I am confident that gentleman has not given to it his usual reflection. Are we thus, sir, to confound our legislative and executive proceedings? Is the executive journal thus to be made public, without the sanction of the Senate, or a notice given while in our legislative capacity, of an intention to do an act, when we shall be in our executive capacity? I hope, sir, the Senator from Missouri will perceive the propriety of withdrawing his notice, and take an occasion, when the Senate shall be engaged on executive business, to bring it forward. Should he, however, persevere in pressing it on the Senate, I am confident you will, sir, [addressing the VICE PRESIDENT,] in the discharge of the duties of your station, refuse its reception.

Mr. HAYNE said he would submit to the Chair whether it was competent for the gentleman from Missouri to make any motion in the Senate, acting in its legislative capacity, in relation to a matter which was stated to be pending before the Senate in its executive character; and if not, whether the notice of such a motion could be now received? If the gentleman desired to bring up any question on the subject to which he had alluded, he might submit a distinct resolution to the Senate, or, if he desired it, to transfer any resolution now pending elsewhere, the motion could only be made there.

The CHAIR decided the whole subject to be out of order.

WEDNESDAY, JANUARY 13, 1830.

#### PRE-EMPTION RIGHTS.

On motion of Mr. McKINLEY, the Senate resumed the consideration of the engrossed bill to grant pre-emption rights to settlers on the public lands.

Mr. McKINLEY rose, and replied to the objections which were made to the bill when it was last before the Senate. He stated his anxiety that the bill should pass now, as some of the lands occupied by the description of persons which the bill proposed to relieve, were advertised for sale by auction in Alabama, on the second Monday of the next month.

Mr. HENDRICKS moved that the bill be recommitted

for the purpose of inserting a clause to guard against abuses under it, which seemed to be apprehended by some gentlemen; and Mr. HENDRICKS, and Mr. SMITH, of South Carolina, spoke in favor of the recommitment.

Mr. BIBB, Mr. BARTON, and Mr. McKINLEY, opposed the motion to recommit, and advocated the passage of the bill.

The question on recommitment was decided in the negative: yeas, 16—nays, 21.

The question on the passage of the bill was then decided in the affirmative, as follows: yeas, 29—nays, 12.

#### MR. FOOT'S RESOLUTION.

Agreeably to the special order of the day, the following resolution, submitted by Mr. FOOT, on Tuesday, the 29th ultimo, was again taken up for consideration:

"Resolved, That the Committee on Public Lands be instructed to inquire into the expediency of limiting for a certain period the sales of the public lands to such lands only as have heretofore been offered for sale, and are subject to entry at the minimum price. And also whether the office of Surveyor General may not be abolished without detriment to the public interest."

Mr. FOOT observed, that in twelve years' experience in legislative assemblies, it was not within his recollection that a resolution merely for inquiry had ever been made a special order: he must, therefore, consider the case as wholly unprecedented. Instances were not unfrequent in which resolutions of this character had been arrested by the "question of consideration;" such questions were generally made, where it was considered improper to make the inquiry. As he could not discover any benefit which could possibly arise from introducing this practice, he should decline giving it his sanction, by taking the lead in the debate; indeed he should feel himself placed in a very awkward situation, to be gravely debating the question, whether it is expedient to inquire into expediency. And as he had not the vanity to think it was in his power "to enlighten" this, or any other committee of five members of the Senate by a speech, he wished the resolution to go directly to the committee for consideration. But although he waived his right to lead, he reserved the right to reply, if in his judgment it should seem expedient; for the present he only asked the yeas and nays on the adoption of the resolution.

The yeas and nays were accordingly ordered.

Mr. KANE, of Illinois, said that, whatever might have been the most appropriate disposition of the resolution upon its first introduction, it appeared to him proper, after the discussion it had already undergone, that it should now be disposed of by an expression of the sense of the Senate upon its principle. If there are, [said Mr. K.] any portion of the people of this country who look to the accomplishment of purposes like those indicated by this resolution, and by kindred efforts elsewhere made, and their hopes not to be realized, the sooner they know it the better. Should, on the other hand, the fears of the people of the new States be alarmed at such projects, simultaneously brought forward in both Houses of Congress, the more speedily they are undeceived the better. The character of the resolution is so peculiar, that the opinions of a Committee will not tend to recommend it to the Senate. No fact is called for, and no state of facts can justify the adoption of its principle. It is a mere direction to the Committee of Public Lands to express their opinion upon a theoretic proposition. A reference for such an object is unusual, and can accomplish no good. The business of standing committees of this body is to examine into matters that cannot, consistently with the ordinary despatch of public business, be examined by the House itself: opinions upon principles are formed by gentlemen for themselves, and reports of committees cannot, and ought not, to influence them.

This resolution is any thing but what it has been represented to be. One gentleman (Mr. HOLMES) supposes that the proposed inquiry will be, whether certain principles of reform cannot be applied to surveys of public lands; whether sinecures exist, and may not be dispensed with. How different is the fact! The Committee are to inquire into the expediency of limiting, for an indeterminate period of years, future sales of lands to such as are now in market. Of course, the business of surveying is postponed, and the office of surveyor is to be made a sinecure, and then abolished. The question is, whether a sinecure shall be created; not whether a sinecure shall be abolished. There is no propriety in connecting with the single project of thus confining sales and stopping surveys, considerations so distant and inappropriate as those referred to. The Western People and their Representatives are not to be drawn off from a course of determined resistance to this attempt to check their growth and prosperity, into discussions about sinecures and reform, which are "trifles light as air" in comparison.

The language of this resolution is too plain, its objects too pointed, to be misunderstood. It appears to me strange that this particular time should have been selected by the honorable gentleman from Connecticut to make his proposition; that, at a time when the whole people of the United States are looking with intense interest to a speedy payment of the public debt, which is to present an incident in the history of nations as remarkable as it will be favorable to the reputation of free governments, he should think it his duty to set on foot an inquiry which, in its results, may disturb one of the established sources of the public revenue. Since the year 1801, the probable receipts from the sale of lands has formed a regular item of estimate. Every Secretary of the Treasury has presented this item as one of the means of discharging the debt, and of defraying the expenses of Government for the ensuing year. In 1801, the estimate of probable receipts from this source was four hundred thousand dollars. It has since risen to more than a million of dollars. Upon what basis were these estimates formed? Upon the quantity of land at the time, compared with the probable annual demand? Constantly recurring disappointments would have followed such a calculation, as the history of every year has proved. No, sir. The estimates have been made not only upon the quantity in market at the time, but upon the additional quantity intended to be thrown into market within the year. Its quality, and more especially its locality; I speak of locality, because settlement and cultivation have usually preceded surveys and sales; advantages, real or imaginary, have induced migrations to the most distant points. The first American settlements in Ohio and Illinois were nearly simultaneous. During the last session of Congress, we were informed that, within the contemplated limits of the Huron Territory, where not a single acre of the public land has been surveyed, there was a population of ten thousand souls. Petitions have reached us from various and opposite quarters of the country, stating the fact that settlements were formed beyond the surveys, and praying for pre-emptions. I have had the honor of presenting the memorial of many of my constituents, residing in the northern parts of Illinois, representing that a large population inhabited a region not in market, and praying for the establishment of a land office, that sales may be authorized. Does the Senator from Connecticut believe that a people thus situated, either desire, or can be induced to purchase, lands in Louisiana, Ohio, or Indiana? No, sir. When you get the hard earnings of these people into your treasury, it will be for the lands and homes of their choice. Do not be deceived in the expectation of augmenting your revenue by selling them lands at a distance from their residences, and such, too, as have been in market ten and twenty years.

For the purpose of exhibiting more clearly the danger-

ous influences of this project upon the public revenue, and of showing how completely it will place all estimated receipts of public lands upon an ocean of uncertainty, permit me, sir, to allege and prove—

1st. That nearly half of the public land now offered for sale is unfit for cultivation.

2d. That so much of it as can be cultivated is not of equal value, and cannot be sold at equal prices.

3d. That the demand for land is large, and cannot be satisfied without a thorough change in the existing system, and a great diminution of price.

I will not fatigue your attention, sir, by going over all the voluminous documents presented to Congress, which establish the truth of these positions. I have been long convinced, that the greatest difficulty the new States had to encounter in their application to Congress for relief and a change in your land system, was to make known the whole facts in such a mode as to show that the interests of the nation, as well as of those States, equally called upon you for the change. With this view, a call was made, under the authority of this body, at the instance of an honorable Senator from Missouri, (Mr. BREXON) upon the proper authority, for information upon the following points:

1. Quantity and quality of land at minimum price, unsold, 30th June, 1828.

2. Probable character and value of same.

3. Length of time same has been in market.

In answer to this call, a statement from the commissioner of the general land office was made, exhibiting information received from almost every land office in the new States and Territories. It will surprise any gentleman unacquainted with the subject, to discover how much of the vast domain of this Government is absolutely worth nothing, in the present condition of the country. The register and receiver at St. Louis report that, out of more than two millions acres of unsold land, in that district, three-fourths of it is unfit for cultivation. By the officers at Huntsville, Alabama, we are informed that, out of a quantity of more than three millions of unsold land, within that district, there is a very inconsiderable part, if any, that may be termed first rate land, and they estimate the greatest portion of it as mountainous, and unfit for cultivation. The officers at Tuscaloosa, in the same State, say, that, of more than three millions of unsold land, in that district, no part of it would come under the head of first quality, and that there is not exceeding ten thousand acres fit for cultivation. Reports from other districts disclose a more favorable view of the matter. From the whole, I have selected the report of the register and receiver at Edwarsville, in Illinois, as presenting, in my judgment, a fair average view of the whole. The statement from that quarter is, that the amount of unsold land was, on the 30th June, 1828, two millions seven hundred and seventy-eight thousand eight hundred and twenty-seven acres and twenty-eight hundredths. The amount unfit for cultivation, one million one hundred and ninety-five thousand two hundred and thirty-eight acres eighty-seven hundredths. We may then, sir, safely infer, that nearly one-half of the whole quantity of land now in market is unfit for cultivation, and cannot be sold at any price. Moreover, the same documents disclose the fact, that not more than one-twelfth part of the land fit for cultivation is of that class called first quality, and although the most of this has been in market for many years, it remains on hand at the minimum price.

So long as the same price shall continue to be demanded for lands without regard to quality, so long will your sales be confined to such as are the best, and all inferior lands may be considered as withdrawn from the market. If this be true, it is at once perceived that the amount of land in market for revenue objects has been greatly overrated. For we have here seen that half of the whole is

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good for nothing, and that but one-twelfth part of the remainder is first rate. So that, for every twenty-four acres we have been in the habit of counting, we ought only to have counted one. The idea has been frequently suggested, that there is no demand for land beyond the quantity already surveyed. If, by this, is meant that sales must be confined to the surveyed regions, and that the same price is to be asked for all sorts of land, and that the minimum is not to be reduced, there is much truth in the suggestion. And as, under these circumstances, the demand will be very much limited, your revenue must be diminished in the same proportion. That there are people, and a great many of them, without land, who want it upon fair terms, and who are unable and unwilling to procure it, under the existing state of things, is unquestionable. Again I refer to documentary evidence to prove my position. By a message transmitted to the Senate, by the President of the United States, in the month of December, 1828, we were informed that, in the State of Ohio, there were fifty-seven thousand two hundred and eighty-six free taxable inhabitants who were not freeholders; that, in the State of Missouri, there were ten thousand one hundred and eighteen persons of the same description; and it is not probable that in any one of the new States the proportion of non-freeholders is less. In such States as Illinois and Missouri, then, more than half of the persons entitled to vote are not owners of the soil. Do you believe that these people do not want lands and homes of their own? Did it never occur to gentlemen, that the reason for this state of things was found in the fact that, for the best of your lands, you ask more than they can afford to give, and for those of inferior quality you demand the same price? As well might a merchant, in possession of a stock of goods of every variety, from the finest silks and broadcloths, down to the coarsest cottons and woollens, fix the same price upon every yard of each, and, after selling the finest, conclude that there was no market for the remainder, though he should see the great body of his neighborhood without cotton shirts and woollen blankets. But, sir, upon this branch of the subject, I will detain you no longer.

I think I have succeeded in showing that, when the objects of this resolution are accomplished, the interests of the nation will be more generally affected than has been supposed. It is to the especially injurious consequences of this measure upon the interests of the new States that I invite the attention of the Senate. In the first place, sir, it will be extremely unjust, because its operation will be partial to an extent not justifiable upon any ground whatever. The amount of lands in market in these several States is very unequal. In the State of Illinois, the number of acres surveyed and unsold is not less than twenty millions; in Indiana, the older and more populous State, not more than one-half that number. In Missouri, not less than twenty millions; in Louisiana, the older State, not more than three millions. In the Territory of Arkansas, about fifteen millions; in West Florida, less than half a million; and, in the Northwestern Territory, not one acre has been surveyed. How unequal will the people of these several States and Territories be situated with regard to all their prospects, domestic and political! A sense of justice, apart from every view of the organic principles of free and equal political associations, pronounces it unjust. Could any man be satisfied with the integrity of his own motives, and declare that it was intrinsically right to permit the inhabitants of Arkansas to enjoy the blessings of improved society, and the benefits of an increased and increasing population, and forbid them all by law, to the people of Florida, or the Northwestern Territory? Such must be the certain consequences of carrying into operation the principles of this resolution.

As a Representative from Illinois, were it possible for me to be governed by unworthy motives, this inequality

would not furnish cause for complaint: for we have seen that the quantity of surveyed land there is comparatively large. Poorly, indeed, should I represent her character by consenting to a measure so unjust and ungenerous towards her sister States. That State contains more than forty millions of acres. By the means proposed, you not only deprive her of the use of more than one-half of her beautiful territory, but that half is by nature the most wealthy, the most desirable, and the most likely to be densely populated. It lines the shores of Lake Michigan, from whence the products of the soil are to be transported to the North Atlantic markets. It contains her extensive mineral grounds, which will give employment to thousands of your fellow-citizens, and it is intersected, at convenient distances, with the purest streams of the navigable waters which pay tribute to the great father of rivers. Is it reasonable to believe that a State, thus deprived of her choicest blessings, thus cut off from her fondest hopes, will be consoled by the reflection that her neighbors are more hardly dealt by than herself?

Need I go into argument to prove, what is so self-evident, that, whilst you close up the one-half of the lands from sale, within all the new States, and much more than that in some, you deprive them of the advantages upon which they have calculated from migration? I will not believe that such a disposition exists on the part of any man. Connected with this subject, there is a view to be taken, compared with which all I have said is insignificant. I now speak of the power of this Government, in the just exercise of its authority, under the constitution, and upon a fair interpretation of the spirit of its obligations, contracted with both old and new States, to pursue the course indicated by this resolution. I am not about to renew the argument, heretofore urged upon this floor, and elsewhere, that the lands, in virtue of the sovereignty of the new States, belong to those States. The little favor which that proposition has heretofore met with in Congress, admonishes me to forbear the argument. However clearly you may distinguish between the sovereign rights of States, and the proprietary rights of the Federal Government; whatever may be the construction of words and phrases employed to secure your authority, it is not difficult to show that, by withdrawing from market a portion of the territory of the States, or by refusing to sell the whole upon equitable terms, you, in point of fact, exceed your powers, violate your plighted faith and solemn obligations, and lay the sovereignty of the new States in the dust.

Your right to withhold a part cannot be distinguished from your right to withhold the whole of your lands within any one or all of the new States from market; and what do the rights of sovereignty, for any practical purpose, over vacant territory, amount to? The rights asserted by this resolution extend to the selling all the lands in one State, and withholding all or nearly all from sale in another. Where, sir, then, is the security for that "equal footing" of the new States, for all substantial purposes of State Government, so emphatically expressed in your compacts?

You have stipulated to admit not less than three nor more than five States into the Union, out of the lands ceded by Virginia. The time when is not fixed. Can you get round this obligation, with regard to the Northwestern territory, by refusing to survey and sell the lands therein, and prohibiting its population forever?

Surely there must be some standard by which the relative rights and duties of the Government and the new States and Territories can be justly fixed; and I am willing that the standard should be good faith. What this requires must be determined by a reference to the state of things which existed when these lands became the property of the Federal Government, the objects of the cessions, and by an honest interpretation of the meaning of

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the parties, as derived from their written contracts. Without intending to go into all the particulars of history connected with this view of the subject, I will content myself by saying, that the difficulties which surrounded the Congress of the Confederation induced them, in September, 1780, to invite the States having unappropriated lands to make liberal cessions for the general good. The resolution of that venerable body of the following month declares, that the unappropriated lands that may be ceded or relinquished to the United States, by any particular State, pursuant to the recommendation of Congress, of the 6th day of September last, shall be disposed of for the common benefit of the United States, and be settled and formed into distinct republican States, which shall become members of the Federal Union, &c. Thus, we see, the object then was to acquire lands, not to be held up in the hands of a great speculator, but to be disposed of and settled; not to be reserved from settlement as this resolution proposes. Let us proceed a little further, and see what was meant by the common benefit, for which the lands were to be disposed of. The State of New York appears to have been the first in point of time, to comply with the invitation referred to. The preamble of her act of the Legislature of the 17th March, 1780, is as follows: "Whereas nothing, under Divine Providence, can more effectually contribute to the tranquillity and safety of the United States of America, than a federal alliance, on such liberal principles as will give satisfaction to its respective members; and whereas the articles of confederation and perpetual union recommended by the honorable Congress of the United States of America, have not proved acceptable to all the States, it having been conceived that a portion of the waste and uncultivated territory, within the limits or claims of certain States, ought to be appropriated as a common fund for the expenses of the war," &c. The States of Virginia, and North Carolina appear to have had the same object in making cessions. For they both declare that the ceded lands should be a common fund for the use and benefit of such of the States as had or should become members of the confederation, "according to their usual respective proportions in the general charge and expenditure." What "usual respective proportions in the general charge and expenditure" were here meant? Precisely what was meant by New York, when she spoke of the expenses of the war. Can it be supposed that the objects of Virginia, New York, and North Carolina, were to make the Federal Government a rich and more powerful one? Or did they intend only to remove existing embarrassments? The old Congress declared before the cessions that the lands should be disposed of and be settled, and formed into distinct republican States. The time was not fixed, it is true, within which either the lands were to be sold and settled or the States admitted. I may, however, at least infer that it was not then intended, that if, in fifty years, the land was not sold, that one half of it should be withdrawn from market, and not settled at all. My interpretation of the intentions of these parties is, that the debt was to be paid as far as might be, by sale of the lands; and the promise that they should be settled, and be received into the Union, was the guarantee that no unnecessary delay in the sale or settlement should be interposed. How different are we in the habit of considering this matter! The public domain is now considered an object of great national wealth, and it is believed to be the duty of Congress to play the part of land jobber, and hold it up for the highest prices, making the settlement of the ceded country, and its admission as States into the Union, solely dependent upon the pecuniary interests of the Federal Government. Nay, sir, I have heard it alleged, that the lands ought not to be brought into market extensively, because it would affect the prices of real estate in the old States; and I have understood that it is seriously debated elsewhere, whether the proceeds of the lands

shall not be divided among the several States, not according to the proportions of charge and expenditure, but according to their representation in Congress.

It is not wonderful that those who are willing to disregard the original understanding of the parties to these cessions should be at a loss to know what to do with so much money. To get rid of the objection that it was never intended to make this Government unnecessarily rich, and to place in its hands the destinies of ten or a dozen States of the confederacy, as this resolution proposes to do now, some States of older date, by their representatives, very kindly offer to take the money themselves, and their younger brethren into their kind keeping also. For one, I very much desire to see the day, when the new States shall neither be an object of envy or cupidity. When the people thereof can be permitted to rest under their own "vine and fig tree," without being eternally subject to the projects of other people. This time will arrive, whenever the energies of this Government shall be directed with fidelity to the honest discharge of its obligations and constitutional duties; whenever it shall in good faith dispose of the land to pay its debts, and with a view to its settlement. But if the national honor is to be sacrificed to gratify national cupidity; if the immediate and pressing interests of the new States are to be sacrificed for the remote and speculative interests of some of the old; if, for the interests of those who wish to monopolize the manufactures of the country, land is to be kept from market in the new States, that labor may be cheap in the old, it will be for the new States, embracing, as they do, the fairest portions of this hemisphere, to decide, whether they shall not accomplish the destinies to which Heaven itself invites them.

Mr. BARTON said, as he should vote differently from those with whom he usually acted on questions respecting the public lands in the new States and Territories, it might be prudent to assign his reasons. If this were a peremptory resolution, affirming the expediency of making any radical change, in that respect, that could retard the migration to the West, or lessen the facilities of acquiring lands by the settlers, and the encouragement of the great agricultural interests in the West, he should vote against it. But being a mere proposition for inquiring into the subject, and that, too, by a committee known, and mentioned by the gentleman from Connecticut, [Mr. FOOT] to come from the very States most directly concerned in this matter, he should vote for the inquiry.

It was an unusual and an ungracious thing, [said Mr. B.] in the estimation of this body, to vote against inquiries, and they had become almost a matter of course. He was not afraid to let the people of the United States, east of the Alleghenies, look fully into this matter and see the plain truth as it really exists in the West. He feared the creation of unfounded and unfavourable suspicions, by thus stepping forward, at the approach of a portion of the owners to examine how this interest of theirs has been managed, and blowing out the light, as if afraid they really would make some unpleasant discoveries, if permitted to come in and examine. Let them examine. He gave the gentleman fair notice of his propositions in favor of going on with the surveys and sales. We had now, [said Mr. B.] in existence all the offices, officers, and their subordinates, necessary to complete the surveys; and why arrest their progress? The survey of our country was necessary to know its physical features and capabilities; to know the rivers and streams; the prairies and forests; hills, mountains, arable lands, minerals, and the situation and general aspect of our great purchase from France, as well as of all our other domains. The surveys were necessary to correct descriptions and maps of our country; and, as the machine was now in useful motion, it would be a saving, even in an economical view, to go on and finish the surveys rather than demolish the machine,

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*Mr. Foot's Resolution.*

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and, after a lapse of ten or twenty years, rebuild it and begin anew. The marks of surveyors, he said, like other human marks, could not last always; but, if faithfully made, they would last long enough, for the purpose of finding and disposing of our public lands. With respect to the sales, it was necessary that our Presidents, under their discretionary powers of selling public lands, should be liberal. It promoted the great agricultural class of our people; the agricultural interests of the country, which lie at the bottom of all the others as their foundation. It was upon this very ground that the late Secretary of the Treasury [Mr. Rosa] gave a correlative encouragement to manufactures. He had understood Mr. Rush only to draw an argument from the great ease with which lands were acquired and agricultural interests fostered in the United States, in favor of a similar encouragement to the other great interests of manufactures and the useful arts of mechanism; and not to be unfriendly to the growth of the West. And to that intent Mr. Rush was certainly correct. Without the manufacturing arts in our country, agriculture could not thrive, when all Europe refuses to receive the products of our soil. Agriculture feeds manufactures, and manufactures encourage and sustain agriculture, by affording it a market at home. They mutually aid each other, and are necessary to each other's prosperity. There may be details in our land laws which ought to be reformed. But the great feature of liberality in them, he should be unwilling to mar, even for a week. So long as that was retained, you might encourage and practise manufactures east of the mountains, where they must necessarily spring up first, as much as you pleased, it could never injuriously affect the migration to the West. So long as the attractions of land, liberty, and free space, are there on their present easy terms, the tide of migration will set towards them.

But why use arguments? Cast your eyes towards the West and you will see the streams of migration to your new countries setting in that direction wide and deep and unrestrained by the manufactures of the East, which had required a high consideration in this nation, and he regretted that they were thought prejudicial to any part of the Union.

Mr. McKINLEY said he was in favor of the adoption of the resolution, not because he expected or wished the inquiry to result in the adoption of a new system, such as that implied in the resolution; but because he was in favor of a full and fair inquiry into every subject connected with the public lands. To refuse it was but to create new prejudices and suspicions, and to increase those already existing. Public attention was now directed to the public lands, with a view to the distribution of their proceeds; and every subject connected with them would of course become more interesting to the people. Although Congress had been legislating upon this subject for more than forty years, a great portion of the members from the old States were ignorant of the land system, and the laws relating to it, (and he meant no disrespect when he said so.) The reason is obvious. They did not consider it their duty to become minutely acquainted with this subject, and therefore generally left it to those who represented the States where those lands lie, to investigate and explain all matters connected with them. This [said Mr. M.] furnishes an additional reason why inquiry should not be refused. For himself, he said, he had nothing to apprehend from any investigation that might take place. And although it was a novel proceeding in the Senate, to discuss the merits of a resolution of inquiry, so far as the discussion was intended to throw light on the subject, and aid the committee in coming to a correct conclusion, he had no objection to it; but so far as it was intended to arrest inquiry, he was opposed to it. It does seem to me, however, [said Mr. M.] that the proper time for discussing the merits, is upon the coming in of the report of the committee; there being

nothing now properly before the Senate, but the simple question—Is the subject proposed in the resolution proper for inquiry? Mr. M. said that, as the merits of the proposed system had been, and would probably be further discussed, he ventured to say, if the sales of public lands were confined to those which had been already offered for sale, (excluding the reverted and relinquished lands) the treasury would not receive two hundred thousand dollars a year from that source.

In Alabama there were a great many millions of acres of land which had been offered and not sold; and if no other land but that were permitted to come into the market for five years to come, not one acre in five thousand would bring one dollar and twenty-five cents, not one in two thousand would bring a dollar, and not one thousand would bring seventy-five cents, or any other price. The Senator from Illinois [Mr. KANE] had said that he was not one of those who contended that the new States were entitled to the public domain within them, in virtue of their sovereignty. Mr. M. said, he did not consider that there was any merit in holding the one opinion or the other, provided it be honestly entertained. But as it had been his fortune, or rather fate, to be the first to advance the doctrine that the new States, in virtue of their sovereignty, had a right to the public lands within their respective limits, and that the United States could not constitutionally hold them, he would now merely say that his opinion on that subject remained unchanged; and that the argument which he had delivered in this Senate some two years ago, on that subject, remained, in his opinion, unanswered. Should it again become necessary to discuss that question, he would maintain the same opinion; but while he did so, he did not ask to control the opinions of others. He regarded that question, for the present, as decided against him, and therefore should discuss all other questions, in relation to the public lands, as if they did constitutionally belong to the United States.

Mr. HOLMES wished the resolution to lie on the table for the present. He wished to offer the following resolution for the adoption of the Senate:

*Resolved,* That the Commissioner of the Land Office be directed to inform the Senate of the quantity of public land which is now, or can be brought into the market, distinguishing in what States or Territories such lands are;

But, upon the suggestion of Mr. FOOT, he abandoned his resolution.

The people of the United States [said Mr. H.] are an inquiring people; they wish for light. If you refuse this inquiry, they will be apt to suspect that we "love darkness rather than light, because our deeds are evil, and that we will not come to the light, lest our deeds should be reproved."

We have [said Mr. H.] a report of the quantity and quality of the public lands which were in market at the commencement of the year 1828. I wish to know what quantity of land has been brought into the market since that period; what is the quality of it, and in what part of the country it is located. If on inquiry it be found proper to go on with the surveys, he should vote for this continuance and for the continuance of the officers employed for that purpose. So far as the subject has been developed, there is a large quantity of land now ready for the market; probably it was not all ready. But I believe there is a large quantity owned by the States. The States would soon become competitors of the United States: for Ohio has a vast quantity of her own land for sale; so has Indiana, and, I believe, so has the State of Illinois. Besides, there are large tracts which have been sold to speculators, (by speculators I mean those who purchase the lands, not for the purpose of settling them, but to re-sell them again) which land is now in the market. If all the lands were not sufficient to gratify the desires and wants of purchasers, (which would be ascertained by the inquiry proposed) let us

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then give them more. He wished the inquiry to be made, but he was desirous of having the information his resolution contemplated, before he voted for the resolution of the gentleman from Connecticut, [Mr. FOOT.] But, as he would probably obtain the information from the Commissioner of the Land Office, or the Committee of Inquiry might obtain and present it to us, he was willing the discussion should go on; still he was surprised that any attempt should be made to another investigation.

Mr. FOOT said he had supposed that his proposition to refer this subject to the Committee on the Public Lands, composed exclusively of Senators from the States most deeply interested, would have screened him from any imputation, and even the slightest suspicion of unfriendly feelings or sinister views, in offering this resolution for inquiry merely. His object was to obtain information, and he knew of no committee better qualified to give full information on this subject; it was their peculiar province; he had full confidence in that committee, that all the information would be communicated in their report, if the resolution should be referred to them, of which he could not entertain a doubt. But if the Senate should refuse to let this resolution for inquiry go to the committee, the Senator from Maine [Mr. HOLMES] could then obtain from the Department the information he desired, and be [Mr. F.] hoped the Senator would not delay the decision on the resolution, by renewing his motion for postponement.

Mr. HOLMES said he would not renew the motion; he did not wish delay.

Mr. BENTON opposed the resolution. He said he would not, at the present advanced hour of the day, enter into a statement of the reasons which induced him to oppose it. He would, however, to-morrow, undertake to show the mischievous consequences which would result to the new States from the adoption of this resolution, notwithstanding it only proposed, as was said, an inquiry.

[Here the matter dropped for to-day.]

THURSDAY, JANUARY 14, 1830.

#### INDIAN AFFAIRS.

The following bill, to enable the President to extinguish the Indian title within the State of Indiana, was read a second time, and considered in Committee of the Whole:

"Be it enacted, &c. That the sum of forty thousand dollars be, and the same is hereby, appropriated, for the purpose of holding Indian treaties, and extinguishing Indian title within the State of Indiana."

Mr. WHITE briefly explained the objects of the bill, which he said was reported in consequence of a memorial received from the State of Indiana, stating that the Legislature of that State had appropriated a sum of money for the purpose of cutting a canal through a part of the country in which a large number of Indians now resided. We all know [said Mr. W.] that there will be constant collisions between the laborers who will be engaged in the construction of this canal and the Indians who inhabit the section of the State through which it is to pass, and it is for the purpose of preventing the carnage and bloodshed which must ensue from these collisions, that this bill has been reported. It was very desirable to have these Indians removed, which could be effected much more easily at this period than when the canal will have been made through the country. The committee were of opinion that the sum mentioned in the bill would be required for holding the treaty, and for subsisting the Indians and their families while holding it. Mr. W. concluded by calling the attention of the Senate to the facilities which would now be experienced in making this purchase, and to the opportunity which it afforded of carrying into effect what was regarded as the settled policy of the country—the removal of the Indians beyond the Mississippi.

Mr. SPRAGUE objected to the amount of the appro-

priation contained in the bill. The sum of forty thousand dollars was much greater than could be necessary to defray the legitimate expenses of holding a treaty. He presumed, therefore, that it was intended to form a part of the consideration to be given for the lands which were to be obtained by the treaty. This he considered improper, because, if the money was paid to the Indians immediately, the treaty would be carried into effect before it should have been submitted to the Senate for their approbation and ratification; thus depriving that body of its constitutional right, and executing the treaty without their sanction. The proper course was to stipulate in the treaty what should be done by the United States—then to submit it to the action of the Senate, and, if approved by them, execute it in good faith according to its terms.

Mr. WHITE replied that the purchase money was not contemplated in the bill, but an appropriation sufficient to defray the expenses of holding the treaty. It was necessary for the purpose of entering on any negotiation with the Indians to subsist them and their families while the treaty was going on. It was also necessary to give them presents, as every one knew who was acquainted with the matter. The expense of holding Indian treaties was, he said, very great, but he did not know that this appropriation would be all required. However, if any balance remained after the object of the bill will have been accomplished, it will not be lost.

Mr. SPRAGUE said that the explanation of the Senator from Tennessee, who was at the head of the Committee on Indian Affairs, had not removed his objections to the amount of the proposed appropriation. Is the sum of forty thousand dollars necessary to defray the expenses of merely holding a treaty? With what nation does it cost half that sum to negotiate? But it was said we must make provision for presents to be made to the Indians at the time of the negotiation. He believed that he understood how this power to make presents had been sometimes exercised. When the Indians, the primitive, original proprietors of the soil, were unwilling to part with their lands, particular chiefs, or other influential individuals, were applied to, their necessities and their cupidity were appealed to, their promises and appetites were solicited, and presents were made to them to purchase their consent and their influence, to sacrifice the interest of their tribes, to betray the trust reposed in them by their nation. Such practices he reprobated, and he would not willingly put into the hands of our commissioners the means of resorting to them. He would appropriate a sufficient sum to pay our own agents and commissioners, and their necessary expenses. He would leave the other party with whom we are about to make a solemn compact, to act freely and independently, according to their own conviction of their interest. Upon these terms he would treat, or not at all. He wished not to acquire their property, nor divest them of their lands, unless it were done honestly, fairly, and justly.

Mr. HENDRICKS said he would vote for the appropriation which the bill proposed; and although it might be that the whole amount would not be required to defray the expenses of holding the treaty, yet he was confident that whatever remained unexpended for that purpose would not be lost; it would be returned to the treasury. He considered the opposition to this bill arose from a misconception, as well of its principles, as of the objects it had in view; and he was confident when gentlemen came to a correct understanding of these points, their opposition would cease. It was impossible [Mr. H. said] to treat with the Indians without making them presents. We must treat with them as they are, and not as the Senator from Maine and the Senate would wish them to be; and it would be idle to think of entering into any negotiation with them without making an appropriation adequate to subsist their women and children, who always accompany them on such occasions. Mr. H. illustrated the necessity of such an appropri-

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tion, by a reference to the treaty of the Wabash, in 1826: at which he was present. Fifteen thousand dollars had been appropriated to defray the expenses of holding that treaty—to feed them on the ground; and for that purpose the appropriation was, perhaps, sufficient. But the commissioners found it necessary to advance them goods; to one tribe upwards of thirty thousand dollars, and twenty or thirty thousand to another. For this purpose it was necessary to purchase on the ground, at exorbitant prices, to indemnify the merchants for the contingency of an unauthorized transaction, and a subsequent appropriation by Congress. It is obvious, that, under such circumstances, the Government must have paid more for advances in goods than would have been necessary if the money had been in the hands of the commissioners. Mr. H. said, we would have ample security that the funds would be reimbursed, and the advances properly accounted for, if the Senate should not ratify the treaty: for we pay these Indians, at the present time, large annuities, which place it in our power to indemnify ourselves for any loss we may sustain. We pay to the Miami Indians twenty-five thousand dollars, and to the Pottawattamies, six thousand dollars, as annuities, and we can retain these sums, and cover advances, should the treaty not be ratified. Such stipulations were made in the treaty of the Wabash, and he presumed they would be inserted in any treaty which should be hereafter made.

But to the necessity of the treaty. The Miamies, consisting of about eleven hundred souls, principally reside on a few reservations on the southern shore of the Wabash. Through these reservations the Wabash canal had already been located. True it is, [said Mr. H.] that, by the treaty of 1826, the State has a right to make this location, and to appropriate six chains in width for the use of said canal; but nothing could be more obvious or certain than that the intercourse between the Indians, and the whites already surrounding them, together with the laborers on the canal, within their own territory, would engender strifes and animosities, which would terminate in blood. This tribe, [said Mr. H.] is perhaps the most vicious and depraved on the continent. They exhibit human existence in its worst and most degraded form. Surrounded by the white population, it is impossible to exclude them from the use of ardent spirits. They get drunk, and commit murders, not only on their own territory, but in the organized counties of the State. The present seemed to be a proper time to give additional impulse to the humane and judicious policy of settling them west of the Mississippi. Various circumstances induced this belief. The Legislature of the State would probably, at its present session, extend the jurisdiction of her laws over the Indian territory, as the States of Georgia and Alabama had heretofore done. He had just seen a paper from the seat of Government of that State, which informed, that the Judiciary Committee of one branch of the Legislature had reported favorably to that object. This would strongly incline them to emigrate. He had recently been informed of another circumstance. A murder had lately been committed among themselves in the county of Cass, adjacent to their boundary. The murderer was an influential person of the tribe. He had been indicted, and well knew the penalty of the law in such cases. It was not probable he would ever be taken, nor was it desirable he should. He would go beyond the Mississippi, and his clan would follow him. Others would follow in their rear, and the inclination to sell, if not now universal, would soon become so. Mr. H. said that the Pottawattamies were much more numerous than the Miamies, and their country more extensive, but less valuable in proportion to its extent. There were but the two tribes in the State; their numbers about four thousand; their territory between four and five millions of acres. The present seemed to be a propitious moment for extinguishing their whole title, and for getting them out of the State,

and he hoped the bill would meet the approbation of the Senate.

Mr. WHITE, in reply to the observations made by the gentleman from Maine, [Mr. SARGENT] as to the presents, or rather, according to his view of them, bribes given to the Indians, remarked that they were not given secretly, as he intimated his suspicion, to the chiefs of the nation, to seduce them from their path of duty, but were given openly to the nation, to use them according to their own internal regulations. They would not negotiate without these presents, which, indeed, he thought should be more properly called a consideration in part of the value of the purchase made. The Indians divide these presents amongst themselves, and apportion them according to their notions of their rank and distinction of their headmen. Is it not better [said Mr. W.] to make an agreement with them, and pay them in the shape of presents, than to terminate all negotiations with them, as would be the consequence of the adoption of the principles advocated by gentlemen? It cannot be considered in any sense offensive to the delicacy or morals of any man. Mr. W. repeated, that there was no secrecy employed in making these presents—that they were usual—and without their being made, no negotiations could be proceeded with. No man could say what sum it would be necessary to appropriate for the presents, &c. As to the sum of the rations, we must [he said] subsidize all their families: for they, not like the whites, bring their wives and children with them to the treaty ground. If they did not, and were not confident of being supported there, they would not negotiate at all. If a treaty thus made is to be considered unfair, then he would say that no treaty has been concluded fairly with these people in modern times. Entertaining these views, [Mr. W. said] the Committee had recommended the appropriation of forty thousand dollars as sufficient to cover the expenses of the treaty. He therefore hoped the bill would be agreed to.

Mr. KING said he was opposed to the passage of the bill, not from any objections he had to the principle of it, but because he thought the appropriation was too large. From the letter of the Secretary of War, it appears that there are only four thousand Indians, who are the remnants of different tribes, now inhabiting the State of Indiana. Can any one then suppose that so large an appropriation as forty thousand dollars will be required to defray the expenses of a treaty with these miserable people? His objections did not arise from any fears he had that the commissioners would exercise an undue influence over the chiefs of the Indians, by making them presents, which gentlemen so much apprehended. Gentlemen did not understand what was meant by giving them presents, unless the gentleman from Tennessee [Mr. WHITE] had satisfactorily explained it to them. But what he objected to especially was, the distributing of goods among the Indians, while the treaty was in progress, to a very large amount, and thus rendering it imperative on the Senate to ratify their treaties, however objectionable they may be, or to lose the immense sums of money thus expended. He was opposed to this practice, and, for his own part, would never sanction it. He therefore hoped the gentlemen who supported the bill would consent to reduce the appropriation to a reasonable sum, and enable those who are friendly to its principles to vote for it. When the treaty with the Creeks and Choctaw Indians was proposed, twenty thousand dollars was only appropriated to defray the expenses of it, although they exceeded in number forty thousand souls. If the appropriation of this bill were reduced to a reasonable amount, he should give it his cordial support.

Mr. SPRAGUE said that he was not opposed to negotiating with the Indians for the objects of the bill, but to the means proposed in order to attain it. The Senator from Tennessee [Mr. WHITE] supposed that he had misapprehended what was meant by the term presents. He willingly accorded to that gentleman the utmost purity of in-



tention; but, whatever might be intended by him, he [Mr. S.] had not misunderstood the manner in which this power to make presents had been sometimes exercised. We do know, that, in order to get a treaty, secret and confidential agreements have been made by our commissioners with certain chiefs, to give them large sums to procure their assent and influence, agreements which they dared not make known to the tribe, and which were to buy them over to our interest, and to render them false and treacherous to their own people, who had confided to them a sacred trust. Mr. S. said he wished every agreement to appear on the face of the treaty, that they might know what stipulations had been made, and with whom, and, therefore, was unwilling to place in the hands of our commissioners large sums of money which they might dispose of in secret and confidential negotiations with individuals. There was no necessity for giving to our agents such a power.

It was said, indeed, that we must subsidize the Indians during the negotiation, and not only the chiefs, but the warriors, and their women and children; that all must be drawn from their homes to the treaty ground; that rations must be issued for their daily food; and something in the nature either of presents or payments must be given them in hand. And why is this necessary? How do the Indian chiefs subsidize themselves, in their own councils, when we are not present? what is the necessity of gathering together the females and their infants? You thereby place them in our power, and, after a short time, their own food being exhausted, we can offer them the alternative of submission to our terms, or starvation. He believed he understood what had sometimes been the process of obtaining a cession of Indian lands. The chiefs, the head men, the wisest and most sagacious, were opposed to selling their country. They were operated upon not only directly, but indirectly. Large quantities of goods and merchandise, particularly such as are most attractive to the savage taste, are ostentatiously displayed to the assembled multitude; they are told, if a bargain shall be concluded, these shall be yours; if not, even the daily food which you now receive shall be withheld; the women and children are brought to influence their husbands and fathers by their entreaties and their wants; the young and thoughtless among the warriors are made to press upon the older and more reflecting, and all to operate upon the chiefs, to subdue their firmness, and seduce them to our will. We may be told that this is the only mode of treating with the Indians, and that we cannot otherwise obtain their lands. If it be so, [said Mr. S.] which he doubted, still the end cannot sanctify such unhallowed means. These feeble remnants of once mighty nations are in our power, at our mercy. He wished to obtain no treaty from them by the weight of such extraneous aid as the measures he had described. If, without such appliances, they will not cede to us the inheritance of their fathers, let them retain it.

Mr. LIVINGSTON said that a disposition had lately manifested itself to consider the savage tribes in our territory and under our protection, as already civilized, and entitled to all the respect in our intercourse with them, with which equal and independent Powers were treated in our diplomatic intercourse. The Senator from Maine, [Mr. SPRAGUE] in this spirit, thinks, that to negotiate our treaties with them no other appropriation is necessary than to provide a salary for our commissioners, leaving the Indians, if I understand his objection, to provide for the salary and outfit of their own ministers. This proposition has, at least, the merit of novelty: for, from the original settlement of the country to the present day—from the first treaty held by the benevolent Penn, whose transactions with the natives will not be reproached with fraud or ill faith; whose gifts to the Indians are on record in his treaties, and whose manner of treating with them has been accurately delineated by the pencil of West—from that treaty, to the last

which we have ratified, every one has been preceded by presents, and accompanied by a liberal allowance for the daily support of the nation. It is a new course, therefore, that is to be prescribed to the Executive. Heretofore, the mode of making a treaty has been to invite the head men of the nation to hear our proposals; if they accept the proposition, they come accompanied by all the warriors of the nation, bringing with them their wives, and the talk is delivered in a public assembly. It is considered by the whole tribe, and the answer is dictated by the council of the nation. All this it appears is now to be changed. The savages are to be told, we have appointed commissioners to treat with you. Do you appoint ministers on your part. We will pay ours, do you pay yours. When they meet they will exchange their full powers, and then proceed regularly and diplomatically to negotiate. No more provisions to feed your wives and children while the treaty is proceeding; no more presents: you are a civilized and independent people, and we mean to treat you as such, and the first step we take is, by making no provision for your support while the treaty is going on, to prevent your attending it. Your chiefs, who make the treaty, then cannot consult you; it will be concluded without your knowing any thing about it, and we shall have obtained your lands very diplomatically at our own price. What answers, sir, would be made to such an address, if the Indian tribe could be made to understand it? Depend on it, that if any essential change is made in our mode of treating, the treaties you have just ratified will be the last you will ever make; you must treat with barbarous or half civilized people, according to their customs, not yours. We have always done so; not only with our Indian, but with the Barbary Powers. We have necessarily done so; to refuse it would be to refuse to treat; and every one acquainted with the habits of the savage tribes, must know that they must assist at the treaty in a body, and must be subsidized while it is negotiating; and that the negotiation would be immediately and necessarily broken off if the necessary supplies were withheld. As to the amount of the appropriation, Mr. L. would be guided by the report of the Committee, having no data by which he could estimate the proper amount. There was one sentiment, [Mr. L. said,] in which he entirely agreed with the Senator from Maine, that of a marked disapprobation of any secret emoluments given, or stipulated to be given, to the chiefs who signed the treaty; gratifications to them in proportion to their rank and power in the tribe, he believed, had been usual and might be proper, provided it were known and approved by the tribe; but a secret donation he could, for obvious reasons, never approve. The passing this appropriation, however, he did not think would sanction any such proceeding.

Mr. FRELINGHUYSEN said he was constrained to oppose the passage of this bill, and for the very reasons urged in its favor. It may, perhaps, arise from my ignorance of the subject, [said Mr. F.] but I confess, sir, that I heard with great surprise the fact announced by an honorable Senator, that it was impossible to treat with the Indians, unless we made them presents. If this be indeed so, I protest, in the face of this Senate, and of the world, that all negotiation should cease with them. Can it be that no cession of their lands can be obtained, no compact formed with these tribes, unless we bring to bear upon them the influence of our gold? That their consent is to be bought—that the only way of access is (to call things by their right names) through bribery and corruption? I can hardly accredit an intimation so humiliating to ourselves. Sir, has a fair experiment ever been made? If not, it is surely time. We owe it to our national character to adopt other means. When has the Senate ever been informed that negotiation had been fruitless, because of the absence of the corrupting agency of our money? What commissioners have ever reported such a failure

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for such a cause? I beg, sir, that we may meet them on equal, manly terms; such as become a great People treating with a feeble race. Let them be approached with honorable proposals; let the terms and conditions be distinctly stated; let them look at our side of the bargain full in its face, and then, if they accord a voluntary acquiescence, and conclude the contract, it will be well. I desire to see such a negotiation conducted in a spirit which this august body will approve, in which these tribes shall have acted freely, unseduced by the influence of money, and unswayed by the presence of chiefs, corrupted by individual and extravagant gifts. The Hon. Senator from Louisiana [Mr. LIVINGSTON] has referred us to the Barbary Powers, and inquires whether such means are not constantly employed in all diplomatic intercourse with them? It may be so, sir. But these are distant, independent nations, towards whom we are strangers. The Indian nations are, at most, but dependent sovereignties under our guardianship, and to whom we have promised protection. And can it be for a moment tolerated, that a guardian shall, by the force of extraneous and corrupting motives, obtain from the ward his lands? Where is the tribunal that would not frown indignantly upon such a procedure? But it is said that this has been a uniform practice for many years; that it has grown almost into a prescriptive privilege. The plea cannot avail us: for we led the way; we first held out these lures to beguile; and I submit it, sir, to this honorable body, if it be not time to arrest this practice. Let us deal with these men as we do with the rest of mankind—upon open, equal, and just terms; such as our country and the world will sanction; such as future history, in its impartial retrospects, will not censure and condemn.

Mr. KING corrected a mistake which the Senator from New Jersey [Mr. FRELINGHUYSEN] had fallen into with respect to the presents made to the Indians. Presents were always made to them; no treaty was ever made without them; and the Indians accept them without believing that they are offered to them as bribes. Mr. K. concluded by moving to amend the bill by striking out the words "forty thousand," and inserting, in lieu thereof, "twenty thousand."

On the motion of Mr. HOLMES, the question was divided; and the motion to strike out was agreed to.

Mr. NOBLE said that the gentleman from New Jersey [Mr. FRELINGHUYSEN] had addressed himself to the passions rather than to the judgment of the House, in the specimen of pulpit eloquence which he had given us. The gentleman has indulged in his passion; I hope, said Mr. N., I will be permitted to indulge in mine. We must defend ourselves from the incursions and rapine of these lawless tribes; and I would ask, is it against the laws either of God or man to protect ourselves from the carnage and bloodshed which these tribes inflict upon us? We are surrounded by these Indians, and are daily and hourly exposed to their rapacious violence. The object, then, of this appropriation, is to lead this people beyond our settlements, and to obtain for ourselves quietness and security. But if this appropriation is refused—if our People are to be cut off day and night, we will not any longer wait for the assistance of the Executive officers; we will undertake our own defence; and it is no easy task to persuade the brave and hardy people of the West from the pursuit of the Indians, when they have assailed our rights or property. But what is the abuse which is apprehended by gentlemen? Will not the money thus appropriated be placed under the control of the President of the United States, by whom the commissioners are to be appointed, who will have the management of it? Was not this, Mr. N. asked, a sufficient security against the apprehended abuse? Who then can doubt that it will not be properly expended? In the last war, this tribe of Indians, at the instigation of British emissaries, annoyed us very

much. Their chief was a Canadian—he might call him a Canadian Frenchman. He has a house, and generally resides, at Montreal. During the war he occasionally resided there, for what purpose could not be well ascertained; but we saw enough of his operations to convince us that he was not friendly to us. What, then, is to become of us, thus surrounded? Will the Indians work? asked Mr. N. No; they will roam at large in the forests, and will plunder and destroy whatever comes across them; and if any opposition is offered to them, they will satiate their appetites in the blood of our unprotected wives and children. If, then, we have the feelings of humanity we profess, we should not hesitate a moment to make this appropriation. As to talking of holding treaties with these people as with civilized nations, it was an idle loss of time. As to what was said about leaving a blot on our national character by giving them presents he [Mr. N.] did not believe a word of it. If the gentleman from Maine [Mr. SPRAGUE] can show on what principles of natural law he can make a white man or an Indian honest, then I shall agree with him that this appropriation ought not to be made.

Mr. FRELINGHUYSEN said that he was not opposed to the bill, as the Senator from Indiana [Mr. NOBLE] seemed to apprehend, but he wished that the influence of presents to the Indians would be kept out of operation while the treaty was in progress. He repeated, he desired to throw no obstruction in the way of the negotiation.

The question on the amendment proposed by Mr. KING was then put, and carried in the affirmative.

Mr. MCKINLEY then moved to amend the bill by adding the following section:

"And be it further enacted, That no secret present, or consideration, shall be offered or given to the chief or chiefs of the tribe or tribes of Indians with which said treaty may be holden."

The amendment was agreed to—Yeas 24.

The bill being then reported to the Senate as amended, Mr. HENDRICKS rose and said, that he could not be silent when the question was about to be taken in the Senate on the amendment which had just been adopted in Committee of the Whole. He thought its adoption would be a reflection upon the integrity of the Executive, and upon the commissioners appointed to make the treaty. It would also be a reflection upon the integrity of all heretofore concerned in negotiating Indian treaties. The section offered for the adoption of the Senate, presupposed abuses which he believed had no existence. He did not know of any undue influence heretofore exercised in making Indian treaties. That which this section would remedy, was found in almost every treaty ever made with the Indians; but it was produced, not by the commissioners, but stipulated for by the Indians themselves. [Mr. HENDRICKS quoted the provisions of several Indian treaties.] Here [said Mr. H.] are brick houses provided for, reservations of land for certain individuals and families, and donations in money. These were made in conformity with the wishes of the individuals composing the tribe, who certainly have it in their power to say, that a shall receive more than B; but these arrangements never before were called bribes, nor can the officers of the Government fairly be charged with impropriety in such stipulations. Mr. H. repeated, that, as the adoption of the amendment could be considered in no other light than as a reflection on those who are constitutionally charged with the negotiation of the treaty, he hoped it would be rejected.

Mr. MCKINLEY replied, that the practice of giving secret presents to the head men of the Indian tribes with whom we treat, is of recent date, and it ought to be discouraged as soon as possible. He believed the most effectual method of putting an end to the practice was by inserting such a provision as he had proposed in the law

making the appropriation. By persevering in the practice, the Senate will be, as it often has been, placed in the dilemma of either losing the money which has been expended, or of ratifying the treaty, whether satisfactory or not. Mr. McK. did not object to a necessary donation being made to the chiefs, if it were made public. Is it proper, he asked, to make presents to the head men, which the nation does not know? The less, he thought, which was given, the better: for the great amounts thus expended often rendered it imperatively necessary for the Senate to ratify bad treaties. The effect of this would be, to prevent the insertion of secret articles in our treaties: for he was of opinion that, in private as well as public transactions, honesty was always the best policy.

Mr. HENDRICKS remarked that the reasons given by the Senator from Alabama, [Mr. McKINLEY] in support of the amendment, had suggested to his mind additional arguments against its adoption. It was not competent for the Senate to legislate into existence instructions to be given to the Commissioners who negotiate Indian treaties. This had uniformly been considered the constitutional prerogative of the President. The Senate, [said Mr. H.] in its legislative capacity, is no part of the treaty-making power; and legislation prescribing the duties which the constitution has plainly devolved on the Executive, is not only unconstitutional, but impeaches the integrity of the President, in pre-supposing that he would not perform his constitutional duties. While he was up, he would say a word in reply to the Senator from New Jersey [Mr. FARRINGTON.] He deprecates the practice and the unnecessary expense of collecting, on such occasions, the young men, the women, and children; says that their influence on their chiefs, who are competent to make treaties without them, is prejudicial to the Indians, and unworthy of the Government. To this class of observations, it may be replied, that the chiefs never, without the consent of the tribes, make treaties at all. This consent is never given in advance, when they can be present. Their presence is necessary to prevent the chiefs consulting in a signal manner their own interests, instead of the interests of the tribe generally; and of all the treaties ever made with the Indians, those which have been made by the chiefs, remote from the tribes they represented, have been the worst for their people. These are the treaties in which special benefits have been most liberally provided for the chiefs. When the warriors were present, with the women and children, at the treaty-ground, every thing was known, and it was almost impossible for any thing unfair to be done by either party.

Mr. ROWAN said, if it was the object of the amendment to regulate the conduct of the commissioners, in forming treaties or compacts with the Indians, it will be utterly unavailing. The intercourse between them and the Indians, during the treaty forming process, must, from the nature of the transaction, necessarily be apart from the public gaze; must be, to some extent at least, private. The intercourse between the contracting parties must be of a conciliatory character. The object will be, to make the treaty or compact; the means, in that, as in all other cases of the like kind, will be adapted to the end. Instructions cannot be graduated to every occurrence which may take place during the negotiation; much must necessarily be left to the discretion of the commissioners, subject to be eventually controlled by the President and Senate. Secret stipulations in a treaty will be unavailing, unless ratified by the Senate, according to the constitution. We ought not to presume that any of an improper character would be authorized by the President, or confirmed by the Senate. Treaties with Indians have been made, from time to time, from the commencement of the Government up to the present period, without the force of the rule contemplated by this amendment. There has been no complaint; the Government has found safety in its reli-

ance upon the integrity of its Executive department. We have all as much confidence in the present as in any former administration. Where, then, the necessity of this rule at this time? No man in the Senate has more confidence in the present Executive than the honorable Senator who has introduced this amendment. He does not, I am sure, think it necessary to the purity of our intercourse with the Indians, under the present administration. It is agreed on all hands, that nothing like bribery should be used in the making of an Indian treaty; that nothing of the kind would receive the sanction of the present Chief Magistrate; and that this Senate would withhold its assent from any treaty obtained by corrupt practices, on the part of the commissioners. But [said Mr. H.] the Senator who introduced this amendment, will perceive, upon a little reflection, that it infringes upon the treaty-making power confided by the constitution to the President and Senate. The amendment cannot regulate the conduct of the commissioners while making a treaty; their conduct will be regulated by instructions from the President, and the constitution alone can regulate him, in making out his instructions. It cannot regulate the conduct of the Senate in approving or rejecting a treaty. The constitution will be their guide; nothing can be added to that instrument or taken from it by a statute.

Mr. R. said he was sorry to differ from his friend, who had introduced this amendment. He considered it as evidence of the purity of the sentiments not only of that gentleman, but of every member of the Senate, in relation to the subjects to which it related. But the exercise of the sentiment was enjoined by the constitution, and would be displayed as well without as with the amendment. He thought, with a very respectful deference for the opinion of his friend, that the amendment was impolitic as well as unconstitutional. It would seem to justify the inference that bribery had been heretofore practised in obtaining Indian treaties. He should feel himself constrained to vote against the additional section proposed.

Mr. BENTON remarked that we had been in the habit, for upwards of half a century, of making Indian treaties, and no such provision as that now proposed had ever been inserted in a bill.

Mr. FOOT said the Senator from Indiana, or himself, certainly misunderstood the amendment offered. He [Mr. F.] did not consider it as applying to the customary presents to the tribe, or to articles in Indian treaties, making special reservations in favor of particular chiefs. These were not secret, being embodied in the treaty, and known to the whole tribe. This amendment was intended to prohibit "secret presents" to any influential chiefs, to induce them to sell the reservations of land belonging to the tribe. He felt some delicacy in discussing this subject in legislative session, but thought he might safely say, without violating any rules, that the Senate had not, as yet, ratified any treaty in which it appeared such secret presents or annuities had been given. But he considered it indispensable that this restriction should now be imposed, for reasons which could be stated here, but which every Senator would fully understand, and he should most cheerfully vote for the amendment.

Mr. HAYNE said he did not apprehend that there existed any difference of opinion with respect to the impropriety of giving presents to the Indian chiefs, for the purpose of influencing them in their negotiations with us. So he had understood the chairman of the Committee who had participated in the discussion, to have expressed themselves. The question is not, therefore, shall we give our sanction to such a practice? but it is, shall we attempt to instruct the President, and put a limitation on the executive power of the Senate? He [Mr. H.] had two objections to this proposition. The first was, that the Senate, in its legislative capacity, has no control over the Execu-

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*Heirs of Robert Fulton.—Internal Improvement.*

[SENATE.]

tive, in the exercise of the treaty-making power; and the second was, that the proposed amendment seemed to imply a "far-gone conclusion" that the Executive intends to do wrong. It belongs [said Mr. H.] to the Executive, and it is not for us to say how treaties are to be carried on. We travel out of the sphere of our appropriate duties when we interfere in this matter; we ought not to do so; we ought not to do any act that can be considered as casting imputations upon the Executive, or the commissioners he may appoint. But we have no evidence of the fact that any such practice exists as that which the amendment is intended to prevent. If any such evil existed in the Government, and the facts be submitted to us, he would examine the subject frankly and candidly, and suggest the proper remedy.

But if the amendment were free from all constitutional objections, do we not see what a reproach it would still cast on the Executive and the country! Suppose we had provided for carrying on a treaty with any European Power, and a bill was submitted to appropriate a certain sum for fitting out a ship to carry our ambassadors, and to defray the other expenses of the negotiation, what would he say if a proviso were added to the bill to the following effect: "Provided, however, That the President shall not appropriate any part of the money for secret or corrupt purposes?" The impropriety would be the same in the present case, where you are providing for making a treaty with the Indians. I take it for granted [said Mr. H.] that the President will not permit any secret presents to be made, and that the commissioners whom he shall appoint will not be guilty of doing so. Until these practices were brought to view, he should oppose any bill containing such a provision. He knew that the Senator who proposed this amendment had the same views that he had on this subject. That gentleman had certainly no design to interfere unconstitutionally with the Executive, or to express any distrust as to his proceedings. His only object unquestionably was, to prevent any improper means from being resorted to, in making treaties with the Indians. While there existed, however, no just cause for apprehension that any such means would be resorted to, the amendment was altogether unnecessary.

Mr. BENTON asked that the question be taken by yeas and nays, if they were not already ordered. He expressed his obligation to the Senator from South Carolina, who had called the attention of the House to the constitutional nature of the amendment. This was the first year [said Mr. B.] of the new administration, and here was a proposition implying a direct censure of it, as the object of it was to place us on our guard against anticipated corruption. There was no necessity for the restraint on the present administration more than on any preceding one. Mr. B. repeated his desire to have the question taken by yeas and nays.

The yeas and nays were ordered.

Mr. BARTON said he had voted for this amendment in Committee of the Whole; but certainly not for the purpose of reflecting on those who had preceded us, or on the present administration. He was not aware, now, that it amounted to any undue reflection on any branch of the Government, legislative or executive; for he knew of no instance of treaties, procured by means of secret bribes, and known to this Government, having been ratified. The parallel drawn, or attempted, between our negotiations with the European nations and with the aboriginal tribes of America, did not hold. Europe does not acknowledge us as her Great Father; nor our protection or supremacy over her; but as an equal. And hence the evident impropriety of such a provision to guard those civilized nations from such influence. But the Indian tribes are a conquered broken down people, who acknowledge our protection and supremacy, and call us their Great Father, looking to us for justice and protection, as the ward

looks to the guardian. Where, then, is the impropriety of the legislative taking the lead of the executive, in announcing to the world that, in our negotiations with these subjected wards and broken tribes, such means should not be lawful? Congress are the guardians of these people. He voted for the amendment in Committee of the Whole, and must repeat that vote on the yeas and nays.

Mr. McKINLEY said he had no design to question the virtue and integrity of the present administration. He had as much confidence in it as those who made greater professions. It is strange [said Mr. McK.] that a proposition cannot be made to appropriate money, for public purposes, under certain restrictions, without having the charge imputed to us of entertaining unfriendly feelings to the present administration. As this was a new subject, and as there was no immediate necessity to have it settled, he moved that the bill, as amended, be laid on the table, that gentlemen may have an opportunity of giving it a sufficient examination.

The motion was agreed to, and the Senate then adjourned to Monday.

MONDAY, JAN. 18, 1830.

## HEIRS OF ROBERT FULTON.

Mr. BARTON rose and said, I wish to submit to the Senate a resolution respecting the heirs of Robert Fulton, deceased, who are known not to be in circumstances suited to their education, character, and feelings; nor to the great public services of their father; and still less to the magnanimity and honor of this republic, his greatest beneficiary. When we consider [said Mr. B.] the great and growing benefits derived by the United States from Mr. Fulton's application of steam to the various purposes of machinery, stationary as well as locomotive; and especially when we cast our eyes into the vast valley of the Mississippi, and behold its long navigable rivers, reaching from the bases of the Alleghanies to those of the Northern Andes, or Rocky Mountains, and from the Northern lakes to the Gulf of Mexico, rendered as useful and valuable to us as so many Mediterranean seas, by the unrequited genius, perseverance, and sacrifices, of Fulton, we must acknowledge him among our greatest public benefactors, not even excepting Lafayette, or the founders and patrons of institutions of learning in America, or those of the African Colonization Society, when it shall be crowned with success. In this view of the subject, I submit for the consideration of the Senate this resolution:

*Resolved*, That the Committee on the Public Lands inquire into the expediency of making a grant to the heirs of Robert Fulton, deceased, of a portion of the public lands, bearing some proportion to the great benefits derived by the United States from his application of steam to the purposes of machinery, stationary as well as locomotive.

[This resolution was taken up on the next day, and agreed to.]

## INTERNAL IMPROVEMENT.

Mr. WEBSTER said he rose to present the petition of the South Carolina Canal and Rail Road Company, praying Congress to authorize a subscription, on the part of the Government of the United States, of two thousand five hundred shares of the capital stock of that company. The rail road, contemplated by the petitioners, was to extend from Charleston to Hamburg, in the vicinity of Augusta; and the petition sets forth the practicability of the intended work. The enterprise certainly was one of a very laudable nature, such as had, in other instances, met encouragement and assistance from the Government of the United States, and it was with pleasure that he presented it to the consideration of the Senate. It had been confided to his hands from no disrespect, certainly, towards the honorable gentlemen who were Senators from S. Carolina,

but solely because the petitioners were unwilling to trespass on the reluctance which the honorable Senators from South Carolina naturally felt, or might be supposed to feel, to presenting petitions for aid from the Government of the United States, in cases in which their known opinions, as to the constitutional powers of Congress, would oblige them to oppose the prayer of the petitioners. For his own part, [Mr. W. said] it was well known, that, during the whole time in which he had had any connexion with Congress, he had uniformly been in favor of what was called internal improvement, when applied to objects of sufficient magnitude and importance to be properly called national. And, while he admitted the necessity of great caution and wisdom in the exercise of the power, he must still say that every day convinced him, more and more, of the necessity of such exercise, in suitable cases. He would take occasion to add, that he was a thorough convert to the practicability and efficacy of rail roads. He believed that the great results which the power of steam had accomplished, in regard to transportation by water, were not superior to those which it would yet accomplish, in regard to transportation by land. The only doubt was, as to the amount of cost; and that was a point which experience would shortly solve, he hoped satisfactorily. He would only add, that, while he felt pleasure in presenting this petition, he looked forward, with equal pleasure, to the time, he hoped not distant, when it would be his duty, in conjunction with his colleague, to ask a subscription, by Congress, to the Massachusetts Rail Road, a contemplated work, which, if executed, would facilitate intercourse between several States, and be felt, in its beneficial effects, all the way from the bay of Massachusetts to the mouth of the Ohio. When the proper time should come, he doubted not the Senate, and the other branch of the Legislature also, would give to that enterprise such aid and assistance as it should be entitled to by the consideration of its magnitude, and its obvious public utility and importance.

Mr. W. then presented the petition, and it was referred to the Committee on Roads and Canals.

#### MR. FOOT'S RESOLUTION.

The consideration of the resolution submitted by Mr. FOOT, and which was before the Senate on Wednesday at the hour of adjournment, was resumed:

Mr. BENTON commenced a speech with an analysis of the resolution, which, he said, presented three distinct propositions, viz:

1. To stop the surveying of the public land.
2. To limit the sales of the land now in market.
3. To abolish all the offices of the Surveyors General.

These were the propositions. The effect of them would be:

1. To check emigration to the new States and Territories.
2. To limit their settlement.
3. To deliver up large portions of them to the dominion of wild beasts.

4. To remove all the land records from the new States. Mr. B. disclaimed all intention of laying any thing to do with the motives of the mover of the resolution: he took it according to its effect and operation, and conceiving this to be eminently injurious to the rights and interests of the new States and Territories, he should justify the view which he had taken, and the vote he intended to give, by an exposition of facts and reasons which would show the disastrous nature of the practical effects of this resolution.

On the first branch of these effects—checking emigration to the West—it is clear, that, if the sales are limited to the lands now in market, emigration will cease to flow; for these lands are not of a character to attract people at a

distance. In Missouri they are the refuse of forty years' picking under the Spanish Government, and twenty more under the Government of the United States. The character and value of this refuse had been shown, officially, in the reports of the Registers and Receivers, made in obedience to a call from the Senate. Other gentlemen would show what was said of it in their respective States; he would confine himself to his own, to the State of Missouri; and show it to be miserable indeed. The St. Louis District, containing two and a quarter millions of acres, was estimated at an average value of fifteen cents per acre; the Cape Girardeau District, containing four and a half millions of acres, was estimated at twelve and a half cents per acre; the Western District, containing one million and three quarters of acres, was estimated at sixty-two and a half cents; from the other two districts there was no intelligent or pertinent return; but assuming them to be equal to the Western District, and the average value of the lands they contain would be only one-half the amount of the present minimum price. This being the state of the lands in Missouri which would be subject to sale under the operation of this resolution, no emigrants would be attracted to them. Persons who remove to new countries want new lands, first choices; and if they cannot get these, they have no sufficient inducement to move. The Senator from Connecticut [Mr. Foot] had read a part of Mr. Graham's, the Commissioner's report, to show that the lands had sold rapidly in the Steubenville District, the oldest in the Union; he had shown the sales there for 1828, to be about thirty-five thousand dollars; but if he had wished to have shown the other side of the question—how much faster they sell in new districts—what a fine opportunity he would have found in the Crawfordville District, in Indiana: the sales there, in the same year, being no less than one hundred and ninety thousand dollars.

The second ill effect to result from this resolution, supposing it to ripen into the measures which it implies to be necessary, would be in limiting the settlements in the new States and Territories. This limitation of settlement would be the inevitable effect of confining the sales to the lands now in market. These lands in Missouri, only amount to one-third of the State. By consequence, only one-third could be settled. Two-thirds of the State would remain without inhabitants; the resolution says, for "a certain period," and the gentlemen, in their speeches, expound this certain period to be seventy-two years. They say seventy-two millions of acres are now in market; that we sell but one million a year; therefore, we have enough to supply the demand for seventy-two years. It does not enter their heads to consider that, if the price was adapted to the value, all this seventy-two millions that is fit for cultivation would be sold immediately. They must go on at a million a year for seventy-two years, the Scripture term of the life of man—a long period in the age of a nation; the exact period of the Babylonish captivity—a long and sorrowful period in the history of the Jews; and not less long nor less sorrowful in the history of the West, if this resolution should take effect.

The third point of objection is, that it would deliver up large portions of new States and Territories to the dominion of wild beasts. In Missouri, this surrender would be equal to two-thirds of the State, comprising about forty thousand square miles, covering the whole valley of the Osage river, besides many other parts, and approaching within a dozen miles of the centre and capital of the State. All this would be delivered up to wild beasts: for the Indian title is extinguished, and the Indians gone; the white people would be excluded from it; beasts alone would take it, and all this in violation of the Divine command to replenish the earth, to increase and multiply upon it, and to have dominion over the beasts of the forest, the birds of the air, the fish in the waters, and the creeping things of the earth.

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Mr. Foot's Resolution.

[SENATE.]

The fourth point of objection is, in the removal of the land records—the natural effect of abolishing all the offices of the Surveyors General. These offices are five in number. It is proposed to abolish them all, and the reason assigned in debate is, that they are sinecures; that is to say, offices which have revenues and no employment. This is the description of a sinecure. We have one of these offices in Missouri, and I know something of it. The Surveyor General, Colonel McRee, in point of fidelity to his trust, belongs to the school of Nathaniel Macon; in point of science and intelligence, he belongs to the first order of men that Europe or America contains. He and his clerks carry labor and drudgery to the ultimate point of human exertion, and still fall short of the task before them; and this is an office which it is proposed to abolish under the notion of a sinecure, as an office with revenue, and without employment. The abolition of these offices would involve the necessity of removing all their records, and thus depriving the country of all the evidences of the foundations of all the land titles. This would be sweeping work; but the gentleman's plan would be incomplete without including the General Land Office in this city, the principal business of which is to superintend the five Surveyor General's offices, and for which there could be but little use after they were abolished.

These are the practical effects of the resolution. Emigration to the new States checked; their settlement limited; a large portion of their surface delivered up to the dominion of beasts; the land records removed. Such are the injuries to be inflicted upon the new States, and we, the Senators from those States, are called upon to vote in favor of the resolution which proposes to inquire into the expediency of committing all these enormities! I, for one, will not do it. I will vote for no such inquiry. I would as soon vote for inquiries into the expediency of conflagrating cities, of devastating provinces, and of submerging fruitful lands under the waves of the ocean.

I take my stand upon a great moral principle: that it is never right to inquire into the expediency of doing wrong.

The proposed inquiry is to do wrong; to inflict unmitigated, unmitigated evil upon the new States and Territories. Such inquiries are not to be tolerated. Courts of law will not sustain actions which have immoral foundations; legislative bodies should not sustain inquiries which have iniquitous conclusions. Courts of law make it an object to give public satisfaction in the administration of justice; legislative bodies should consult the public tranquillity in the prosecution of their measures. They should not alarm and agitate the country; yet, this inquiry, if it goes on, will give the greatest dissatisfaction to the new States in the West and South. It will alarm and agitate them, and ought to do it. It will connect itself with other inquiries going on to make the new States a source of revenue to the old ones, to deliver them up to a new set of masters, to throw them as grapes into the wine press, to be trod and squeezed as long as one drop of juice could be pressed from their hulls. These measures will go together; and if that resolution passes, and this one passes, the transition will be easy and natural, from dividing the money after the lands are sold, to divide the lands before they are sold, and then to renting the land and drawing an annual income, instead of selling it for a price in hand. The signs are portentous; the crisis is alarming; it is time for the new States to wake up to their danger, and to prepare for a struggle which carries ruin and disgrace to them, if the issue is against them.

Mr. B. alluded to the coaxing argument of some gentlemen, who endeavored to carry this resolution through, by promising the Senate that the Committee on Public Lands, to whom it was to be referred, would report against it. He ridiculed this species of argument. Such

an inquiry would become nugatory and idle. Why send a resolution of inquiry to be returned *non est inventus*? Why send your bucket to the bottom of a dry well? Why this perseverance for three weeks to get the inquiry before a committee who are to reject it? Surely for some purpose; and that purpose may be to gain a foot hold, to get jurisdiction, to get the subject going, and then refer it to another committee that would report favorably, under the plea that the first committee was composed of interested members from the new States. He then took notice of the terrifying argument which was used to get the resolution through. It was said it would excite suspicion and prejudice against us, if we did not agree to it. Suspicion of what? Prejudice in what? Explain these terms. Name the thing, foul or hidden, which the new States have to avoid in this inquiry. There is none. None can be named. It is an attempt to terrify little children and aged women. Prejudice indeed! The way to avoid it, and to command respect, is to show a knowledge of your rights, and a determination to defend them. He next adverted to a class of arguments which undertook to smuggle this resolution through—to convey it along unobtrusively, as one of the harmless or beneficial inquiries which daily passed as a matter of course. This was putting the enemy into a covered wagon; but he would pull off the cover, and show the character of the cargo. He aimed at the suggestion, that a rejection of the resolution was a suppression of inquiry. He thought the attempt to send it off to a committee-room was more like suppressing debate. But he had no notion of letting it escape under a flash and a smoke. He would wait till the atmosphere cleared up, and then call gentlemen back to the character of the resolution, and urge them to meet him on the perniciousness of that character. He discriminated between resolutions for good and for evil; the former passed, of course; the latter should be resisted. If not, the whole country may be alarmed, agitated, and enraged, with mischievous inquiries: the South about its slaves and Indians; the West about its lands; the Northeast on the subject of its fisheries, its navigation, its light houses, and its manufactories. What would be the condition of the Union, what the chance for the preservation of harmony, if each part struck at the other in a system of pernicious and alarming inquiries? And yet, unless the discrimination is made which I propose, all this may be done. The argument used by the Senator from Alabama, [Mr. McKILPATRICK] the Senator from Connecticut [Mr. FOOT] and others, would carry through every species of inquiry, even the most fatal to the interest, the most insulting to the pride, and most destructive to the harmony of the States.

But this resolution is not only unjust to the new States, but it is partial and unequal in its operation among them. It hears hard upon some, and not at all upon others. It would lock up twenty-five millions of acres from sale and settlement in the State of Louisiana, and not one acre in Ohio; it would desolate Florida, and do comparatively but little mischief in Michigan. It is not sufficient to reject such a resolution—the sentiments in which it originated, must be eradicated. We must convince gentlemen that it is wrong to entertain such sentiments—that it will be wrong to act upon them in the progress of any of our land bills. This whole idea of checking emigration to the West, must be shown to be erroneous. It is an old idea, and lately brought forward with great openness of manner, and distinctness of purpose. Mr. Rush's Treasury Report of 1827 placed it before Congress and the people. Since then, there has been no ambiguity about it. The doctrine has taken a decided turn. The present resolution is, in effect, a part of the same system, and a most efficient part. The public mind has laid hold of this doctrine, and subjected it to the ordeal of reason and discussion. Professor Dew, in the college of William and

\*In the House of Representatives.

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*Mr. Foot's Resolution.*

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Mary, in his able lectures, has spoken my sentiments on this point, and I will avail myself of his language, to convey them to the Senate.

Mr. B. then read as follows, Mr. Dew's lectures, page 43: "In the second place, these tariff measures injure the South and West, by preventing that emigration which would otherwise take place. Now, this is an injustice committed upon those States, towards which the tide of emigration sets. . . . If there was a bounty upon emigration, then those States would have no right to complain of the adoption of any measure which might counteract the effects of the bounty; but this is not the case. . . . It is true, the Secretary of the Treasury, in his annual report, in December, 1827, thinks the low price at which the public lands are sold, operates as a bounty; but I doubt much whether Government price is too low; were this the case, would not enterprising individuals, with large capitals, quickly buy Government out, in order that they might speculate on the lands, and thus raise them to their proper value? . . . One thing is certain, that the prevention of emigration to the Western country is injurious to the West."

Mr. B. agreed with the Virginia professor, that the prevention of emigration to the West was an injury to that quarter of the Union. He said farther, it was an injury to the people of the Northeast, who were to be prevented from bettering their condition by removal; and that it was an injury to the whole human race to undertake to preserve the vast and magnificent valley of the Mississippi for the haunts of beasts and savages, instead of making it the abode of liberty and civilization, and the asylum of the oppressed of all the States and nations. He inveighed against the horrid policy of making paupers by law—against the cruel legislation which would confine poor people in the Northeast to work as journeymen in the manufactories, instead of letting them go off to new countries, acquire land, become independent freeholders, and lay the foundation of comfort and independence for their children. Manufactories are now realizing what was said by Dr. Franklin forty-five years ago, that they need great numbers of poor people to do the work for small wages; that these poor people are easily got in Europe, where there was no land for them, but that they could not be got in America till the lands were taken up. These are the words of that wise man, near half a century ago. The experience of the present day is verifying them. The manufactories want poor people to do the work for small wages; these poor people wish to go to the West and get land; to have flocks and herds—to have their own fields, orchards, gardens, and meadows—their own cribs, barns, and dairies; and to start their children on a theatre where they can contend with equal chances with other people's children for the honors and dignities of the country. This is what the poor people wish to do. How to prevent it—how to keep them from straying off in this manner—is the question. The late Secretary of the Treasury could discover no better mode than in the idea of a bounty upon non-emigration, in the shape of protection to domestic manufactures! A most complex scheme of injustice, which taxes the South to injure the West, to pauperize the poor of the North! All this is bad enough, but it is a trifle, a lame, weak, and impotent contrivance, compared to the scheme which is now on the table. This resolution, which we are now considering, is the true measure for supplying the poor people which the manufactories need. It proposes to take away the inducement to emigration. It takes all the fresh lands out of market. It stops the surveys, abolishes the office of the Surveyor General, confines the settlements, limits the sales to the refuse of innumerable pickings; and thus annihilates the very object of attraction—breaks and destroys the magnet which was drawing the people of the Northeast to the blooming regions of the West.

Mr. B. said that he felt himself compelled, by these persevering measures, to stop emigration to the West, to recur to the early history of the confederation, to show the origin and policy of these measures, and to do justice to the patriots by whom they were then defeated. The first of these measures that he would bring to the notice of the Senate, was the famous attempt, about the year 1786, to surrender the navigation of the Mississippi to the King of Spain, for a period of twenty-five or thirty years. Seven States voted for the surrender; six, beginning at Maryland, and going South, voted against it. The articles of confederation required the consent of nine States to make a treaty, and therefore the surrender was not accomplished. The Spanish negotiator, Don Gardouqui, in his communications to his court, said that the object of this surrender was to prevent the growth of the West. But it is not necessary to have recourse to foreign testimony; we have that of our own countrymen, who were actors in the scene. The seal which covered all these doings in the old Congress, has since been broken; their journals are published; and besides the evidence of the journals, we have the testimony of the Virginia delegation, afterwards given in the convention of that State which ratified the constitution of the United States. The convention required them to report what they had witnessed on this subject, and they did so under all the responsibilities of so great and serious an occasion.

Mr. B. then read from Mr. Monroe's statement several passages, which showed that Spain viewed with jealousy our settlements in the Western country, and wished them checked, and had made communications to the old Congress, in secret session, to that effect; that the surrender of the navigation of the Mississippi to Spain, for twenty-five to thirty years, would have that effect; that this surrender was resented by the Southern States, because it would depress the growth of the West, and advocated by the Northeastern States: that the pursuit of this object was animated, and met with a warm opposition from the southern members; that he believed the Mississippi safer under the articles of confederation, than under the new constitution; and that, as mankind in general, and States in particular, were governed by interest, the Northern States would not fail of availing themselves of the opportunity given, them by the constitution of relinquishing that river, in order to depress the Western country, and prevent the southern interest from preponderating. Mr. B. also read, in support of Mr. Monroe's statement, as to the jealousy of Spain, the following curious passages from the Secret Journals of Congress for the year 1780, contained in a communication from the Spanish court:

"It is the idea of the cabinet of Madrid, that the United States extend to the westward no farther than settlements were permitted by the royal (British) proclamation of the 6th of October, 1763. . . . 'That the lands lying on the east side of the Mississippi, whereon settlements were prohibited by the aforesaid proclamation, are possessions of the Crown of Great Britain, and proper objects against which the arms of Spain may be employed for the purpose of making a permanent conquest for the Crown of Spain. That, such conquest may probably be made during the present war. That, therefore, it would be advisable to restrain the Southern States from making any settlements or conquests in those territories.'—Vol. 4, p. 310.

Having read these extracts, Mr. B. remarked that here was the germ of that policy, which, thirty years af-

\* New Jersey was one of the seven, but the Legislature of that State, on hearing what their Delegates had done, recalled them, in virtue of the salutary power reserved to the States under the articles of confederation, and which the best patriots of 99 endeavored to preserve over Senators under the new constitution.

† This proclamation of George the Third, forbid the settlements of the English Colonies to extend further West, than the heads of the rivers which flowed into the Atlantic Ocean.

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Mr. Foote's Resolution.

[SENATE.]

terwards, ended in dismembering the valley of the Mississippi, amputating two of its noblest rivers, and surrendering two hundred thousand square miles of its finest territory to the Crown of Spain.

Mr. B. also read the following passages from Mr. Grayson's statement:

"Secrecy was required on this subject. I told Congress that imposing secrecy on such a great occasion was unwarrantable.

"Seven States were disposed to yield the navigation of the Mississippi. I speak not of any particular characters. I have the charity to suppose that all mankind act on the best motives. Suffice it for me to tell plain and direct facts, and leave the conclusion with this honorable House.

"They (the Northern States) looked at the true interests of nations. Their language has been 'Let us prevent any new States from rising in the Western world, or they will outvote us—we will lose our importance and become as nothing in the scale of nations. If we do not prevent it, our countrymen will remove to those places, instead of going to sea, and we will receive no particular tribute or advantage from them.' This, sir, has been the language and spirit of their policy, and I suppose ever will.

"When the act of Congress was passed, respecting the settlement of the Western country, and establishing a State there, it passed in a lucky moment. I was told that that State (Massachusetts) was extremely uneasy about it, and in order to retain her inhabitants, lands in the province of Maine were lowered to one dollar per acre."

Mr. B. here remarked that, since the introduction of his graduation bill in Congress, the price of land in Maine had been still further lowered. That he had seen advertisements offering fresh lands, the first time they were offered, at a minimum price of twenty-five cents per acre, and also at twenty cents per acre; and had been told that these minimums had been as low as ten and five cents an acre, and that fifty cents was above the average of the auction sales.

Mr. B. also read the following extracts from a letter contained in the fourth volume of the Secret Journals of Congress, written from the Falls of the Ohio, December 4th, 1786, and addressed to a gentleman in New England, and which showed the alarm which was created in the West at the news of what was going on in Congress. "Politics, which a few months ago were scarcely thought of, are now sounded aloud in this part of the world. The late treaty with Spain shutting up, as it is said, the navigation of the Mississippi for the term of twenty-five years, has given this Western country a universal shock, and struck its inhabitants with amazement. Our foundation is affected; it is therefore necessary that every individual apply himself to find a remedy. To sell us and make us vassals to the merciless Spaniards, is a grievance not to be borne. The parliamentary acts which occasioned our revolt from Great Britain were not so barefaced and intolerable.

"What benefit can you, on the Atlantic shores, receive from this act? Though this country has been settling but six years, and that in the midst of an inveterate enemy, and most of the first adventurers fallen a prey to the savages; and although the emigration to this country is so very rapid that the internal market is very great, yet the quantities of produce now on hand are immense. Do you think to prevent emigration from a barren country, loaded with taxes, and impoverished with debts, to the most luxurious and fertile soil in the world? Vain is the thought, and presumptuous the supposition. You may as well endeavor to prevent the fishes from gathering on a bank in the sea,

which affords them plenty of nourishment. Shall the best and largest part of the United States be uncultivated, a nest for savages and beasts of prey? Certainly not. Providence has designed it for some nobler purpose."

[Mr. B. has furnished for the press the following extracts from Mr. Madison's statement: "We will not differ as to facts; perhaps we may differ as to principles. \* \* \* From the best information it never was the sense of the people at large, or the prevailing character of the Eastern States, to approve of the measure, (surrender of the Mississippi.) If interest should continue to operate on them, I humbly conceive they will derive more advantage from holding the Mississippi than even the Southern States." Mr. Madison also said that the Southern States had been for giving up the navigation of the Mississippi to Spain. Patrick Henry powerfully replied that that was when they did not possess it—in the gloomiest period of the Revolution, and to purchase the aid of Spain in establishing our independence.]

Mr. B. said that he had now given one great instance of the attempts to prevent the growth and settlement of the West. It was a diplomatic instance. He would now give another instance of the same policy from the legislative department of the Government—from the Congress of 1785, which he must be permitted to consider as the origin and prototype of all succeeding measures for cramping, crippling, and stifling the West. It is in the ordinance for the sale and disposition of the Western lands; the first one that passed after the States had surrendered their claims to that territory for the payment of the public debt. This ordinance was reported by a committee of twelve members, eight of them from the north side, four from the south side of the Potomac. They were:

Messrs. Long, of New Hampshire, King, of Massachusetts, Howard, of Rhode Island, Johnson, of Connecticut, R. R. Livingston, of New York, Stewart, of New Jersey, Gardiner, of Pennsylvania, Henry, of Maryland, Grayson, of Virginia, Williamson, of North Carolina, Bull, of South Carolina, Houston, of Georgia.

The ordinance reported by the committee, contained the plan of surveying the public lands, which has since been followed. It adopted the scientific principle of ranges of townships, which has been continued ever since, and found so beneficial in a variety of ways to the country. The ranges began on the Pennsylvania line, and proceeded west to the Mississippi; and since the acquisition of Louisiana, they have proceeded west of that river; the townships began upon the Ohio river, and proceeded north to the Lakes. The townships were divided into sections of a mile square, six hundred and forty acres each, and the minimum price was fixed at one dollar per acre, and not less than a section to be sold together. This is the outline of the present plan of sales and surveys, and with the modifications it has received, and may receive, in graduating the price of the land to the quality, the plan is excellent. But a principle was incorporated in the ordinance of the most fatal character. It was, that each township should be sold out complete before any land could be offered in the next one! This was tantamount to a law that the lands should not be sold; that the country should not be settled: for it is certain that every township, or almost every one, would contain land unfit for cultivation, and for which no person would give six hundred and forty dollars for six hundred and forty acres. The effect of such a provision may be judged by the fact that above one hundred thousand acres remain to this day unsold in the first land district; the district of Steubenville, in Ohio, which included the first range and first township. If that provision had remained in the ordinance, the settlements would not yet have got out of sight of the Pennsylvania line. It was a wicked and preposterous provision. It required the people to take the country clean before them; buy all as they went; mountains, hills, and swamps; rocks, glens,



and prairies. They were to make clean work, as the giant Polyphemus did when he ate up the companions of Ulysses:

"Nor entrails, blood, nor solid bone remains."

Nothing could be more iniquitous than such a provision. It was like requiring your guest to eat all the bones on his plate before he should have more meat. To say that township No. 1 should be sold out complete before township No. 2 should be offered for sale, was like requiring the bones of the first turkey to be eat up before the breast of the second one should be touched. Yet such was the provision contained in the first ordinance for the sale of the public lands, reported by a committee of twelve, of which eight were from the north and four from the south side of the Potomac. How invincible must have been the determination of some politicians to prevent the settlement of the West, when they would thus counteract the sales of the lands which had just been obtained after years of importunity, for the payment of the public debt!

When this ordinance was put upon its passage in Congress, two Virginians, whose names, for that act alone, would deserve the lasting gratitude of the West, levelled their blows against the obnoxious provision. Mr. Grayson moved to strike it out, and Mr. Monroe seconded him; and, after an animated and arduous contest, they succeeded. The whole South supported them; not one recreant arm from the South; many scattering members from the North also voted with the South, and in favor of the infant West; proving then, as now, and as it always has been, that the West has true supporters of her rights and interests—unhappily not enough of them—in that quarter of the Union from which the measures have originated that several times threatened to be fatal to her.

Mr. B. here adverted to a statement made by Mr. Grayson, in the Virginia convention, and which he had read just before, declaring that the language of some Northern members had been, that they wanted no States in the West, &c. and ventured the assertion of the belief, that it was in this committee that reported this ordinance, that that language was used. The occasion was a natural one to produce such language, and there was a gentleman upon that committee known to entertain that opinion, and of a spirit too proud and lofty to dissemble his sentiments. The occasion was one which involved the direct question, whether there should be new States in the West? The provision which required all the land in one township to be sold out, before the next was offered, was tantamount to saying that the land should not be sold; the country should not be settled; that new States should not be formed. The part acted by Mr. Grayson, in the House, in expunging this obnoxious provision, authorizes the belief that he objected to it in the committee, and took the natural ground that it would prevent the formation of new States in the West. The character of Mr. King, of New York, who was one of the committee, authorizes the belief that he answered frankly, that it was his intention to prevent the formation of such States. Such an answer would naturally flow from the lofty spirit which, at a subsequent period, and upon the floor of this Senate, disdaining all disguise, and discarding all hypocrisy, openly proclaimed that the Missouri contest was a struggle for political power, and that he would sooner see Missouri remain forever a haunt for wild beasts, than come into the Union on the side of the slave States.

These are two great and signal attempts to prevent the settlement of the West. Other measures, tending to the same effect, fill up the long period of her history from that day to this. Refusals to vote money for raising troops to defend the early settlers on the Cumberland and Kentucky; refusals to vote money for holding treaties to extinguish Indian titles; and lately, during the last administration, the reservation of iron ore lands, and the withdrawal of a thousand square miles of territory from mar-

ket, in the State of Missouri, by Presidential authority, and in violation of an act of Congress, down to the resolution now under consideration, are all measures of the same class, all tending to check the growth, and to injure the prosperity of the West, and all flowing from the same geographical source.

Mr. B. now spoke of the woful improvidence of the new States in parting with the right to tax the federal lands when they came into the Union, and obtaining no stipulation for the sale of the lands in a reasonable time, and for a fair price. Such improvidence placed them at the mercy of those who are not responsible to them for the votes they give, who are strangers, who live a thousand miles off, and may labor under the belief that they have an interest in checking their growth. This is the weak and dangerous part of our system. This is representation without responsibility. It is taxation without representation, and that in its direct form; not of a few pence on a pound of tea, or on a quire of stamped paper, but of land; power to tax it in the price, to demand double price; to do worse, to place it above all price, as this resolution proposes to do, withdraw it from market, and deliver it up to wild beasts!

Massachusetts acted wisely. She surrendered a barren sceptre in the West, where she owned nothing, and held fast to thirty thousand square miles of vacant territory which she did own in the Northeast. She nurtured her province of Maine upon this territory, and ripened her infant to a State. They divided the vacant lands between them, and are now selling them on easy and parental terms to their citizens. Twenty-five cents an acre, twenty cents, ten cents, five cents; such are their prices, and for fresh lands never before in the market! What a contrast to the price of public land in the new States of the West! One dollar and twenty-five cents per acre, the lowest price for the refuse of innumerable pickings and cullings! What a contrast, not only in the price of the land, but in the condition of Maine and the other new States! Her Legislature settles all questions of survey, sale, price, donation; all this done at home, by a Legislature elected by the people and responsible to them. For the new States in the West and South, Congress is the tribunal for the decision of these matters, and before her they must appear with petitions, memorials, entreaties, supplications, and prayers; and hear in return denials, rebukes, and reproaches! These humiliations, these injuries, go not to the new State of Maine; the wisdom of Massachusetts in holding fast her public land, while Virginia was throwing hers upon the public altar, has saved Maine from them; they are reserved for the new States of the West, and copious and bitter have been the draughts which these States have had to swallow; severe are the trials which they have yet to go through, before the census of 1840 shall enable them to vindicate their rights, by the tranquil exercise of superior power. In the mean time, the surveys may be stopped, the sales may be limited, two-thirds of their soil may be reserved from market, plans may be got up to divide the money which the lands sell for, by a rule of proportion which will give all the money to the populous States of the Northeast; then other plans may be invented to run up the prices to the highest point, and obtain every possible dollar from the new States, to be distributed among these new receivers. When this plan is screwed to the highest, it may give way to the natural conception, that it is better to divide the land before the sale, than to divide the money after it; and when the lands are so divided and distributed, the next conclusion will be as natural as irresistible, that it is better not to sell the lands at all, but to rent them, and derive that "tribute" from the West which Mr. Grayson tells of, and retain a body of tenantry in the new States to govern the elections. Is this fancy, or is it fact? It is fact, and the incipient steps for the consummation of all this are now in full progress. Where is the

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Mr. Foot's Resolution.

[SENATE.]

relief, where the defence of the new States, in this alarming conjuncture? Not in themselves. They are yet too weak; they must look abroad for help, and the history of the past tells them where; tells them to look to the solid phalanx in the South, and those scattering reinforcements of the Northeast, which, in 1787, saved the navigation of the Mississippi, and, in 1785, expunged the non-settlement clause from the ordinance for the sale of Western lands, and, in these two great acts, saved the infant West from being stifled in its birth.

[Here the debate closed for this day.]

TUESDAY, JANUARY 19, 1830.

THE DEBATE CONTINUED.

Mr. FOOT's resolution for suspending the surveys of the public lands, &c. being again under consideration—

Mr. HOLMES rose, and said, if some stranger had happened to have been in the Senate when the Senator from Missouri [Mr. BENTON] rose in the debate of yesterday, and had listened to him throughout, he would have been led to conclude that the thirteen United States were thirteen tyrants; that they had driven the emigrants to the West, exposed to savage beasts and savage men; that they had not only withheld population, but had extended to them the hand of oppression; that, in spite of the savages on the one hand, and our tyranny on the other, they had grown and flourished; that we had disregarded their complaints and remonstrances "as the capricious squalls of a child, which did not know whether it was aggrieved or not;" that this child had at length acquired the voice, vigor, and courage of a man; had risen up, and hurled defiance in the teeth of its unnatural parent; that insurrection prevailed; that discord was snapping her whip of scorpions; the torch of rebellion was lighted; the flames of civil war were kindled; and this resolution was to seal their subjugation. But when he came to learn that (lo! and behold!) nothing more was intended but to inquire whether a sufficient quantity of our land was ready for sale to supply the demand; and, if so, whether some of the officers employed in surveying them might not be dispensed with, he would be surprised, and suppose it was a dream. Thus, said Mr. H. does impassioned eloquence magnify a small affair into a fearful catastrophe. If there is danger of excitement, who has created that danger? Surely the Senators who have opposed the resolution. Had it passed *sub silentio*, as it was in the ordinary course of business, the rest would have thought nothing of it. Th's inquiry is demanded for the information of the Senate and the people. They want light. We ask an inquiry, and now, by this preliminary and premature discussion, the gentlemen have placed themselves in this dilemma—if we make the inquiry, we alarm the West; if we suppress it, the East will suspect you. In these days, when reform has been promised and is expected, we ask for information on a subject so important as our public domain, and this information is refused. What will be the inference? You raise every where suspicion and jealousy that something is wrong, which will not bear the light. Sir, it is not for us, who call for this inquiry, to give an accurate detail of the quantity, quality, and location of these lands, nor of the number, duties, and emoluments of the officers employed. It would be admitting at once, that we have all the information the resolution seeks. These are the very objects of the inquiry. We may have some knowledge, but not enough. This is my case. We have five great land districts, viz: 1. Ohio and Indiana; 2. Illinois, Missouri, and Arkansas; 3. South of the Tennessee, including Mississippi and Louisiana; 4. Alabama; 5. Florida. In all these, we have surveyed one hundred and forty millions; sold and granted about thirty-nine millions; leaving more than one hundred millions of acres still for sale. The quantity reserved by, or ceded to the States, is probably not less than fifty millions; and what is in the hands of speculators, who purchased not to

cultivate, but to sell, and other large claimants under foreign grants, &c. not less than fifty millions more; making a grand aggregate of two hundred millions of acres now ready for purchasers. Now, if one hundred acres is sufficient for a farm, which will sustain a family of six persons, there is already enough, from these different sources, to accommodate twelve millions of persons, equal to the whole population of the United States. But, suppose that one-half of this is unfit for cultivation, (a large deduction in a country described as a perfect paradise) then it would be only sufficient for six millions. If, then, you have enough already surveyed to supply only six millions, is it necessary to be at the expense of surveying more, or rather, is it dangerous to inquire into the expediency of doing it? This question is the more impressive, when we reflect that this West contains three millions of inhabitants, and only twenty millions of the public land have yet been sold. And I repeat, had this inquiry been permitted from the usual courtesy of the Senate, no excitement might have been apprehended from any quarter; all would have believed it was in the spirit of reform; and coming from the quarter it does, that there was some sincerity in it. Let us see, at least, whether we have not officers in this department who have nothing to do, or nothing which we may want done for many years. If so, instead of empty professions to amuse, if not deceive the people, let us set to work in earnest.

But, we are told that we need not direct the Committee to inquire, for gentlemen are able now to give us all necessary information. Now, two Senators have volunteered to inform us. We expected, and had a right to expect, a detailed statement, as explicit as the report of a committee: for nothing else would fairly and properly dispense with the inquiry. But, it was fairly predicted that, to give in a speech, a clear, precise, and accurate statement, in detail, of the quantity, value, and location of these lands, would be an attempt to which no man is equal; and if he was, it is not in the power of the human mind to comprehend it, merely by hearing it, and so it has turned out. The Senator from Illinois, (Mr. KANE) has attempted it in vain. Has any one obtained the information we ask, from what he has said? If he has developed the whole subject, I, for one, am so unfortunate as not to comprehend it. He did, to be sure, tell us that the whole system needed modification, the strongest argument for inquiry, and yet he was against it.

The Senator from Missouri [Mr. BENTON] has not even attempted it. His remarks, when they applied to the subject at all, were confined chiefly to his own State, only a small portion of one of the five great land districts. Is this giving us a full view of the whole subject? It is no compliment to our understandings to pretend it. The opposers of the inquiry are driven to one of two grounds; that they have already informed us, or that we have no right to know. But the information yet given is utterly defective, and consists in declamation on the sufferings of the West. Your hand of oppression rests heavy on her; so heavy, that you must not even inquire into her condition. And will it be pretended that the people of the United States have no right to understand the condition of their lands? Is information to be locked up, and is the West exclusively to keep the keys? Sir, if we refuse to open the doors, the people will break them. No secrets! No secrets! Let us know every thing which concerns our property or our liberty. But, says the Senator from Missouri, [Mr. B.] if you abolish the offices of surveyors, the records will be taken away, and the people will be deprived of their evidences of title. Indeed! How does this follow? It would be strange, indeed, if, in abolishing an office, it was beyond the power of legislation to provide for preserving the records, and authenticating copies. I believe, sir, that every Legislature has, in dispensing with an office, taken care to preserve the records, and to pro-

vide the means of using them. It is a perfect *non sequitur*, an utter inconsequence, that the records would share the fate of the office.

But, the resolution does not go far enough; it is confined to the surveyors. Now, sir, I should suppose, if I could look upon this subject with ordinary gravity, that, should the Committee report to abolish the principal offices, it would not be very far exceeding their authority to determine that the subordinate and dependent ones were also unnecessary. A resolution for inquiry, I should think, need not be quite so formal and technical as to stand the test of a "plea in abatement." If it presented a definite proposition which required the direct action of the Senate, it should be drawn with such special care as accurately to define the subject on which we were to act; but an inquiry gives a latitude to the Committee, as to subjects collateral.

The new States, we are told, have parted with the power of protecting themselves. Sir, I don't understand this. What power have they surrendered? What power have they not now, which they ever had before? Is it political power? The power granted them or their ancestors, by the ordinance of 1787? Did they surrender this or any other, on their admission into the Union? I was surprised at the remark; and I should wish to understand its import; and how, and in what this surrender had been made. Is it physical power which is surrendered? What can be meant? Has it come to this, that the people of the West are urged to resort to their native strength to take back what they have fairly and constitutionally conceded, or rather to exact more than we have conceded to them? I hope and trust that the time is far distant when any bold or ambitious aspirant will be able to seduce them from their allegiance to this Union. But we are told that, by a series of measures pursued by the East, we have evinced a settled and determined hostility to the West; and that too for the purpose of checking emigration. Sir, this is a heavy charge. For what purpose, or from what policy, could originate this hostility? Are they not our own brethren, "bone of our bone, and flesh of our flesh"? Were not those lands ceded to us for the purpose of settlement? Of what value would the cession have been to us, had our policy been not to settle them? We know that these lands would not, and could not, pay any of our public debt unless they could be settled. It is preposterous, therefore, to suppose that any statesman would wish to throw a stumbling block in the way of the growth and prosperity of this immense and delightful country. But, if you insist that it is so, here is a paradox to be solved. How does it happen that, with the savages on one side, and our tyranny on the other, this country has increased and flourished beyond all parallel? At the time of the census of 1790, what is now Ohio had perhaps a population of ten thousand; at that of 1800, about forty thousand; in 1810, two hundred and thirty thousand; and in 1820, five hundred and eighty thousand, and now was probably a million! And all this, in spite of savage barbarities and domestic oppressions. All the West, in the space of forty years, has increased three millions. Sir, with facts like these, let an impartial world decide upon the cruelty and tyranny of the parent States.

In the ordinance of the 13th July, 1787, a state paper which does us honor, and which was drawn by a citizen of Massachusetts, evidence of this hostility? Five States marked out and defined, to be admitted into the Union, when each or either should have a population of sixty thousand, and the pledge in this respect more than redeemed; religious freedom, trial by jury, *habeas corpus*, representation, common law, bail—all the securities of life, liberty, and property—guaranteed, and excessive fines, cruel punishments, and *ex post facto* and retrospective laws forbidden—all the essential rights for which our Revolution was achieved, and which raise the freemen above the slave, secured! Does this look like hostility to the West? More-

over, is the admission into the Union, before they had the requisite numbers, proof of this hostility? Does the admission of Missouri evince such hostility? Sir, this is an event which I shall long remember. But for Eastern members, Missouri would now be a province. That Senator would not be here. This Hall would never have witnessed the triumph of his eloquence, nor the ardor of his patriotism. Eastern members took their lives in their hands when they defended the cause of Missouri. They acted against the honest prejudices of their constituents. Prejudices did I say? No, principles which they deem correct, emanating from the best feelings of the human heart. I will appeal to both of these Senators for the truth of what I say. They were literally knocking at the door of the Senate, and Eastern men were exerting their powers to burst it open and let them in. It is illiberal to charge the East with hostility to Missouri.

But because it was proposed, by Eastern members of the old Congress, to provide, in the ordinance of '87, that every section in one township should be sold, before another should be offered for sale, (which proposition did not prevail) the Senator infers that this is evidence of hostility. Now it seems to me that this inference is, to say the least, a little uncharitable. I could easily perceive that a very patriotic and charitable motive might have induced this proposition. At that time the settlers would be opposed to numerous and powerful savage tribes. They would be obliged in some measure to defend themselves. It would be safest, therefore, to keep them as compact as possible: for the more they should scatter, the more would they be exposed. The members from the East had near and dear friends, who had emigrated to that country, and it might be their motive to protect them. When a good and a bad motive may be assigned to an act, it is the part of charity to assign the good, especially when the person implicated is dead, and cannot therefore defend his motives. The Senator from Missouri illustrates this case by a turkey. A man has two turkeys cooked and on the table, and he obliges his guests to eat one, bones and all, before he will carve the other. The analogy seems to be most unfortunate. We have sold but twenty millions of the public lands, and there are now two hundred millions to be sold. His turkey then has one tenth of flesh, and nine tenths of bones; a poor turkey truly. Is this a fair description of the paradise of the West? If it is, there is little need of checking emigration. But to carry his figure of the turkey a little further, and his case would be this: A man has twenty guests, and he serves up twenty turkeys, one for each, and each takes his dinner out of his turkey, and they are all left partially eaten and all mangled. Now this is exactly the case of bringing more land into the market than can possibly be wanted.

The Senator [Mr. B.] has read from the debates of the Virginia convention, to prove that the East were disposed to give to Spain our right of navigation of the Mississippi. It seems that this alienation came incidentally into discussion, and it was apprehended that, under the constitution which was to be adopted, the new Government would have more power to do this than would the old confederation. A Mr. Grayson had stated that this was the disposition of the East, and chiefly inferred it from the supposed fact that we had no interest in that navigation. If this same Mr. Grayson was an able statesman, he had not then learnt much of geography: for he stated that Massachusetts had no intercourse with the Mississippi, but by the St. Lawrence, or the Hudson! When the fact is, that Massachusetts, for half a century, has had a more intimate intercourse with the Mississippi than even the State of Maryland. A man who could deliberately advance such an opinion, can scarcely be considered very high authority on any subject. Mr. Madison, however, a real statesman, put it all right, showed the connexion of the East with the West, and denied that the Eastern people ever would be willing

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*Mr. Foot's Resolution.*

[SENATE.]

to make the concession. The next charge against the East is, that a distinguished citizen of Massachusetts had discovered hostility to the West, in giving up our claims upon Texas. The Florida treaty was negotiated when he was Secretary of State, and it was long in negotiation. I was then a member of the Committee of Foreign Relations in the other House, and, from the connexion of that Committee with the Executive, I had an opportunity of knowing something of that negotiation; and though I do not deem it proper to state particular conversations, I do know that the distinguished citizen was the last who gave up the Colorado for a boundary, and accepted of the Sabine.

Sir, I beg pardon of the Senate for thus detaining them. It was chiefly to resist the attempt to excite sectional jealousies that I rose. It has always been my course. When we were involved in war, and an attempt was made, as in New England, to do this, I resisted it. When now it is attempted in the West, I will resist it still. I will bear in mind—for it sunk deep into my heart—the legacy of the Father of his Country to his children. The sectional jealousies which have been excited in this debate have brought it fresh to my recollection. God grant that the good sense of the people of the West may spurn the insinuation!

Mr. WOODBURY said he rose, not with a view of entering at large into the debate, or of repeating any suggestions made by him on a former occasion; but he held in his hand a motion, which, he flattered himself, perhaps in vain, might meet the approbation of gentlemen on both sides. The resolution under consideration was, avowedly, one for mere inquiry, and not intended in any degree to alarm or injure the West. Every gentleman from the East, who had advocated its passage, indignantly repelled any other design. This was honorable and right. On the contrary, every gentleman who had opposed its passage, whether from the East or West, repelled, with equal indignation, any design to stifle inquiry, suppress information, or exclude light. Imputations of these kinds, come whence they may, were to be presumed alike groundless and unjust. What, then, is honestly wanted on both sides? An inquiry into the subject of the surveys and sales of public lands may be as thorough as gentlemen please; but an inquiry instituted in such form as not to create alarm; or, beforehand, to imply any opinion on the present system unfavorable to the interest and hopes of the new States in the West. He trusted, therefore, that the gentleman from Connecticut, who introduced this resolution, would consent to any modification likely to attain this object; as [Mr. W. presumed] that gentlemen went for substance rather than form. It was doubtless more important to that gentleman, to have the subject of the surveys and sales inquired into by the Committee, than the particular manner in which the subject was referred.

He proposed, therefore, to alter only the manner of the inquiry. In this case of the West, as in some other cases, he might say with Mirabeau, that "words were things." He could easily see that one form of inquiry might excite fear and jealousy, which would be entirely removed by a different form, and still the investigations of the committee be equally full, and the result of their investigations the same. Let us bring the question a little closer home. Would it be equally agreeable to the Atlantic seaboard, to have passed a resolution of inquiry into the expediency of limiting the number of light houses, of stopping the improvement of harbors, or of abandoning the removal of obstructions in our rivers, as to have one pass for inquiring into the expediency of increasing the number of light houses, extending the improvement of our harbors, and of removing more generally the obstructions in our rivers? As a still stronger illustration, and as an illustration only, what gentleman, who had advocated this resolution, would like to vote for a mere inquiry into the expediency of dissolving the Union? But it

would be a very different resolution in its acceptability and bearings, if the form was changed into an inquiry how the Union could be strengthened, or into the expediency of strengthening it by any system of roads and canals, any disposition of the public lands, or any regulation of commerce, that might come within the purview of the constitution, and, at the same time, not tend to alienate one portion of our political brotherhood from the other portion. Mr. W. forbore to enter into further illustration or detail; as enough had been said to indicate the importance, in such cases, of mere phraseology, and how easy it was to conciliate and soothe, where conciliation, and not irritation, was the real design.

If he were to glance at the state of the country now, and not go back to its condition and its policy on the public lands forty years ago, which, he agreed with the gentleman from Maine, might now be entirely inapplicable, he should say that the resolution, on that account also, ought to have a much wider scope than it now possessed. The more extended were our surveys and sales, the quicker would be the probable payment of our public debt, to which these lands stood firstly and sacredly pledged. The more extended were our surveys and sales, the better could we compete, for income and population, with the other great land owners on our north and southwest, and even with parts of Europe and Asia. We must take the world as it is, most of it at peace and cultivating the arts of peace, and throwing open its vacant spots of territory to the poor and oppressed from all regions. The institutions of the old world were becoming yearly more liberal, that their territories might not become deserts. Beside turning the tide of emigration that set to this country, by extraordinary advantages held out in Southern Africa, the whole continent of New Holland, and on the coast of the Black Sea—even Persia, within half a dozen years, had circulated her proclamations, in both London and Paris, promising to actual settlers, land, freedom from taxes, and liberty of conscience.

Our free institutions gave us, to be sure, great advantages over monarchies and despotisms, in attracting emigrants; but it must be recollected that other Governments are also becoming more free; that new and cheaper lands are flung open; and that most of the emigrants hither, of late, have consisted of artisans rather than agriculturists. But on our own immediate borders had arisen the greatest rivalry, and one which had begun to create a large drain even to our own native population. Settlers were systematically invited into Canada, by the most favorable terms as to land, and by almost an entire exemption from taxes; while on our southwest, under a Government free in form as our own, the largest tracts of the richest soil were bestowed with a most liberal hand. He had before him a letter, received from a friend since this resolution was offered, containing an account of grants by the Mexican Government, to a native of New Hampshire, among others, of lands larger in extent than the whole of that State, or the State which the honorable mover of this resolution represents; land, also, on the finest of rivers, and near our southwestern borders, on the simple condition of actual settlement to the small extent required by the laws of colonization in Mexico, passed in 1825. One other consideration on our own solemn engagements. How are we ever, in good faith, to permit the Northwestern Territory to become States, unless we permit the lands to be surveyed, and sold at a moderate price, so as to throw into that territory the requisite population for States? and how can the population there, deem it honorable or just for us to talk of liberality in admitting them to be States a little under the population required, if we stop the surveys and sales before they can approach near the requisition; or if we stop them after they become States, and reserve our lands for beasts of prey and savages to roam over, rather than permit them to be bought

and cultivated by the thousands of civilized freemen, with small pecuniary means, who are now looking, in the pursuit of happiness and new homes, to Canada and Texas? To borrow a course of reasoning applied so often in regard to the tariff, he would ask if no counteracting regulations were necessary to meet the measures of other nations? Many who have sought, and many who would now seek, what once were called the Western wilds, look to us for a new policy, in accordance with the new condition of this country and the age in which we live. Public policy, forty years ago, might have been rather to contract the settlements, for increased security against the tomahawk and scalping knife. But no such motive now existed. Our own little world should all be open where to choose; to the young and enterprising of the East as well as the West. Compared with former years, they had no dangers nor difficulties there to fear, and their friends behind felt much less reluctance at parting with them in their removal to regions of improved and improving laws, institutions, and morals. Those behind, also, he trusted, felt neither jealousy nor distrust. Many of them had been reared under the same roof, taught in the same schools, had worshipped in the same temples.

He hoped that these and similar considerations, as well as those suggested by him on a former occasion, would vindicate him in the wish to have all the public lands surveyed as speedily as possible, and then sold on such terms, and with such despatch, as the present state of this country and of the world rendered proper, looking to our true and lasting interests, and exercising, in regard to the lands, a policy worthy the impartiality and liberality so often professed.

Mr. W. concluded by offering the following amendment: After the word "expediency," insert the words "of adopting measures to hasten the sales, and extend more rapidly the surveys of the public lands."

Mr. FOOT made a few observations in reply to Mr. WOODBURN. The amendment [he said] was opposed to the resolution he offered. It proposed an inquiry directly the opposite to his. He suggested whether the gentleman might not as well offer his amendment in the form of a distinct resolution, after the adoption of the resolution he offered, and then the whole subject would lie open to the Committee.

Mr. BARTON said he liked this amendment, and the remarks of the gentleman from New Hampshire. He believed the inquiry, in the form proposed by the amendment, would throw open precisely the same field of inquiry as that of the gentleman from Connecticut; and, as one member, he should take into view those topics suggested by the latter, if the resolution should assume the new form. This form of inquiry would also prevent the very excitements in the West deprecated by the gentleman from Maine. It was a great object to have free inquiry into our public concerns. It was, he said, also a great object to give public satisfaction, and to allay and prevent sectional jealousies and suspicions. He also accorded in opinion with the gentleman from New Hampshire in the propriety of counteracting measures against the bounties to emigrants held out in Canada by the British Government, and in Texas by that of Mexico. The Senate would recollect that, in 1828, in his opposition to the "Graduation Bill," his only objections were the encouragement it would give speculators, and its prostration of the actual cultivators under the weight of combination and wealth. But he had, at the same time, proposed a substitute, offering to give small estates in lands to those who would settle them. To give away lands to the citizens who needed them, as a countervailing measure to the policy of our surrounding neighbors, who tempt away some of our people, was his constant policy; but it had been smothered under the schemes of the day; and nothing had, as yet, been obtained, except a disposition to divide the lands among the

States, according to present numbers. He was glad, he said, to find a measure proposed from the Northeast that would bring this identical plan into re-consideration before the Committee, supported by the arguments of the gentleman from New Hampshire; and should vote for his proposed amendment.

Mr. SMITH, of Maryland, said there was no necessity for the amendment, as the Committee had already the same powers it proposed to confer. Although he was opposed to the measure which the resolution of the gentleman from Connecticut [Mr. FOOT] purported to have in view, yet he would vote for the resolution. What would be said, if this resolution were rejected? That we were afraid of inquiry. At the first stage of the new administration he would wish to avoid the charge of being hostile to any investigation. If the resolution goes to a committee, they will make a report, and he said it was desirable to put down the jealousies which a contrary course would excite. The excitement of one part of the Union against the other was, if prevalent, extremely unfortunate. Mr. S. stated that the policy of the Government in all projects having reference to the Western States has been indulgent. He said he would vote against the amendment as being unnecessary, and in support of the resolution, for the reasons stated. A gentleman had been alluded to by the gentleman from Missouri, [Mr. BENTON] in the course of his remarks, of which he [Mr. S.] thought it necessary to take notice. That gentleman said, alluding to a distinguished character, that he had ceded by negotiation a fair portion of the land belonging to the United States. Mr. S. said that he had been an actor on that occasion, and was well acquainted with the subject; that he had been informed at the time that a quarrel had taken place between the gentleman alluded to and Don Onis, the minister on the part of Spain, and they had separated not to meet again on the subject; that a quarrel arose, as he was informed and believed, on the determination of the American negotiator that the Colorado must and should be the boundary line; that the negotiators met again at the request of mutual friends; what passed afterwards he did not know, further than that he could assure the Senator from Missouri that the gentleman alluded to by him was not the first to recede to the Sabine as the boundary of the United States.

Mr. LIVINGSTON said, in all deliberative assemblies with which I have been acquainted, there are two modes of deciding on a resolution requiring the opinion of a committee on the expediency of a proposed measure—one, the most ordinary and regular mode directing the reference as a matter of course, which mode gave rise to no presumption of the opinion of the House on the measure proposed by the resolution; the other mode is that of opposing the inquiry as useless, or by an investigation of the subject, showing that it would be improper to ground any measures on such a result of the inquiry as seemed to be expected by the resolution—I say seemed to be expected, because the mover certainly would not have wished for an inquiry merely to satisfy curiosity, and the phraseology of the resolution evidently shows the object to be, that the sales of lands shall be restricted to those already surveyed. The debate, then, not having turned on the necessity of an inquiry, but on the propriety of the measure itself, which was to be made the subject of inquiry, it was as competent to the Senate to decide now, whether such restriction of the sale of lands was an advisable measure, as it would be on the report of a committee: for such report could give us no facts that we were not in possession of; and, after the turn the debate had taken, a vote of reference to a committee would be considered as an acquiescence in the propriety of the measure contemplated by the resolution. Therefore, although I should have voted for the reference, if the measure had taken its usual course, I cannot do so under existing cir-

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[SENATE.]

circumstances. The State whose interests I advocate and partly represent, has suffered too much from the delay in the sale of the public lands already, not to render this proposition of restraining them still further, a fatal one to her interest, with a population of one hundred and sixty thousand inhabitants, to bear all the charges of Government: her increase has been checked for twenty-five years: during which, according to the natural course of things, that population ought to have been at least doubled. The lands of the United States, amounting to thirty-one millions, are not only exempt from taxes, but the inhabitants are forced, if they wish to keep up a communication between themselves in some of the settlements, and to protect their property from inundations, to make roads, bridges, and embankments, on the public lands. A law to restrict the sales of public lands to those already surveyed, would be equivalent to a law to stop them altogether: for although, of the thirty-one millions of acres owned by the United States, two millions seven hundred thousand have been surveyed, yet not a tenth part of that quantity has been sold, and of what remains, not a tenth part will ever sell; it is morass or pine barren. Therefore, a law to stop the surveys would be equivalent to a law to put a stop to the further increase of the State, and entailing upon its present inhabitants and their descendants, the burden of all the taxes and all the services required for defending and improving the lands of the United States. There are two views in which the subject may be considered; that in which the pecuniary interest of the United States is alone considered—the other, that in which the infinitely more important political interest of the new States is concerned.

In the first view, considering the United States simply as a great landholder, what are its interests? To sell as speedily and for as good a price as they can; but the greater choice you give to settlers, the more speedily it is evident; that you can sell; and the better land you throw into the market, as evidently the better price you can command. This can only be done by continuing your surveys. The political view of the question is one that would require an investigation not now necessary to be gone into. The strength of the Union depends on the population, wealth, resources, and industry, of the States, its component parts. Whatever cramps them, restrains the general welfare, and reduces its strength. The money to be drawn from the sale of the lands is but a feather in the scale of great national policy; and if the population of the States would be increased by disposing of them, even for nominal price, we ought not to hesitate. In another point of view, the surveys are highly important. They give us an accurate knowledge, not only of the situation, but the quality and value of our land. Its facilities for improvement by roads, canals, and proximity to market; and even if the sales were stopped, the surveys ought to go on. What great landed proprietor who does not begin by this operation? And shall the greatest of all landholders, from a fear of expense, neglect it? These are some of the advantages resulting from a perseverance in the judicious plan which has been adopted in relation to our public lands. These are some of the injurious effects which would result from abandoning it. What are the benefits expected from a change? I have not heard a single one suggested. My vote will be governed by these considerations.

Mr. SPRAGUE suggested the propriety of combining both the propositions before the Senate in one resolution. He said he was willing to vote for an inquiry, whether the surveys of the public lands ought, on the one hand, to be stopped, or on the other hand, whether they ought to be extended. If the gentleman would consent to adopt both propositions, he [Mr. S.] said he would support the resolution. Both objects contended for by gentlemen would be thus attained. He would therefore suggest a modification of the resolution, in the following form:

*Resolved*, That the Committee on the Public Lands be instructed to inquire whether it be expedient to limit for a certain period the sales of the public lands to such lands only as have heretofore been offered for sale, and are subject to entry at the minimum price. And also whether the office of Surveyor General may not be abolished without detriment to the public interest, or whether it be expedient to adopt measures to hasten the sales, and extend more rapidly the surveys of the public lands.

Mr. S. said, if the gentleman from Connecticut, [Mr. Foot] and the gentleman from New Hampshire, [Mr. WOODBURY] would consent to this modification, he would now, if in order, move it as an amendment. If it was not now in order, he said he would make the motion at another time.

The PRESIDENT said the motion was not in order.

Mr. FOOT made a few observations in reply to Mr. BENTON and Mr. WOODBURY. He repelled the imputation that it was through any hostile motives to the West he proposed the resolution. He said the question here involved was one of great and increasing importance and interest, and added, that if the resolution and amendment, in the modified form, were adopted, he should move to add to the whole, the words "propriety of making donations to actual settlers."

On the motion of Mr. SMITH, of Maryland, a division of the question was ordered.

Mr. HAYNE said that, if the gentlemen who had discussed this proposition had confined themselves strictly to the resolution under consideration, he would have spared the Senate the trouble of listening to the few remarks he now proposed to offer. It has been said, and correctly said, by more than one gentleman, that resolutions of inquiry were usually suffered to pass without opposition. The parliamentary practice in this respect was certainly founded in good sense and sound policy, which regarded such resolutions as intended merely to elicit information, and therefore entitled to favor. But [said Mr. H.] I cannot give my assent to the proposition so broadly laid down by some gentlemen, that, because nobody stands committed by a vote for inquiry, that, therefore, every resolution proposing an inquiry, no matter on what subject, must pass almost as a matter of course, and that, to discuss or oppose such resolutions, is unparliamentary. The true distinction seems to be this: Where information is desired as the basis of legislation, or where the policy of any measure, or the principles it involves, are really questionable, it was always proper to send the subject to a committee for investigation; but where all the material facts are already known, and there is a fixed and settled opinion in respect to the policy to be pursued, inquiry was unnecessary, and ought to be refused. No one, he thought, could doubt the correctness of the position assumed by the gentleman from Missouri, that no inquiry ought ever to be instituted as to the expediency of doing "a great and acknowledged wrong." I do not mean, however, to intimate an opinion that such is the character of this resolution. The application of these rules to the case before us will decide my vote, and every Senator can apply them for himself to the decision of the question, whether the inquiry now called for should be granted or refused. With that decision, whatever it may be, I shall be content.

I have not risen, however, Mr. President, for the purpose of discussing the propriety of instituting the inquiry recommended by the resolution, but to offer a few remarks on another and much more important question, to which gentlemen have alluded in the course of this debate—I mean the policy which ought to be pursued in relation to the public lands. Every gentleman who has had a seat in Congress for the last two or three years, or even for the last two or three weeks, must be convinced of the great and growing importance of this question. More than half of our time has been taken up with the discussion of

propositions connected with the public lands; more than half of our acts embrace provisions growing out of this fruitful source. Day after day the changes are rung on this topic, from the grave inquiry into the right of the new States to the absolute sovereignty and property in the soil, down to the grant of a pre-emption of a few quarter sections to actual settlers. In the language of a great orator in relation to another "vexed question," we may truly say, "that year after year we have been lashed round the miserable circle of occasional arguments and temporary expedients." No gentleman can fail to perceive that this is a question no longer to be evaded; it must be met—fairly and fearlessly met. A question that is pressed upon us in so many ways; that intrudes in such a variety of shapes; involving so deeply the feelings and interests of a large portion of the Union; insinuating itself into almost every question of public policy, and tinging the whole course of our legislation, cannot be put aside, or laid asleep. We cannot long avoid it; we must meet and overcome it, or it will overcome us. Let us, then, be prepared to encounter it in a spirit of wisdom and of justice, and endeavor to prepare our own minds and the minds of the people, for a just and enlightened decision. The object of the remarks I am about to offer is merely to call public attention to the question, to throw out a few crude and undigested thoughts, as food for reflection, in order to prepare the public mind for the adoption, at no distant day, of some fixed and settled policy in relation to the public lands. I believe that, out of the Western country, there is no subject in the whole range of our legislation less understood, and in relation to which there exists so many errors, and such unhappy prejudices and misconceptions.

There may be said to be two great parties in this country, who entertain very opposite opinions in relation to the character of the policy which the Government has heretofore pursued, in relation to the public lands, as well as to that which ought, hereafter, to be pursued. I propose, very briefly, to examine these opinions, and to throw out for consideration a few ideas in connexion with them. Adverting first, to the past policy of the Government, we find that one party, embracing a very large portion, perhaps at this time a majority of the people of the United States, in all quarters of the Union, entertain the opinion, that, in the settlement of the new States and the disposition of the public lands, Congress has pursued not only a highly just and liberal course, but one of extraordinary kindness and indulgence. We are regarded as having acted towards the new States in the spirit of parental weakness, granting to froward children, not only every thing that was reasonable and proper, but actually robbing ourselves of our property to gratify their insatiable desires. While the other party, embracing the entire West, insist that we have treated them, from the beginning, not like heirs of the estate, but in the spirit of a hard taskmaster, resolved to promote our selfish interests from the fruit of their labor. Now, sir, it is not my present purpose to investigate all the grounds on which these opposite opinions rest; I shall content myself with noticing one or two particulars, in relation to which it has long appeared to me, that the West have had some cause for complaint. I notice them now, not for the purpose of aggravating the spirit of discontent in relation to this subject, which is known to exist in that quarter—for I do not know that my voice will ever reach them—but to assist in bringing others to what I believe to be a just sense of the past policy of the Government in relation to this matter. In the creation and settlement of the new States, the plan has been invariably pursued, of selling out, from time to time, certain portions of the public lands, for the highest price that could possibly be obtained for them in open market, and, until a few years past, on long credits. In this respect, a marked difference is observable between our po-

licy and that of every other nation that has ever attempted to establish colonies or create new States. Without pausing to examine the course pursued in this respect at earlier periods in the history of the world, I will come directly to the measures adopted in the first settlement of the new world, and will confine my observations entirely to North America. The English, the French, and the Spaniards, have successively planted their colonies here, and have all adopted the same policy, which, from the very beginning of the world, had always been found necessary in the settlement of new countries, viz: A free grant of lands, "without money and without price." We all know that the British colonies, at their first settlement here, (whether deriving title directly from the crown or the lords proprietors) received grants for considerations merely nominal.

The payment of "a penny," or a "pepper corn," was the stipulated price which our fathers along the whole Atlantic coast, now composing the old thirteen States, paid for their lands, and even when conditions, seemingly more substantial, were annexed to the grants; such for instance as "settlement and cultivation." These were considered as substantially complied with, by the cutting down a few trees and erecting a log cabin—the work of only a few days. Even these conditions very soon came to be considered as merely nominal, and were never required to be pursued, in order to vest in the grantee the fee simple of the soil. Such was the system under which this country was originally settled, and under which the thirteen colonies flourished and grew up to that early and vigorous manhood, which enabled them in a few years to achieve their independence; and I beg gentlemen to recollect, and note the fact, that, while they paid substantially nothing to the mother country, the whole profits of their industry were suffered to remain in their own hands. Now, what, let us inquire, was the reason which has induced all nations to adopt this system in the settlement of new countries? Can it be any other than this; that it affords the only certain means of building up in a wilderness, great and prosperous communities? Was not that policy founded on the universal belief, that the conquest of a new country, the driving out "the savage beasts and still more savage men," cutting down and subduing the forest, and encountering all the hardships and privations necessarily incident to the conversion of the wilderness into cultivated fields, was worth the fee simple of the soil? And was it not believed that the mother country found ample remuneration for the value of the land so granted in the additions to her power and the new sources of commerce and of wealth, furnished by prosperous and populous States? Now, sir, I submit to the candid consideration of gentlemen, whether the policy so diametrically opposite to this, which has been invariably pursued by the United States towards the new States in the West has been quite so just and liberal, as we have been accustomed to believe. Certain it is, that the British colonies to the north of us, and the Spanish and French to the south and west, have been fostered and reared up under a very different system. Lands, which had been for fifty or a hundred years open to every settler, without any charge beyond the expense of the survey, were, the moment they fell into the hands of the United States, held up for sale at the highest price that a public auction, at the most favorable seasons, and not unfrequently a spirit of the wildest competition, could produce, with a limitation that they should never be sold below a certain minimum price; thus making it, as it would seem, the cardinal point of our policy, not to settle the country, and facilitate the formation of new States, but to fill our coffers by coining our lands into gold.

Let us now consider for a moment, [said Mr. H.] the effect of these two opposite systems on the condition of a new State. I will take the State of Missouri, by way of example. Here is a large and fertile territory, coming into the possession of the United States without any inha-

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bitants but Indians and wild beasts—a territory which is to be converted into a sovereign and independent State. You commence your operations by surveying and selling out a portion of the lands, on long credits, to actual settlers; and, as the population progresses, you go on, year after year, making additional sales on the same terms; and this operation is to be continued, as gentlemen tell us, for fifty or a hundred years at least, if not for all time to come. The inhabitants of this new State, under such a system, it is most obvious, must have commenced their operations under a load of debt, the annual payment of which must necessarily drain their country of the whole profits of their labor, just so long as this system shall last. This debt is due, not from some citizens of the State to others of the same State, (in which case the money would remain in the country) but it is due from the whole population of the State to the United States, by whom it is regularly drawn out, to be expended abroad. Sir, the amount of this debt has, in every one of the new States, actually constantly exceeded the ability of the people to pay, as is proved by the fact that you have been compelled, from time to time, in your great liberality, to extend the credits, and in some instances even to remit portions of the debt, in order to protect some land debtors from bankruptcy and total ruin. Now, I will submit the question to any candid man, whether, under this system, the people of a new State, so situated, could, by any industry or exertion, ever become rich and prosperous. What has been the consequence, sir? Almost universal poverty; no money; hardly a sufficient circulating medium for the ordinary exchanges of society: paper banks, relief laws, and the other innumerable evils, social, political, and moral, on which it is unnecessary for me to dwell. Sir, under a system by which a drain like this is constantly operating upon the wealth of the whole community, the country may be truly said to be afflicted with a curse which it has been well observed is more grievous to be borne "than the barrenness of the soil, and the inclemency of the seasons." It is said, sir, that we learn from our own misfortunes how to feel for the sufferings of others; and perhaps the present condition of the Southern States has served to impress more deeply on my own mind, the grievous oppression of a system by which the wealth of a country is drained off to be expended elsewhere. In that devoted region, sir, in which my lot has been cast, it is our misfortune to stand in that relation to the Federal Government, which subjects us to a taxation which it requires the utmost efforts of our industry to meet. Nearly the whole amount of our contributions is expended abroad: we stand towards the United States in the relation of Ireland to England. The fruits of our labor are drawn from us to enrich other and more favored sections of the Union; while, with one of the finest climates and the richest products in the world, furnishing, with one-third of the population, two-thirds of the whole exports of the country, we exhibit the extraordinary, the wonderful, and painful spectacle of a country enriched by the bounty of God, but blasted by the cruel policy of man. The rank grass grows in our streets; our very fields are scathed by the hand of injustice and oppression. Such, sir, though probably in a less degree, must have been the effects of a kindred policy on the fortunes of the West. It is not in the nature of things that it should have been otherwise.

Let gentlemen now pause and consider for a moment what would have been the probable effects of an opposite policy. Suppose, sir, a certain portion of the State of Missouri had been originally laid off and sold to actual settlers for the quit rent of a "peppercorn" or even for a small price to be paid down in cash. Then, sir, all the money that was made in the country would have remained in the country, and, passing from hand to hand, would, like rich and abundant streams flowing through the land, have adorned and fertilized the whole. Suppose, sir,

that all the sales that have been effected had been made by the State, and that the proceeds had gone into the State treasury, to be returned back to the people in some of the various shapes in which a beneficent local government exerts its powers for the improvement of the condition of its citizens. Who can say how much of wealth and prosperity, how much of improvement in science and the arts, how much of individual and social happiness, would have been diffused throughout the land! But I have done with this topic.

In coming to the consideration of the next great question, What ought to be the future policy of the Government in relation to the Public Lands? we find the most opposite and irreconcilable opinions between the two parties which I have before described. On the one side it is contended that the public land ought to be reserved as a permanent fund for revenue, and future distribution among the States, while, on the other, it is insisted that the whole of these lands of right belong to, and ought to be relinquished to, the States in which they lie. I shall proceed to throw out some ideas in relation to the proposed policy, that the public lands ought to be reserved for these purposes. It may be a question, Mr. President, how far it is possible to convert the public lands into a great source of revenue. Certain it is, that all the efforts heretofore made for this purpose have most signally failed. The harshness, if not injustice of the proceeding, puts those upon whom it is to operate upon the alert, to contrive methods of evading and counteracting our policy, and hundreds of schemes, in the shape of appropriations of lands for Roads, Canals, and Schools, grants to actual settlers, &c. are resorted to for the purpose of controlling our operations. But, sir, let us take it for granted that we will be able, hereafter, to resist these applications, and to reserve the whole of your lands, for fifty or for a hundred years, or for all time to come, to furnish a great fund for permanent revenue, is it desirable that we should do so? Will it promote the welfare of the United States to have at our disposal a permanent treasury, not drawn from the pockets of the people, but to be derived from a source independent of them? Would it be safe to confide such a treasure to the keeping of our national rulers? to expose them to the temptations inseparable from the direction and control of a fund which might be enlarged or diminished almost at pleasure, without imposing burthens upon the people? Sir, I may be singular—perhaps I stand alone here in the opinion, but it is one I have long entertained, that one of the greatest safeguards of liberty is a jealous watchfulness on the part of the people, over the collection and expenditure of the public money—a watchfulness that can only be secured where the money is drawn by taxation directly from the pockets of the people. Every scheme or contrivance by which rulers are able to procure the command of money by means unknown to, unseen or unfelt by, the people, destroys this security. Even the revenue system of this country, by which the whole of our pecuniary resources are derived from indirect taxation, from duties upon imports, has done much to weaken the responsibility of our federal rulers to the people, and has made them, in some measure, careless of their rights, and regardless of the high trust committed to their care. Can any man believe, sir, that, if twenty-three millions per annum was now levied by direct taxation, or by an appropriation of the same among the States, instead of being raised by an indirect tax, of the severe effect of which few are aware, that the waste and extravagance, the unauthorized imposition of duties, and appropriations of money for unconstitutional objects, would have been tolerated for a single year? My life upon it, sir, they would not. I distrust, therefore, sir, the policy of creating a great permanent national treasury, whether to be derived from public lands or from any other source. If I had,



air, the powers of a magician, and could, by a wave of my hand, convert this capitol into gold for such a purpose, I would not do it. If I could, by a mere act of my will, put at the disposal of the Federal Government any amount of treasure which I might think proper to name, I should limit the amount to the means necessary for the legitimate purposes of the Government. Sir, an immense national treasury would be a fund for corruption. It would enable Congress and the Executive to exercise a control over States, as well as over great interests in the country, nay, even over corporations and individuals—utterly destructive of the purity, and fatal to the duration of our institutions. It would be equally fatal to the sovereignty and independence of the States. Sir, I am one of those who believe that the very life of our system is the independence of the States, and that there is no evil more to be deprecated than the consolidation of this Government. It is only by a strict adherence to the limitations imposed by the constitution on the Federal Government, that this system works well, and can answer the great ends for which it was instituted. I am opposed, therefore, in any shape, to all unnecessary extension of the powers, or the influence of the Legislature or Executive of the Union over the States, or the people of the States; and, most of all, I am opposed to those partial distributions of favors, whether by legislation or appropriation, which has a direct and powerful tendency to spread corruption through the land; to create an abject spirit of dependence; to sow the seeds of dissolution; to produce jealousy among the different portions of the Union, and finally to sap the very foundations of the Government itself.

But, sir, there is another purpose to which it has been supposed the public lands can be applied, still more objectionable. I mean that suggested in a report from the Treasury Department, under the late administration, of so regulating the disposition of the public lands as to create and preserve, in certain quarters of the Union, a population suitable for conducting great manufacturing establishments. It is supposed, sir, by the advocates of the American System, that the great obstacle to the progress of manufactures in this country is the want of that low and degraded population which infest the cities and towns of Europe, who, having no other means of subsistence, will work for the lowest wages, and be satisfied with the smallest possible share of human enjoyment. And this difficulty it is proposed to overcome, by so regulating and limiting the sales of the public lands, as to prevent the drawing off this portion of the population from the manufacturing States. Sir, it is bad enough that Government should presume to regulate the industry of man; it is sufficiently monstrous that they should attempt, by arbitrary legislation, artificially to adjust and balance the various pursuits of society, and to “organize the whole labor and capital of the country.” But what shall we say of the resort to such means for these purposes! What! create a manufactory of paupers, in order to enable the rich proprietors of woollen and cotton factories to amass wealth? From the bottom of my soul do I abhor and detest the idea, that the powers of the Federal Government should ever be prostituted for such purpose. Sir, I hope we shall act on a more just and liberal system of policy. The people of America are, and ought to be for a century to come, essentially an agricultural people; and I can conceive of no policy that can possibly be pursued in relation to the public lands, none that would be more “for the common benefit of all the States,” than to use them as the means of furnishing a secure asylum to that class of our fellow-citizens, who in any portion of the country may find themselves unable to procure a comfortable subsistence by the means immediately within their reach. I would by a just and liberal system convert into great and flourishing communities, that entire class of persons, who would otherwise be paupers in your streets, and outcasts in soci-

ety, and by so doing you will but fulfil the great trust which has been confided to your care.

Sir, there is another scheme in relation to the public lands, which, as it addresses itself to the interested and selfish feelings of our nature, will doubtless find many advocates. I mean the distribution of the public lands among the States, according to some ratio hereafter to be settled. Sir, this system of distribution is, in all its shapes, liable to many and powerful objections. I will not go into them at this time, because the subject has recently undergone a thorough discussion in the other House, and because, from present indications, we shall shortly have up the subject here. “Sufficient unto the day is the evil thereof.” I come now to the claims set up by the West to these lands. The first is, that they have a full and perfect legal and constitutional right to all the lands within their respective limits. This claim was set up for the first time only a few years ago, and has been advocated on this floor by the gentlemen from Alabama and Indiana, with great zeal and ability. Without having paid much attention to this point, it has appeared to me that this claim is untenable. I shall not stop to enter into the argument further than to say, that, by the very terms of the grants under which the United States have acquired these lands, the absolute property in the soil is vested in them, and must, it would seem, continue so until the lands shall be sold or otherwise disposed of. I can easily conceive that it may be extremely inconvenient, nay, highly injurious to a State, to have immense bodies of land within her chartered limits, locked up from sale and settlement, withdrawn from the power of taxation, and contributing in no respect to her wealth or prosperity. But though this state of things may present strong claims on the Federal Government for the adoption of a liberal policy towards the new States, it cannot affect the question of legal or constitutional right. Believing that this claim, on the part of the West, will never be recognized by the Federal Government, I must regret that it has been urged, as I think it will have no other effect than to create a prejudice against the claims of the new States.

But, sir, there has been another much more fruitful source of prejudice. I mean the demands constantly made from the West, for partial appropriations of the public lands for local objects. I am astonished that gentlemen from the Western country have not perceived the tendency of such a course to rivet upon them for ever the system which they consider so fatal to their interests. We have been told, sir, in the course of this debate, of the painful and degrading office which the gentlemen from that quarter are compelled to perform, in coming here, year after year, in the character of petitioners for these petty favors. The gentleman from Missouri tells us, “if they were not goaded on by their necessities, they would never consent to be beggars at our doors.” Sir, their course in this respect, let me say to those gentlemen, is greatly injurious to the West. While they shall continue to ask and gratefully to receive these petty and partial appropriations, they will be kept for ever in a state of dependence. Never will the Federal Government, or rather those who control its operations, consent to emancipate the West, by adopting a wise and just policy, looking to any final disposition of the public lands, while the people of the West can be kept in subjection and dependence, by occasional donations of those lands; and never will the Western States themselves assume their just and equal station among their sisters of the Union, while they are constantly looking up to Congress for favors and gratuities.

What, then, [asked Mr. H.] is our true policy on this important subject? I do not profess to have formed any fixed or settled opinions in relation to it. The time has not yet arrived when that question must be decided; and I must reserve for further lights, and more mature reflection, the formation of a final judgment. The public debt

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must be first paid. For this, these lands have been solemnly pledged to the public creditors. This done, which, if there be no interference with the Sinking Fund, will be effected in three or four years, the question will then be fairly open, to be disposed of as Congress and the country may think just and proper. Without attempting to indicate precisely what our policy ought then to be, I will, in the same spirit which has induced me to throw out the desultory thoughts which I have now presented to the Senate, suggest for consideration, whether it will not be sound policy, and true wisdom, to adopt a system of measures looking to the final relinquishment of these lands on the part of the United States, to the States in which they lie, on such terms and conditions as may fully indemnify us for the cost of the original purchase, and all the trouble and expense to which we may have been put on their account. Giving up the plan of using these lands forever as a fund either for revenue or distribution, ceasing to hug them as a great treasure, renouncing the idea of administering them with a view to regulate and control the industry and population of the States, or of keeping in subjection and dependence the States, or the people of any portion of the Union, the task will be comparatively easy of striking out a plan for the final adjustment of the land question on just and equitable principles. Perhaps, sir, the lands ought not to be entirely relinquished to any State until she shall have made considerable advances in population and settlement. Ohio has probably already reached that condition. The relinquishment may be made by a sale to the State, at a fixed price, which I will not say should be nominal; but certainly I should not be disposed to fix the amount so high as to keep the States for any length of time in debt to the United States. In short, our whole policy in relation to the public lands may perhaps be summed up in the declaration with which I set out, that they ought not to be kept and retained forever as a great treasure, but that they should be administered chiefly with a view to the creation, within reasonable periods, of great and flourishing communities, to be formed into free and independent States; to be invested in due season with the control of all the lands within their respective limits.

[Here the debate closed for this day.]

WEDNESDAY, JAN. 20, 1830.

#### THE DEBATE CONTINUED.

The Senate resumed the consideration of the resolution of Mr. FOOT, which was the subject of discussion yesterday.

Mr. F. rose and said, that, in conformity with the suggestion of Mr. SPRAGUE, made yesterday, for the purpose of meeting the views of Mr. WEBSTER, he would modify his motion to read as follows:

*Resolved*, That the Committee on Public Lands be instructed to inquire and report the quantity of the public lands remaining unsold within each State and Territory, and whether it be expedient to limit, for a certain period, the sales of the public lands to such lands only as have heretofore been offered for sale, and are now subject to entry at the minimum price; and also, whether the office of Surveyor General, and some of the Land Offices, may not be abolished without detriment to the public interest; or whether it be expedient to adopt measures to hasten the sales, and extend more rapidly the surveys of the public lands.

Mr. WEBSTER said, on rising, that nothing had been further from his intention than to take any part in the discussion of this resolution. It proposed only an inquiry, on a subject of much importance, and one in regard to which it might strike the mind of the mover, and of other gentlemen, that inquiry and investigation would be useful. Although [said Mr. W.] I am one of those who do not perceive any particular utility in instituting the inquiry, I have, nevertheless, not seen that harm would be likely to

result from adopting the resolution. Indeed, it gives no new powers, and hardly imposes any new duty on the Committee. All that the resolution proposes should be done, the Committee is quite competent, without the resolution, to do, by virtue of its ordinary powers. But, sir, although I have felt quite indifferent about the passing of the resolution, yet opinions were expressed yesterday on the general subject of the public lands, and on some other subjects, by the gentleman from South Carolina, so widely different from my own, that I am not willing to let the occasion pass without some reply. If I deemed the resolution, as originally proposed, hardly necessary, still less do I think it either necessary or expedient to adopt it, since a second branch has been added to it to-day. By this second branch, the Committee is to be instructed to inquire whether it be expedient to adopt measures to hasten the sales, and extend more rapidly the surveys of the public lands. Now, it appears that, in forty years, we have sold no more than about twenty millions of acres of public lands. The annual sales do not now exceed, and never have exceeded, one million of acres. A million a year is, according to our experience, as much as the increase of population can bring into settlement. And it appears also, that we have, at this moment, sir, surveyed and in the market, ready for sale, two hundred and ten millions of acres, or thereabouts. All this vast mass, at this moment, lies on our lands, for mere want of purchasers. Can any man, looking to the real interests of the country and the people, seriously think of inquiring whether we ought not still faster to hasten the public surveys, and to bring, still more and more rapidly, other vast quantities into the market? The truth is, that, rapidly as population has increased, the surveys have, nevertheless, outrun our wants. There are more lands than purchasers. They are now sold at low prices, and taken up as fast as the increase of people furnishes hands to take them up. It is obvious, that no artificial regulation, no forcing of sales, no giving away of the lands even, can produce any great and sudden augmentation of population. The ratio of increase, though great, has yet its bounds. Hands for labor are multiplied only at a certain rate. The lands cannot be settled but by settlers; nor faster than settlers can be found. A system, if now adopted, of forcing sales, at whatever prices, may have the effect of throwing large quantities into the hands of individuals, who would, in this way, in time, become themselves competitors with the Government in the sale of land. My own opinion has uniformly been, that the public lands should be offered freely, and at low prices; so as to encourage settlement and cultivation as rapidly as the increasing population of the country is competent to extend settlement and cultivation. Every actual settler should be able to buy good land, at a cheap rate; but, on the other hand, speculation by individuals, on a large scale, should not be encouraged, nor should the value of all lands, sold and unsold, be reduced to nothing, by throwing new and vast quantities into the market at prices merely nominal.

I now proceed, sir, to some of the opinions expressed by the gentleman from South Carolina. Two or three topics were touched by him, in regard to which he expressed sentiments in which I do not at all concur.

In the first place, sir, the honorable gentleman spoke of the whole course and policy of the Government towards those who have purchased and settled the public lands and seemed to think this policy wrong. He held it to have been, from the first, hard and rigorous; he was of opinion that the United States had acted towards those who had subdued the Western wilderness, in the spirit of a step-mother; that the public domain had been improperly regarded as a source of revenue; and that we had rigidly compelled payment for that which ought to have been given away. He said we ought to have followed the analogy of other Governments, which had acted on a

much more liberal system than ours, in planting colonies. He dwelt particularly upon the settlement of America by colonists from Europe; and reminded us that their governments had not exacted from those colonists payment for the soil; with them, he said, it had been thought that the conquest of the wilderness was itself, an equivalent for the soil; and he lamented that we had not followed the example, and pursued the same liberal course towards our own emigrants to the West.

Now, sir, I deny altogether, that there has been any thing harsh or severe in the policy of the Government towards the new States of the West. On the contrary, I maintain that it has uniformly pursued towards those States, a liberal and enlightened system, such as its own duty allowed and required, and such as their interests and welfare demanded. The Government has been no step-mother to the new States; she has not been careless of their interests, nor deaf to their requests; but from the first moment, when the Territories which now form those States, were ceded to the Union, down to the time in which I am now speaking, it has been the invariable object of the Government to dispose of the soil, according to the true spirit of the obligation under which it received it; to hasten its settlement and cultivation, as far and as fast as practicable; and to rear the new communities into equal and independent States, at the earliest moment of their being able, by their numbers, to form a regular government.

I do not admit sir, that the analogy to which the gentleman refers is just, or that the cases are at all similar. There is no resemblance between the cases upon which a statesman can found an argument. The original North American colonists either fled from Europe, like our New England ancestry, to avoid persecution, or came hither at their own charges, and often at the ruin of their fortunes, as private adventurers. Generally speaking, they derived neither succor nor protection from their governments at home. Wide, indeed, is the difference between those cases and ours. From the very origin of the Government, these Western lands, and the just protection of those who had settled or should settle on them, have been the leading objects in our policy, and have led to expenditures, both of blood and treasure, not inconsiderable; not indeed exceeding the importance of the object, and not yielded grudgingly or reluctantly certainly; but yet not inconsiderable, though necessary sacrifices, made for high proper ends. The Indian title has been extinguished at the expense of many millions. Is that nothing? There is still a much more material consideration. These colonists, if we are to call them so, in passing the Alleghany, did not pass beyond the care and protection of their own Government. Wherever they went, the public arm was still stretched over them. A parental Government at home was still ever mindful of their condition, and their wants; and nothing was spared which a just sense of their necessities required. Is it forgotten that it was one of the most arduous duties of the Government, in its earliest years, to defend the frontiers against the Northwestern Indians? Are the sufferings and misfortunes under Harmer and St. Clair not worthy to be remembered? Do the occurrences connected with these military efforts show an unfeeling neglect of Western interests? And here, sir, what becomes of the gentleman's analogy? What English armies accompanied our ancestors to clear the forests of a barbarous foe? What treasures of the exchequer were expended in buying up the original title to the soil? What governmental arm held its axis over our fathers' heads, as they pioneered their way in the wilderness? Sir, it was not till General Wayne's victory, in 1794, that it could be said we had conquered the savages. It was not till that period that the Government could have considered itself as having established an entire ability to protect those who should undertake the conquest of the wilderness.

And here, sir, at the epoch of 1794, let us pause, and survey the scene. It is now thirty-five years since that scene actually existed. Let us, sir, look back, and behold it. Over all that is now Ohio, there then stretched one vast wilderness, unbroken, except by two small spots of civilized culture, the one at Marietta, and the other at Cincinnati. At these little openings, hardly each a pin's point upon the map, the arm of the frontiersman had levelled the forest, and let in the sun. These little patches of earth, and themselves almost shadowed by the over hanging boughs of that wilderness, which had stood and perpetuated itself, from century to century, ever since the creation, were all that had then been rendered verdant by the hand of man. In an extent of hundreds and thousands of square miles, no other surface of smiling green attested the presence of civilization. The hunter's path crossed mighty rivers, flowing in solitary grandeur, whose sources lay in remote and unknown regions of the wilderness. It struck, upon the North, on a vast inland sea, over which the wintry tempests raged as on the ocean; all around was bare creation. It was a fresh, untouched, unbounded, magnificent wilderness! And sir, what is it now? Is it imagination only, or can it possibly be fact, that presents such a change, as surprises and astonishes us, when we turn our eyes to what Ohio now is? Is it reality, or a dream, that, in so short a period even as thirty-five years, there has sprung up, on the same surface, an independent State, with a million of people? A million of inhabitants! an amount of population greater than that of all the cantons of Switzerland; equal to one third of all the people of the United States, when they undertook to accomplish their independence. This new member of the republic has already left far behind her a majority of the old States. She is now by the side of Virginia and Pennsylvania; and in point of numbers, will shortly admit no equal but New York herself. If, sir, we may judge of measures by their results, what lessons do these facts read us upon the policy of the Government? What inferences do they authorize, upon the general question of kindness, or unkindness? What convictions do they enforce, as to the wisdom and ability, on the one hand, or the folly and incapacity, on the other, of our general administration of Western affairs? Sir, does it not require some portion of self-respect in us, to imagine that, if our light had shone on the path of government, if our wisdom could have been consulted in its measures, a more rapid advance to strength and prosperity would have been experienced? For my own part, while I am struck with wonder at the success, I also look with admiration at the wisdom and foresight which originally arranged and prescribed the system for the settlement of the public domain. Its operation has been, without a moment's interruption, to push the settlement of the Western country to the full extent of our utmost means.

But, sir, to return to the remarks of the honorable member from South Carolina. He says that Congress has sold these lands, and put the money into the treasury, while other Governments, acting in a more liberal spirit, gave away their lands; and that we ought, also, to have given ours away. I shall not stop to state an account between our revenues derived from land, and our expenditures in Indian treaties and Indian wars. But, I must refer the honorable gentleman to the origin of our own title to the soil of these territories, and remind him that we received them on conditions, and under trusts, which would have been violated by giving the soil away. For compliance with those conditions, and the just execution of those trusts, the public faith was solemnly pledged. The public lands of the United States have been derived from four principal sources. First, Cessions made to the United States by individual States, on the recommendation or request of the old Congress. Second, The compact with Georgia, in 1802. Third, The purchase of Louisiana, in 1802. Fourth, The purchase of Florida, in

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1819. Of the first class, the most important was the cession by Virginia, of all her right and title, as well of soil as jurisdiction, to all the territory within the limits of her charter, lying to the Northwest of the river Ohio. It may not be ill-timed to recur to the causes and occasions of this and the other similar grants.

When the war of the Revolution broke out, a great difference existed in different States in the proportion between people and Territory. The Northern and Eastern States, with very small surfaces, contained comparatively a thick population, and there was generally within their limits, no great quantity of waste lands belonging to the Government, or the Crown of England. On the contrary, there were in the Southern States, in Virginia and in Georgia for example, extensive public domains, wholly unsettled and belonging to the Crown. As these possessions would necessarily fall from the crown, in the event of a prosperous issue of the war, it was insisted that they ought to devolve on the United States, for the good of the whole. The war, it was argued, was undertaken, and carried on, at the common expense of all the colonies; its benefits, if successful, ought also to be common; and the property of the common enemy, when vanquished, ought to be regarded as the general acquisition of all. While yet the war was raging, it was contended that Congress ought to have the power to dispose of vacant and unpatented lands commonly called Crown lands, for defraying the expenses of the war, and for other public and general purposes. "Reason and justice," said the Assembly of New Jersey, in 1778, "must decide, that the property which existed in the Crown of Great Britain, previous to the present Revolution, ought now to belong to Congress, in trust for the use and benefit of the United States. They have fought and bled for it, in proportion to their respective abilities, and therefore the reward ought not to be predilectionally distributed. Shall such States as are shut out, by situation, from availing themselves of the least advantage from this quarter, be left to sink under an enormous debt, whilst others are enabled, in a short period, to replace all their expenditures from the hard earnings of the whole confederacy?"

Moved by these considerations, and these addresses, Congress took up the subject, and in September, 1780, recommended to the several States, in the Union, having claims to Western Territory, to make liberal cessions of a portion thereof to the United States; and on the 10th of October, 1780, Congress resolved, "That any lands, so ceded in pursuance of their preceding recommendation, should be disposed of for the common benefit of the United States; should be settled and formed into distinct republican States, to become members of the Federal Union, with the same rights of sovereignty, freedom, and independence, as the other States; and that the lands should be granted or settled, at such times, and under such regulations, as should be agreed on by Congress." Again, in September, 1783, Congress passed another resolution, expressing the conditions on which cessions from States should be received; and in October following, Virginia made her cession, reciting the resolution, or act, of September preceding, and then transferring her title to her Northwestern Territory to the United States, upon the express condition "that the lands, so ceded, should be considered as a common fund for the use and benefit of such of the United States as had become or should become members of the confederation, Virginia inclusive, and should be faithfully and bona fide disposed of for that purpose, and for no other use or purpose whatsoever." The grants from other States were on similar conditions. Massachusetts and Connecticut both had claims to western lands, and both relinquished them to the United States in the same manner. These grants were all made on three substantial conditions or trusts: First, that the ceded territories should be formed into States, and admitted in due

time into the Union, with all the rights belonging to other States. Second, that the lands should form a common fund, to be disposed of for the general benefit of all the States. Third, that they should be sold and settled, at such time and in such manner as Congress should direct.

Now, sir, it is plain that Congress never has been, and is not now, at liberty to disregard these solemn conditions. For the fulfilment of all these trusts, the public faith was, and is, fully pledged. How, then, would it have been possible for Congress, if it had been so disposed, to give away these public lands? How could they have followed the example of other Governments, if there had been such, and considered the conquest of the wilderness an equivalent compensation for the soil? The States had looked to this territory, perhaps too sanguinely, as a fund out of which means were to come to defray the expenses of the war. It had been received as a fund—a fund Congress had bound itself to apply it. To have given it away, would have defeated all the objects which Congress, and particular States, had had in view, in asking and obtaining the cession, and would have plainly violated the conditions which the ceding States attached to their own grants.

The gentleman admits that the lands cannot be given away until the national debt is paid, because, to a part of that debt they stand pledged. But this is not the original pledge. There is, so to speak, an earlier mortgage. Before the debt was funded, at the moment of the cession of the lands, and by the very terms of that cession, every State in the Union obtained an interest in them, as in a common fund. Congress has uniformly adhered to this condition. It has proceeded to sell the lands, and to realize as much from them as was compatible with the other trusts created by the same deeds of cession. One of these deeds of trust, as I have already said, was, that the lands should be sold and settled, "at such time and manner as Congress shall direct." The Government has always felt itself bound, in regard to sale and settlement, to exercise its own best judgment, and not to transfer the discretion to others. It has not felt itself at liberty to dispose of the soil, therefore, in large masses, to individuals, thus leaving to them the time and manner of settlement. It had stipulated to use its own judgment. If, for instance, in order to rid itself of the trouble of forming a system for the sale of those lands, and going into detail, it had sold the whole of what is now Ohio, in one mass, to individuals, or companies, it would clearly have departed from its just obligations. And who can now tell, or conjecture, how great would have been the evil of such a course? Who can say what mischiefs would have ensued, if Congress had thrown these territories into the hands of private speculation? Or who, on the other hand, can now foresee what the event would be, should the Government depart from the same wise course hereafter, and, not content with such constant absorption of the public lands as the natural growth of our population may accomplish, should force great portions of them, at nominal or very low prices, into private hands, to be sold and settled, as and when such holders might think would be most for their own interest? Hitherto, sir, I maintain Congress has acted wisely, and done its duty on this subject. I hope it will continue to do it. Departing from the original idea, so soon as it was found practicable and convenient, of selling by townships, Congress has disposed of the soil in smaller and still smaller portions, till, at length, it sells in parcels of no more than eighty acres; thus putting it into the power of every man in the country, however poor, but who has health and strength, to become a freeholder if he desires, not of barren acres, but of rich and fertile soil. The Government has performed all the conditions of the grant. While it has regarded the public lands as a common fund, and has sought to make what reasonably could be made of them, as a source of revenue, it has also applied its best wisdom to sell and settle

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them, as fast and as happily as possible; and whensoever numbers would warrant it, each territory has been successively admitted into the Union, with all the rights of an independent State. Is there, then, sir, I ask, any well founded charge of hard dealing; any just accusation for negligence, indifference, or parsimony, which is capable of being sustained against the Government of the country, in its conduct towards the new States? Sir, I think there is not.

But there was another observation of the honorable member, which, I confess, did not a little surprise me. As a reason for wishing to get rid of the public lands as soon as we could, and as we might, the honorable gentleman said, he wanted no permanent sources of income. He wished to see the time when the Government should not possess a shilling of permanent revenue. If he could speak a magical word, and by that word convert the whole capitol into gold, the word should not be spoken. The administration of a fixed revenue, [he said] only consolidates the Government, and corrupts the people! Sir, I confess I heard these sentiments uttered on this floor not without deep regret and pain.

I am aware that these, and similar opinions, are espoused by certain persons out of the capitol, and out of this Government; but I did not expect so soon to find them here. Consolidation!—that perpetual cry, both of terror and delusion—consolidation! Sir, when gentlemen speak of the effects of a common fund, belonging to all the States, as having a tendency to consolidation, what do they mean? Do they mean, or can they mean, any thing more than that the Union of the States will be strengthened, by whatever continues or furnishes inducements to the people of the States to hold together? If they mean merely this, then, no doubt, the public lands as well as every thing else in which we have a common interest, tends to consolidation; and to this species of consolidation every true American ought to be attached; it is neither more nor less than strengthening the Union itself. This is the sense in which the framers of the constitution use the word consolidation; and in which sense I adopt and cherish it. They tell us, in the letter submitting the constitution to the consideration of the country, that, "in all our deliberations on this subject, we kept steadily in our view that which appears to us the greatest interest of every true American—the consolidation of our Union—in which is involved our prosperity, felicity, safety; perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each State in the Convention to be less rigid, on points of inferior magnitude, than might have been otherwise expected."

This, sir, is General Washington's consolidation. This is the true constitutional consolidation. I wish to see no new powers drawn to the General Government; but I confess I rejoice in whatever tends to strengthen the bond that unites us, and encourages the hope that our Union may be perpetual. And, therefore, I cannot but feel regret at the expression of such opinions as the gentleman has avowed; because I think their obvious tendency is to weaken the bond of our connexion. I know that there are some persons in the part of the country from which the honorable member comes, who habitually speak of the Union in terms of indifference, or even of disparagement. The honorable member himself is not, I trust, and can never be, one of these. They significantly declare, that it is time to calculate the value of the Union; and their aim seems to be to enumerate, and to magnify all the evils, real and imaginary, which the Government under the Union produces.

The tendency of all these ideas and sentiments is obviously to bring the Union into discussion, as a mere question of present and temporary expediency; nothing more than a mere matter of profit and loss. The Union to be preserved, while it suits local and temporary purposes to

preserve it; and to be sundered whenever it shall be found to thwart such purposes. Union, of itself, is considered by the disciples of this school as hardly a good. It is only regarded as a possible means of good; or on the other hand, as a possible means of evil. They cherish no deep and fixed regard for it, flowing from a thorough conviction of its absolute and vital necessity to our welfare. Sir, I deprecate and deplore this tone of thinking and acting. I deem far otherwise of the Union of the States; and so did the framers of the constitution themselves. What they said I believe; fully and sincerely believe, that the Union of the States is essential to the prosperity and safety of the States. I am a Unionist, and in this sense a National Republican. I would strengthen the ties that hold us together. Far, indeed, in my wishes, very far distant be the day, when our associated and fraternal stripes shall be severed asunder, and when that happy constellation under which we have risen to so much renown, shall be broken up, and be seen sinking, star after star, into obscurity and night!

Among other things, the honorable member spoke of the public debt. To that he holds the public lands pledged, and has expressed his usual earnestness for its total discharge. Sir, I have always voted for every measure for reducing the debt, since I have been in Congress. I wish it paid, because it is a debt; and, so far, is a charge upon the industry of the country, and the finances of the Government. But, sir, I have observed that, whenever the subject of the public debt is introduced into the Senate, a morbid sort of fervor is manifested in regard to it, which I have been sometimes at a loss to understand. The debt is not now large, and is in a course of most rapid reduction. A very few years will see it extinguished. Now I am not entirely able to persuade myself that it is not certain supposed incidental tendencies and effects of this debt, rather than its pressure and charge as a debt, that cause so much anxiety to get rid of it. Possibly it may be regarded as in some degree a tie, holding the different parts of the country together by considerations of mutual interest. If this be one of its effects, the effect itself is, in my opinion, not to be lamented. Let me not be misunderstood. I would not continue the debt for the sake of any collateral or consequential advantage, such as I have mentioned. I only mean to say, that that consequence itself is not one that I regret. At the same time, that if there are others who would, or who do regret it, I differ from them.

As I have already remarked, sir, it was one among the reasons assigned by the honorable member for his wish to be rid of the public lands altogether, that the public disposition of them, and the revenues derived from them, tends to corrupt the people. This, sir, I confess, passes my comprehension. These lands are sold at public auction, or taken up at fixed prices, to form farms and freeholds. Whom does this corrupt? According to the system of sales, a fixed proportion is every where reserved, as a fund for education. Does education corrupt? Is the schoolmaster a corrupter of youth? the spelling book, does it break down the morals of the rising generation? and the Holy Scriptures, are they fountains of corruption? or if, in the exercise of a provident liberality, in regard to its own property as a great landed proprietor, and to high purposes of utility towards others, the Government gives portions of these lands to the making of a canal, or the opening of a road, in the country where the lands themselves are situated, what alarming and overwhelming corruption follows from all this? Can there be nothing pure in government, except the exercise of mere control? Can nothing be done without corruption, but the imposition of penalty and restraint? Whatever is positively beneficent, whatever is actively good, whatever spreads abroad benefits and blessings which all can see, and all can feel, whatever opens intercourse, augments population, enhances the value of property, and diffuses knowledge—must all

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this be rejected and reprobated as a dangerous and obnoxious policy, hurrying us to the double ruin of a Government, turned into despotism by the mere exercise of acts of beneficence, and of a people, corrupted, beyond hope of rescue, by the improvement of their condition?

The gentleman proceeded, sir, to draw a frightful picture of the future. He spoke of the centuries that must elapse, before all the lands could be sold, and the great hardships that the States must suffer while the United States reserved to itself, within their limits, such large portions of soil, not liable to taxation. Sir, this is all, or mostly, imagination. If these lands were leasehold property, if they were held by the United States on rent, there would be much in the idea. But they are wild lands, held only till they can be sold; reserved no longer than till somebody will take them up, at low prices. As to their not being taxed, I would ask whether the States themselves, if they owned them, would tax them before sale? Sir, if in any case any State can show that the policy of the United States retards her settlement, or prevents her from cultivating the lands within her limits, she shall have my vote to alter that policy. But I look upon the public lands as a public fund, and that we are no more authorized to give them away gratuitously than to give away gratuitously the money in the treasury. I am quite aware that the sums drawn annually from the Western States make a heavy drain upon them, but that is unavoidable. For that very reason, among others, I have always been inclined to pursue towards them a kind and most liberal policy; but I am not at liberty to forget, at the same time, what is due to others, and to the solemn engagements under which the Government rests.

I come now to that part of the gentleman's speech which has been the main occasion of my addressing the Senate. The East! the obnoxious, the rebuked, the always reproached East! We have come in, sir, on this debate, for even more than a common share of accusation and attack. If the honorable member from South Carolina was not our original accuser, he has yet recited the indictment against us, with the air and tone of a public prosecutor. He has summoned us to plead on our arraignment; and he tells us we are charged with the crime of a narrow and selfish policy; of endeavoring to restrain emigration to the West, and, having that object in view, of maintaining a steady opposition to Western measures and Western interests. And the cause of all this narrow and selfish policy, the gentleman finds in the tariff. I think he called it the accursed policy of the tariff. This policy, the gentleman tells us, requires multitudes of dependent laborers, a population of paupers, and that it is to secure these at home that the East opposes whatever may induce to Western emigration. Sir, I rise to defend the East. I rise to repel, both the charge itself, and the cause assigned for it. I deny that the East has, at any time, shown an illiberal policy towards the West. I pronounce the whole accusation to be without the least foundation in any facts, existing either now, or at any previous time. I deny it in the general, and I deny each and all its particulars. I deny the sum total, and I deny the detail. I deny that the East has ever manifested hostility to the West, and I deny that she has adopted any policy that would naturally have led her in such a course. But the tariff the tariff! Sir, I beg to say, in regard to the East, that the original policy of the tariff is not hers, whether it be wise or unwise. New England is not its author. If gentlemen will recur to the tariff of 1816, they will find that that was not carried by New England votes. It was truly more a Southern than an Eastern measure. And what votes carried the tariff of 1824? Certainly, not those of New England. It is known to have been made matter of reproach, especially against Massachusetts, that she would not aid the tariff of 1824; and a selfish motive was imputed to her for that also. In point of fact, it is

true that she did, indeed, oppose the tariff of 1824. There were more votes in favor of that law in the House of Representatives, not only in each of a majority of the Western States, but even in Virginia herself also, than in Massachusetts. It was literally forced upon New England; and this shows how groundless, how void of all probability any charge must be, which imputes to her hostility to the growth of the Western States, as naturally flowing from a cherished policy of her own. But leaving all conjectures about causes and motives, I go at once to the fact, and I meet it with one broad, comprehensive, and emphatic negative. I deny that, in any part of her history, at any period of the Government, or in relation to any leading subject, New England has manifested such hostility as is charged upon her. On the contrary, I maintain that, from the day of the cession of the territories by the States to Congress, no portion of the country has acted, either with more liberality or more intelligence, on the subject of the Western lands in the new States, than New England. This statement, though strong, is no stronger than the strictest truth will warrant. Let us look at the historical facts. So soon as the cessions were obtained, it became necessary to make provision for the government and disposition of the territory—the country was to be governed. This, for the present, it was obvious, must be by some territorial system of administration. But the soil, also, was to be granted and settled. Those immense regions, large enough almost for an empire, were to be appropriated to private ownership. How was this best to be done? What system for sale and disposition should be adopted? Two modes for conducting the sales presented themselves; the one a Southern, and the other a Northern mode. It would be tedious, sir, here, to run out these different systems into all their distinctions, and to contrast their opposite results. That which was adopted was the Northern system, and is that which we now see in successful operation in all the new States. That which was rejected, was the system of warrants, surveys, entry, and location; such as prevails South of the Ohio. It is not necessary to extend these remarks into invidious comparisons. This last system is that which, as has been emphatically said, has shingled over the country to which it was applied with so many conflicting titles and claims. Every body acquainted with the subject knows how easily it leads to speculation and litigation—two great calamities in a new country. From the system actually established, these evils are banished. Now, sir, in effecting this great measure, the first important measure on the whole subject, New England acted with vigor and effect, and the latest posterity of those who settled Northwest of the Ohio, will have reason to remember, with gratitude, her patriotism and her wisdom. The system adopted was her own system. She knew, for she had tried and proved its value. It was the old fashioned way of surveying lands, before the issuing of any title papers, and then of inserting accurate and precise descriptions in the patents or grants, and proceeding with regular reference to metes and bounds. This gives to original titles, derived from Government, a certain and fixed character; it cuts up litigation by the roots, and the settler commences his labors with the assurance that he has a clear title. It is easy to perceive, but not easy to measure, the importance of this in a new country. New England gave this system to the West; and while it remains, there will be spread over all the West one monument of her intelligence in matters of government, and her practical good sense.

At the foundation of the constitution of these new Northwestern States, we are accustomed, sir, to praise the lawgivers of antiquity; we help to perpetuate the fame of Solon and Lycurgus; but I doubt whether one single law of any lawgiver, ancient or modern, has produced effects of more distinct, marked, and lasting character, than the ordinance of '87. That instrument was drawn by

Nathan Dane, then, and now, a citizen of Massachusetts. It was adopted, as I think I have understood, without the slightest alteration; and certainly it has happened to few men, to be the authors of a political measure of more large and enduring consequence. It fixed, forever, the character of the population in the vast regions Northwest of the Ohio, by excluding from them involuntary servitude. It impressed on the soil itself, while it was yet a wilderness, an incapacity to bear up any other than free men. It laid the interdiction against personal servitude, in original compact, not only deeper than all local law, but deeper, also, than all local constitutions. Under the circumstances then existing, I look upon this original and seasonal provision, as a real good attained. We see its consequences at this moment, and we shall never cease to see them, perhaps, while the Ohio shall flow. It was a great and salutary measure of prevention. Sir, I should fear the rebuke of no intelligent gentleman of Kentucky, were I to ask whether, if such an ordinance could have been applied to his own State, while it yet was a wilderness, and before Boone had passed the gap of the Alleghany, he does not suppose it would have contributed to the ultimate greatness of that Commonwealth? It is, at any rate, not to be doubted, that, where it did apply, it has produced an effect not easily to be described, or measured in the growth of the States, and the extent and increase of their population. Now, sir, this great measure again was carried by the North, and by the North alone. There were, indeed, individuals elsewhere favorable to it; but it was supported, as a measure, entirely by the votes of the Northern States. If New England had been governed by the narrow and selfish views now ascribed to her, this very measure was, of all others, the best calculated to thwart her purposes. It was, of all things, the very means of rendering certain a vast emigration from her own population to the West. She looked to that consequence only to disregard it. She deemed the regulation a most useful one to the States that would spring up on the territory, and advantageous to the country at large. She adhered to the principle of it perseveringly, year after year, until it was finally accomplished.

Leaving, then, sir, these two great and leading measures, and coming down to our own times, what is there in the history of recent measures of Government that exposes New England to this accusation of hostility to Western interests? I assert, boldly, that in all measures conducive to the welfare of the West, since my acquaintance here, no part of the country has manifested a more liberal policy. I beg to say, sir, that I do not state this with a view of claiming for her any special regard on that account. Not at all. She does not place her support of measures on the ground of favor conferred; far otherwise. What she has done has been consonant to her view of the general good, and, therefore, she has done it. She has sought to make no gain of it; on the contrary, individuals may have felt, undoubtedly, some natural regret at finding the relative importance of their own States diminished by the growth of the West. But New England has regarded that as in the natural course of things, and has never complained of it. Let me ace, sir, any one measure favorable to the West which has been opposed by New England, since the Government bestowed its attention to these Western improvements. Select what you will, if it be a measure of acknowledged utility, I answer for it, it will be found that not only were New England votes for it, but that New England votes carried it. Will you take the Cumberland Road? Who has made that? Will you take the Portland Canal? Whose support carried that bill? Sir, at what period beyond the Greek kalends could these measures, or measures like these, have been accomplished, had they depended on the votes of Southern gentlemen? Why, sir, we know that we must have waited till the constitutional notions of those gentlemen had undergone an entire change. Generally speaking, they have done no-

thing, and can do nothing. All that has been effected has been done by the votes of reproached New England. I undertake to say, sir, that if you look to the votes on any one of these measures, and strike out from the list of ayes the names of New England members, it will be found that in every case the South would then have voted down the West, and the measure would have failed. I do not believe that any one instance can be found where this is not strictly true. I do not believe that one dollar has been expended for these purposes beyond the mountains, which could have been obtained without cordial co-operation and support from New England. Sir, I put the gentleman to the West itself. Let gentlemen who have sat here ten years, come forth and declare by what aids, and by whose votes, they have succeeded in measures deemed of essential importance to their part of the country. To all men of sense and candor, in or out of Congress, who have any knowledge on the subject, New England may appeal, for refutation of the reproach now attempted to be cast upon her in this respect. I take liberty to repeat that I make no claim, on behalf of New England, or on account of that which I have not stated. She does not profess to have acted out of favor: for it would not have become her so to have acted. She solicits for no special thanks; but, in the consciousness of having done her duty in these things, uprightly and honestly, and with a fair and liberal spirit, be assured she will repel, whenever she thinks the occasion calls for it, an unjust and groundless imputation of partiality and selfishness.

The gentleman alluded to a report of the late Secretary of the Treasury, which, according to his reading or construction of it, recommended what he called the tariff policy, or a branch of that policy; that is, the restraining of emigration to the West, for the purpose of keeping hands at home to carry on the manufactures. I think, sir, that the gentleman misapprehended the meaning of the Secretary, in the interpretation given to his remarks. I understand him only as saying, that, since the low price of lands at the West acts as a constant and standing bounty to agriculture, it is, on that account, the more reasonable to provide encouragement for manufactures. But, sir, even if the Secretary's observation were to be understood as the gentleman understands it, it would not be a sentiment borrowed from any New England source. Whether it be right or wrong, it does not originate in that quarter.

In the course of these remarks, I have spoken of the supposed desire, on the part of the Atlantic States, to check, or at least not to hasten, Western emigration, as a narrow policy. Perhaps I ought to have qualified the expression; because, sir, I am now about to quote the opinions of one to whom I would impute nothing narrow. I am now about to refer you to the language of a gentleman of much and deserved distinction, now a member of the other House, and occupying a prominent situation there. The gentleman, sir, is from South Carolina. In 1825, a debate arose, in the House of Representatives, on the subject of the Western road. It happened to me to take some part in that debate. I was answered by the honorable gentleman to whom I have alluded; and I replied. May I be pardoned, sir, if I read a part of this debate?

"The gentleman from Massachusetts has urged, [said Mr. McDuffie] as one leading reason why the Government should make roads to the West, that these roads have a tendency to settle the public lands; that they increase the inducements to settlement; and that this is a national object. Sir, I differ entirely from his views on the subject. I think that the public lands are settling quite fast enough; that our people need want no stimulus to urge them thither; but want rather a check, at least on that artificial tendency to Western settlement which we have created by our own laws.

"The gentleman says that the great object of Government, with respect to those lands, is not to make them a

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source of revenue, but to get them settled. What would have been thought of this argument in the old thirteen States? It amounts to this, that those States are to offer a bonus for their own impoverishment—to create a vortex to swallow up our floating population. Look, sir, at the present aspect of the Southern States. In no part of Europe will you see the same indications of decay. Deserted villages, houses falling into ruin, impoverished lands thrown out of cultivation. Sir, I believe that, if the public lands had never been sold, the aggregate amount of the national wealth would have been greater at this moment. Our population, if concentrated in the old States, and not ground down by tariffs, would have been more prosperous and more wealthy. But every inducement has been held out to them to settle in the West, until our population has become sparse; and then the effects of this sparseness are now to be counteracted by another artificial system. Sir, I say if there is any object worthy the attention of this Government, it is a plan which shall limit the sale of the public lands. If those lands were sold according to their real value, be it so. But while the Government continues, as it now does, to give them away, they will draw the population of the older States, and still further increase the effect which is already distressingly felt, and which must go to diminish the value of all those States possess. And this, sir, is held out to us as a motive for granting the present appropriation. I would not, indeed, prevent the formation of roads on these considerations, but I certainly would not encourage it. Sir, there is an additional item in the account of the benefits which this Government has conferred on the Western States. It is the sale of the public lands at the minimum price. At this moment we are selling to the people of the West, lands at one dollar and twenty-five cents an acre, which are fairly worth fifteen, and which would sell at that price if the markets were not glutted."

"Mr. W. observed, in reply, that the gentleman from South Carolina had mistaken him if he supposed that it was his wish so to hasten the sales of the public lands, as to throw them into the hands of purchasers who would sell again. His idea only went as far as this: that the price should be fixed as low as not to prevent the settlement of the lands, yet not so low as to tempt speculators to purchase. Mr. W. observed that he could not at all concur with the gentleman from South Carolina, in wishing to restrain the laboring classes of population in the Eastern States from going to any part of our territory, where they could better their condition; nor did he suppose that such an idea was anywhere entertained. The observations of the gentleman had opened to him new views of policy on this subject, and he thought he now could perceive why some of our States continued to have such bad roads; it must be for the purpose of preventing people from going out of them. The gentleman from South Carolina supposes that, if our population had been confined to the old thirteen States, the aggregate wealth of the country would have been greater than it now is. But, sir, it is an error that the increase of the aggregate of the national wealth is the object chiefly to be pursued by Government. The distribution of the national wealth is an object quite as important as its increase. He was not surprised that the old States not increasing in population so fast as was expected (for he believed nothing like a decrease was pretended) should be an idea by no means agreeable to gentlemen from those States; we are all reluctant in submitting to the loss of relative importance: but this was nothing more than the natural condition of a country densely populated in one part, and possessing, in another, a vast tract of unsettled lands. The plan of the gentleman went to reverse the order of nature, vainly expecting to retain men within a small and comparatively unproductive territory, "who have all the world before them where to choose." For his own part, he was in fa-

vor of letting population take its own course; he should experience no feeling of mortification if any of his constituents liked better to settle on the Kansas, or the Arkansas, or the Lord knows where, within our territory; let them go, and he happier, if they could. The gentleman says our aggregate of wealth would have been greater, if our population had been restrained within the limits of the old States; but does he not consider population to be wealth? And has not this been increased by the settlement of a new and fertile country? Such a country presents the most alluring of all prospects to a young and laboring man; it gives him a freehold; it offers to him weight and respectability in society; and, above all, it presents to him a prospect of a permanent provision for his children. Sir, these are inducements which never were resisted, and never will be; and, were the whole extent of country filled with population up to the Rocky Mountains, these inducements would carry that population forward to the shores of the Pacific Ocean. Sir, it is in vain to talk; individuals will seek their own good, and not any artificial aggregate of the national wealth. A young, enterprising, and hardy agriculturist can conceive of nothing better to him than plenty of good, cheap land."

Sir, with the reading of these extracts, I leave the subject. The Senate will bear me witness that I am not accustomed to allude to local opinions, nor to compare nor contrast different portions of the country. I have often suffered things to pass which I might, properly enough, have considered as deserving a remark, without any observation. But I have felt it my duty, on this occasion, to vindicate the State I represent from charges and imputations on her public character and conduct, which I know to be undeserved and unfounded. If advanced elsewhere, they might be passed, perhaps, without notice. But whatever is said here, is supposed to be entitled to public regard, and to deserve public attention; it derives importance and dignity from the place where it is uttered. As a true Representative of the State which has sent me here, it is my duty, and a duty which I shall fulfil, to place her history and her conduct, her honor and her character, in their just and proper light, so often as I think an attack is made upon her so respectable as to deserve to be repelled.

[Mr. W. concluded by moving the indefinite postponement of the resolution.]

Mr. BENTON followed, and spoke in reply to Mr. W. His remarks will be found consolidated in the succeeding pages.

THURSDAY, JANUARY 21, 1830.

The Senate again resumed the consideration of the resolution offered by Mr. FOOT, relative to the Public Lands.

Mr. CHAMBERS hoped that the Senate would consent to postpone the resolution till Monday next, as Mr. WEBSTER, who had engaged in, and wished to be present at, the discussion of the resolution, when it should be resumed, had some unavoidable engagements out of the Senate, and could not conveniently give his attendance before Monday.

Mr. HAYNE said he saw the gentleman from Massachusetts in his seat, and presumed he could make an arrangement which would enable him to be present here during the discussion to-day. He was unwilling that this subject should be postponed, until he had an opportunity of replying to some of the observations which had fallen from the gentleman yesterday. He would not deny that some things had fallen from that gentleman which rankled here, (touching his breast) from which he would desire, at once, to relieve himself. The gentleman had discharged his fire in the face of the Senate. He hoped he would now afford him the opportunity of returning the shot.

Mr. WEBSTER. I am ready to receive it. Let the discussion proceed.



Mr. BENTON then rose, and addressed the Senate about an hour in continuation of the speech which he commenced yesterday, in reply to Mr. WEBSTER, (for which see the consolidated report.)

Mr. BELL now moved that the further consideration of the resolution be postponed to Monday, but the motion was negatived: yeas 13, noes 18.

Mr. HAYNE then took the floor, and spoke about an hour in reply to Mr. WEBSTER's remarks of yesterday; when

The Senate adjourned to Monday.

MONDAY, JANUARY 25, 1830.

#### THE INDIANS.

The following resolution, which was submitted on Thursday, by Mr. FRELINGHUYSEN, was taken up for consideration:

*Resolved*, That the Secretary of War be requested to furnish to the Senate any information in the possession of his Department, respecting the progress of civilization, for the last eight years, among the Cherokee, Creek, and Choctaw nations of Indians, east of the Mississippi, and the present state of education, civil government, agriculture, and the mechanic arts, among those nations."

Mr. FORSYTH said he could have no objections to the inquiry which the resolution proposed, but he desired that it should be more comprehensive in the information which it was the object of the gentleman to procure. If the gentleman is of a different opinion, I hope [said Mr. F.] he will show the reasons he had for confining the resolution to the three nations of Indians east of the Mississippi, the Cherokee, the Creek, and the Choctaw. I would be glad if the resolution was more extensive; so extensive as to embrace all the Indians in the United States. I do not intend to propose an amendment to the resolution, to the effect I have stated, without first giving the gentleman an opportunity to explain his reasons for limiting the inquiry. If no objection, satisfactory to me, is stated, why the inquiry should not be extended as I have suggested, then I shall move to amend the resolution.

Mr. FRELINGHUYSEN said he had strong reasons why he did not wish to extend the inquiry to other Indians than those mentioned in the resolution, and stronger reasons why it should not be extended to all other Indians. The Senate will perceive [said Mr. F.] that the resolution proposes an inquiry into the progress which these tribes of Indians have made in improvement and civilization, and an investigation into the present state of their civil government, education, agriculture, and the mechanic arts. One of the prominent reasons he said he had for employing this phraseology in the resolution, was, that it is the emphatic terms in which our treaties with these tribes are couched. With respect to agriculture, we have encouraged these free tribes in the pursuit of it. We have agreed, by our solemn treaty, to afford them every facility, by extending to them our patronage, and giving them the countenance of the Government. By our pledges to them, we have guaranteed (and under our solemn faith and obligations are bound to fulfil the pledges we have made to them) the undisturbed, the uninterrupted possession of their territory. It is in vain, said Mr. F. to disguise that an attempt is now made to interrupt that possession; and what were the reasons, he asked, which were urged for the removal of these Indians from the country they now inhabit? Humanity, it is said, requires their removal, and this is the only reason assigned, as appears from the resolutions of the State Legislature, from the public prints of the country; nay, this is the reason given in the very message of the Executive of the Government. Humanity, it is said, calls for our interference, because, while the Indians remain in the neighborhood of

the white people, their situation is daily deteriorating, and their population decreasing. Justice calls for a correct statement respecting the condition of these tribes. I want, said Mr. F. to meet the reasons which have been urged for the removal of these people. I want it to be shown to the Senate how true these representations are with regard to these same Indians. With regard to them, and especially to the Cherokees, we are bound to afford every possible encouragement in their improvement. They are rising every day in moral elevation; they are leaving behind them the habits of the savage life; and have established for themselves a civil government; they are entering upon the arts of peace, agriculture, commerce, and mechanics; they know the obligations of law; and in regard to population, instead of its approaching to annihilation or melting away, they have outstripped the whites in any section of country.

I have proposed this resolution, therefore, because I wish to be able to meet the reasons which now assail us, that unless we remove these people, their population will soon melt away. It is in vain we attempt to disguise the tendency of such proceedings. It is my wish, then, said Mr. F. to obtain such information as will enable me to meet those reasons fairly, fully, and fearlessly; and on the faith of treaties, to show that we are pledged to encourage and protect these people. I want to be enabled to prove that they need no such assistance as that proffered to prevent their annihilation. If we only leave them where the faith of treaties renders it obligatory on us to leave them, they will raise themselves to a high moral elevation; they will secure for themselves a strength and stability of civil government, and will make a rapid progress in the cultivation of the arts.

Another reason which justifies the adoption of this resolution is, that, as we have bound ourselves to protect and patronize them in the cultivation of the arts, as independent, sovereign people, it is a duty we owe to ourselves, to them, to this country, and the world at large, which is looking on us, to see that we have fulfilled this obligation, and to ascertain, by a reference to the proper department, what progress they have made in these arts. I therefore apprehend that, if the resolution proposed is adopted, I shall be enabled, when the discussion of this question comes on, to meet, by official documents, the reasons assigned for the removal of these Indians. We shall also be informed what progress they have made in civilization, or, if they have retrograded, what has been the cause of it. If the reasons which he alluded to would be removed by this information, then the reasons to interfere with these people would be also removed.

Mr. FORSYTH replied, that the gentleman from New Jersey had misapprehended him in the observations he had made. I had no objection, Mr. F. said, to the inquiry which the resolution proposed, but I objected to confining the investigation to three sections of the Indians only. I wish that it should embrace all the Indians in the United States. The resolution does not even embrace all the Indians in the part of the country in which the others it mentions inhabit. The Chickasaws are as numerous as any other tribe mentioned; and the same promises, the same pledges, were given to them as to the others. Why then are they excluded? Besides, there are in other parts of the United States Indians residing, to whom the same pledges were given. It was obvious to the Senate that this important question would agitate us in all our relations with the Indians. Like the gentleman from New Jersey, [Mr. FRELINGHUYSEN] I desire that the question should be presented so as to receive a full discussion; but I have no idea that persons, either in this House or out of it, shall narrow the discussion down to a local or sectional question. For the purpose, then, of applying the inquiry to the condition of all the Indians in the United States, and that those who hold different sentiments from the gen-

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teman from New Jersey, on this subject, may have ground to stand upon, as well as he, I move to strike out of the resolution, the words "in the possession," and to insert, in lieu thereof, the words "within the reach;" and to strike out the words, "the Cherokee, Creek, and Choctaw nations of Indians, east of the Mississippi," and to insert, in lieu thereof, the words, "the Indian nations within the United States;" and also, to erase the two last words of the resolution, (those nations) and in their stead to insert the word "them."

Mr. F. proceeded to state that he wanted all the information which could be procured respecting the condition of all the Indians, and that he wished to do justice not only to those who dwelt in the southwest part of the United States, but to all those residing in any part of the country. So far as he, (who was unfortunately the only representative of Georgia now in the Senate) could undertake to say, we seek to do nothing which has not been already exercised by the majority of the States of the Union. Mr. F. concluded by saying, if the gentleman from New Jersey wished to take time for the consideration of his amendment, he would move to lay both the resolution and amendment, for the present, on the table.

Mr. PRELINGHUYSEN did not assent to this course, but suggested to the gentleman from Georgia to propose his amendment in the form of a new resolution. He repeated what his object was in proposing the resolution, and said, if the gentleman from Georgia would consent to the adoption of his resolution, he would not object to the adoption of a resolution embracing the same matter as the present amendment.

Mr. FORSYTH made no reply; and

The question on amending the resolution was then put, and carried in the affirmative, by the casting vote of the President, the ayes and noes being equal.

The resolution, as amended, was then adopted, as follows:

*Resolved*, That the Secretary of War be requested to furnish to the Senate any information within the reach of his Department, respecting the progress of civilization, for the last eight years, among the Indian nations within the United States, and the present state of education, civil government, agriculture, and the mechanic arts, among them.

#### MIL. FOOT'S RESOLUTION.

The unfinished business of Thursday, being the order of the day, was then resumed; and the question being on the motion of Mr. WEBSTER to postpone, indefinitely, the resolution proposed by Mr. FOOT, concerning the public lands,

Mr. HAYNE rose, and, in continuation of his reply to Mr. WEBSTER, addressed the Senate for two hours and a half.

(The following are the remarks of Mr. H. as delivered on Thursday and to-day.)

Mr. HAYNE began by saying that when he took occasion, two days ago, to throw out some ideas with respect to the policy of the Government in relation to the public lands, nothing certainly could have been further from his thoughts than that he should be compelled again to throw himself upon the indulgence of the Senate. Little did I expect [said Mr. H.] to be called upon to meet such an argument as was yesterday urged by the gentleman from Massachusetts [Mr. WEBSTER.] Sir, I questioned no man's opinions; I impeached no man's motives; I charged no party, or State, or section of country, with hostility to any other; but ventured, I thought in a becoming spirit, to put forth my own sentiments in relation to a great national question of public policy. Such was my course. The gentleman from Missouri, [Mr. BAXTER] it is true, had charged upon the Eastern States an early and continued hostility towards the West, and referred to a number of

historical facts and documents in support of that charge. Now, sir, how have these different arguments been met? The honorable gentleman from Massachusetts, after deliberating a whole night upon his course, comes into this chamber to vindicate New England, and, instead of making up his issue with the gentleman from Missouri, on the charges which he had preferred, chooses to consider me as the author of those charges, and, losing sight entirely of that gentleman, selects me as his adversary, and pours out all the vials of his mighty wrath upon my devoted head. Nor is he willing to stop there. He goes on to assail the institutions and policy of the South, and calls in question the principles and conduct of the State which I have the honor to represent. When I find a gentleman of mature age and experience, of acknowledged talents and profound sagacity, pursuing a course like this, declining the contest offered from the West, and making war upon the unoffending South, I must believe, I am bound to believe, he has some object in view that he has not ventured to disclose. Why is this? [asked Mr. H.] Has the gentleman discovered in former controversies with the gentleman from Missouri, that he is overmatched by that Senator? And does he hope for an easy victory over a more feeble adversary? Has the gentleman's distempered fancy been disturbed by gloomy forebodings of "new alliances to be formed," at which he hinted? Has the ghost of the murdered Coalition come back, like the ghost of Banquo, to "sear the eye-balls" of the gentleman, and will it not "down at his bidding?" Are dark visions of broken hopes, and honors lost forever, still floating before his heated imagination? Sir, if it be his object to thrust me between the gentleman from Missouri and himself, in order to rescue the East from the contest it has provoked with the West, he shall not be gratified. Sir, I will not be dragged into the defence of my friend from Missouri. The South shall not be forced into a conflict not its own. The gentleman from Missouri is able to fight his own battles. The gallant West needs no aid from the South to repel any attack which may be made on them from any quarter. Let the gentleman from Massachusetts controvert the facts and arguments of the gentleman from Missouri—if he can; and if he win the victory, let him wear its honors: I shall not deprive him of his laurels.

The gentleman from Massachusetts, in reply to my remarks on the injurious operation of our land system on the prosperity of the West, pronounced an extravagant eulogium on the paternal care which the Government had extended towards the West, to which he attributed all that was great and excellent in the present condition of the new States. The language of the gentleman on this topic fell upon my ears like the almost forgotten tones of the Tory leaders of the British Parliament, at the commencement of the American Revolution. They, too, discovered, that the colonies had grown great under the fostering care of the mother country; and, I must confess, while listening to the gentleman, I thought the appropriate reply to his argument was to be found in the remark of a celebrated orator, made on that occasion: "They have grown great in spite of your protection."

The gentleman, in commenting on the policy of the Government, in relation to the new States, has introduced to our notice a certain Nathan Dane, of Massachusetts, to whom he attributes the celebrated ordinance of '87, by which he tells us, "slavery was forever excluded from the new States north of the Ohio." After eulogizing the wisdom of this provision, in terms of the most extravagant praise, he breaks forth in admiration of the greatness of Nathan Dane—and great, indeed, he must be, if it be true, as stated by the Senator from Massachusetts, that "he was greater than Solon and Lycurgus, Minos, Numa Pompilius, and all the legislators and philosophers of the world," ancient and modern. Sir, to such high authority it is certainly my duty, in a becoming spirit of

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humility, to submit. And yet, the gentleman will pardon me when I say, that it is a little unfortunate for the fame of this great legislator, that the gentleman from Missouri should have proved that he was not the author of the ordinance of '87, on which the Senator from Massachusetts has reared so glorious a monument to his name. Sir, I doubt not the Senator will feel some compassion for our ignorance, when I tell him, that so little are we acquainted with the modern great men of New England, that, until he informed us yesterday, that we possessed a Solon and a Lycurgus in the person of Nathan Dane, he was only known to the South as a member of a celebrated assembly called and known by the name of "the Hartford Convention." In the proceedings of that assembly, which I hold in my hand, (at page 19) will be found, in a few lines, the history of Nathan Dane; and a little further on, there is conclusive evidence of that ardent devotion to the interests of the new States, which, it seems, has given him a just claim to the title of "Father of the West." By the 2d resolution of the "Hartford Convention," it is declared, "that it is expedient to attempt to make provision for restraining Congress in the exercise of an unlimited power to make new States, and admitting them into the Union." So much for Nathan Dane, of Beverly, Massachusetts.

In commenting upon my views in relation to the public lands, the gentleman insists that it being one of the conditions of the grants, that these lands should be applied to "the common benefit of all the States, they must always remain a fund for revenue," and adds, "they must be treated as so much treasure." Sir, the gentleman could hardly find language strong enough to convey his disapprobation of the policy which I had ventured to recommend to the favorable consideration of the country. And what, sir, was that policy, and what is the difference between that gentleman and myself, on this subject? I threw out the idea, that the public lands ought not to be reserved forever as "a great fund for revenue;" that they ought not to be "treated as a great treasure;" but that the course of our policy should rather be directed towards the creation of new States, and building up great and flourishing communities.

Now, Sir, will it be believed, by those who now hear me, and who listened to the gentleman's denunciation of my doctrines yesterday, that a book then lay open before him, nay, that be held it in his hand, and read from it certain passages of his own speech, delivered to the House of Representatives, in 1825, in which speech he himself contended for the very doctrines I had advocated, and almost in the same terms. Here is the speech of the Hon. Daniel Webster, contained in the first volume of Gales and Seaton's Register of Debates, (p. 251) delivered in the House of Representatives, on the 18th January, 1825, in a debate on the Cumberland Road—the very debate from which the Senator read yesterday. I shall read from this celebrated speech two passages, from which it will appear that, both as to the past and the future policy of the Government in relation to the public lands, the gentleman from Massachusetts maintained, in 1825, substantially the same opinions which I have advanced, but which he now so strongly reprobates. I said, sir, that the system of credit sales, by which the West had been kept constantly in debt to the United States, and by which their wealth was drained off to be expended elsewhere, had operated injuriously on their prosperity. On this point the gentleman from Massachusetts, in January, 1825, expressed himself thus: "There could be no doubt, if gentlemen looked at the money received into the treasury from the sale of the public lands to the West, and then looked to the whole amount expended by Government, (even including the whole of what was laid out for the army) the latter must be allowed to be very inconsiderable, and there must be a constant drain of money from the

West to pay for the public lands. It might, indeed, be said that this was no more than the reflux of capital which had previously gone over the mountains. Be it so. Still its practical effect was to produce inconvenience, if not distress, by absorbing the money of the people."

I contended that the public lands ought not to be treated merely as "a fund for revenue;" that they ought not to be hoarded "as a great treasure." On this point the Senator expressed himself thus: "Government, he believed, had received eighteen or twenty millions of dollars from the public lands, and it was with the greatest satisfaction he adverted to the change which had been introduced in the mode of paying for them; yet he could never think the national domain was to be regarded as any great source of revenue. The great object of the Government in respect to those lands, was not so much the money derived from their sale, as it was the getting of them settled. What he meant to say was, that he did not think they ought to hug that domain as a great treasure, which was to enrich the exchequer."

Now, Mr. President, it will be seen that the very doctrines which the gentleman so indignantly abandons, were urged by him in 1825; and if I had actually borrowed my sentiments from those which he then avowed, I could not have followed more closely in his footsteps. Sir, it is only since the gentleman quoted this book, yesterday, that my attention has been turned to the sentiments he expressed in 1825, and, if I had remembered them, I might possibly have been deterred from uttering sentiments here which, it might well be supposed, I had borrowed from that gentleman.

In 1825, the gentleman told the world, that the public lands "ought not to be treated as a treasure." He now tells us, that "they must be treated as so much treasure." What the deliberate opinion of the gentleman on this subject may be, belongs not to me to determine; but, I do not think he can, with the shadow of justice or propriety, impugn my sentiments, while his own recorded opinions are identical with my own. When the gentleman refers to the conditions of the grants under which the United States have acquired these lands, and insists that, as they are declared to be "for the common benefit of all the States," they can only be treated as so much treasure, I think he has applied a rule of construction too narrow for the case. If, in the deeds of cession, it has been declared that the grants were intended for "the common benefit of all the States," it is clear, from other provisions, that they were not intended merely as so much property: for, it is expressly declared that the object of the grants is the erection of new States; and the United States, in accepting the trust, bind themselves to facilitate the foundation of these States, to be admitted into the Union with all the rights and privileges of the original States. This, sir, was the great end to which all parties looked, and it is by the fulfilment of this high trust, that "the common benefit of all the States" is to be best promoted. Sir, let me tell the gentleman, that, in the part of the country in which I live, we do not measure political benefits by the money standard. We consider as more valuable than gold—liberty, principle, and justice. But, sir, if we are bound to act on the narrow principles contended for by the gentleman, I am wholly at a loss to conceive how he can reconcile his principles with his own practice. The lands are, it seems, to be treated "as so much treasure," and must be applied to the "common benefit of all the States." Now, if this be so, whence does he derive the right to appropriate them for partial and local objects? How can the gentleman consent to vote away immense bodies of these lands—for canals in Indiana and Illinois, to the Louisville and Portland Canal, to Kenyon College in Ohio, to Schools for the Deaf and Dumb, and other objects of a similar description? If grants of this character can fairly be considered as made "for the common benefit of all the States," it

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can only be because all the States are interested in the welfare of each—a principle which, carried to the full extent, destroys all distinction between local and national objects, and is certainly broad enough to embrace the principle for which I have ventured to contend. Sir, the true difference between us, I take to be this: the gentleman wishes to treat the public lands as a great treasure; just as so much money in the treasury, to be applied to a objects, constitutional and unconstitutional, to which the public money is now constantly applied. I consider it as a sacred trust, which we ought to fulfil, on the principles for which I have contended.

The Senator from Massachusetts has thought proper to present in strong contrast the friendly feelings of the East towards the West, with sentiments of an opposite character displayed by the South in relation to appropriations for internal improvement. Now, sir, let it be recollected that the South have made no professions; I have certainly made none in their behalf, of regard for the West. It has been reserved to the gentleman from Massachusetts, while he vaunts his own personal devotion to Western interests, to claim for the entire section of country to which he belongs, an ardent friendship for the West, as manifested by their support of the system of Internal Improvement, while he casts in our teeth the reproach that the South has manifested hostility to Western interests in opposing appropriations for such objects. That gentleman, at the same time, acknowledged that the South entertains constitutional scruples on this subject. Are we then, sir, to understand, that the gentleman considers it a just subject of reproach, that we respect our oaths, by which we are bound "to preserve, protect, and defend, the constitution of the United States?" Would the gentleman have us manifest our love to the West by trampling under foot our constitutional scruples? Does he not perceive, if the South is to be reproached with unkindness to the West, in voting against appropriations, which the gentleman admits, they could not vote for without doing violence to their constitutional opinions, that he exposes himself to the question, whether, if he was in our situation, he could vote for these appropriations, regardless of his scruples? No, sir, I will not do the gentleman so great injustice. He has fallen into this error from not having duly weighed the force and effect of the reproach which he was endeavoring to cast upon the South. In relation to the other point, the friendship manifested by New England towards the West in their support of the system of internal improvement, the gentleman will pardon me for saying that I think he is equally unfortunate in having introduced that topic. As that gentleman has forced it upon us, however, I cannot suffer it to pass unnoticed. When the gentleman tells us that the appropriations for Internal Improvement in the West would, in almost every instance, have failed, but for New England votes, he has forgotten to tell us the when, the how, and the wherefore, this new-born zeal for the West sprung up in the bosom of New England. If we look back only a few years, we will find, in both Houses of Congress, a uniform and steady opposition, on the part of the members from the Eastern States, generally, to all appropriations of this character. At the time I became a member of this House, and for some time afterwards, a decided majority of the New England Senators were opposed to the very measures which the Senator from Massachusetts tells us they now cordially support. Sir, the journals are before me, and an examination of them will satisfy every gentleman of that fact.

It must be well known to every one whose experience dates back as far as 1825, that, up to a certain period, New England was generally opposed to appropriations for internal improvements in the West. The gentleman from Massachusetts may be himself an exception, but if he went for the system before 1825, it is certain that his colleagues did not go with him. In the session of 1824 and

1825, however, (a memorable era in the history of this country) a wonderful change took place in New England, in relation to the Western interests. Sir, an extraordinary union of sympathies and of interests was then effected, which brought the East and the West into close alliance. The book from which I have before read contains the first public announcement of that happy reconciliation of conflicting interests, personal and political, which brought the East and West together, and locked in a fraternal embrace the two great orators of the East and West. Sir, it was on the 18th January, 1825, while the result of the Presidential election, in the House of Representatives, was still doubtful, while the whole country was looking with intense anxiety to that Legislative hall where the mighty drama was so soon to be acted, that we saw the leaders of two great parties in the House and in the nation "taking sweet counsel together," and in a celebrated debate on the Cumberland Road fighting side by side for Western interests. It was on that memorable occasion that the Senator from Massachusetts held out the white flag to the West, and uttered those liberal sentiments, which he, yesterday, so indignantly repudiated. Then it was that that happy union between the members of the celebrated coalition was consummated, whose immediate issue was a President from one quarter of the Union, with the succession (as it was supposed) secured to another. The "American System," before, a rude, disjointed, and mishapen mass, now assumed form and consistency; then it was, that it became "the settled policy of the Government" that this system should be so administered as to create a reciprocity of interests, and a reciprocal distribution of Government favors—East and West, (the Tariff and Internal Improvements)—while the South—yes, sir, the impracticable South, was to be "out of your protection." The gentleman may boast as much as he pleases of the friendship of New England for the West, as displayed in their support of Internal Improvement; but, when he next introduces that topic, I trust that he will tell us when that friendship commenced, how it was brought about, and why it was established. Before I leave this topic, I must be permitted to say, that the true character of the policy now pursued by the gentleman from Massachusetts and his friends, in relation to appropriations of land and money, for the benefit of the West, is, in my estimation, very similar to that pursued by Jacob of old towards his brother Esau; "it robs them of their birthright for a mess of pottage."

The gentleman from Massachusetts, in alluding to a remark of mine, that, before any disposition could be made of the public lands, the national debt (for which they stand pledged) must be first paid, took occasion to intimate: "that the extraordinary fervor which seems to exist in a certain quarter [meaning the South, sir] for the payment of the debt, arises from a disposition to weaken the ties which bind the people to the Union." While the gentleman deals us this blow, he professes an ardent desire to see the debt speedily extinguished. He must excuse me, however, for feeling some distrust on that subject until I find this disposition manifested by something stronger than professions. I shall look for acts, decided and unequivocal acts: for the performance of which an opportunity will very soon (if I am not greatly mistaken) be afforded. Sir, if I were at liberty to judge of the course which that gentleman would pursue, from the principles which he has laid down in relation to this matter, I should be bound to conclude that he will be found acting with those with whom it is a darling object to prevent the payment of the public debt. He tells us he is desirous of paying the debt, "because we are under an obligation to discharge it." Now, sir, suppose it should happen that the public creditors, with whom we have contracted, the obligation, should release us from it, so far as to declare their willingness to wait for payment for fifty years to come, provided only the interest shall be punct-

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tually discharged. The gentleman from Massachusetts will then be released from the obligation which now makes him desirous of paying the debt; and, let me tell the gentleman, the holders of the stock will not only release us from this obligation, but they will implore, nay, they will even pay us not to pay them. But, adds the gentleman, "so far as the debt may have an effect in binding the debtors to the country, and thereby serving as a link to hold the States together, he would be glad that it should exist forever." Surely then, sir, on the gentleman's own principles, he must be opposed to the payment of the debt.

Sir, let me tell that gentleman that the South repudiates the idea that a pecuniary dependence on the Federal Government is one of the legitimate means of holding the States together. A moneyed interest in the Government is essentially a base interest; and just so far as it operates to bind the feelings of those who are subjected to it to the Government; just so far as it operates in creating sympathies and interests that would not otherwise exist; is it opposed to all the principles of free government, and at war with virtue and patriotism. Sir, the link which binds the public creditors, as such, to their country, binds them equally to all governments, whether arbitrary or free. In a free government, this principle of abject dependence, if extended through all the ramifications of society, must be fatal to liberty. Already have we made alarming strides in that direction. The entire class of manufacturers, the holders of stocks, with their hundreds of millions of capital, are held to the Government by the strong link of pecuniary interests, millions of people, entire sections of country, interested, or believing themselves to be so, in the public lands, and the public treasure, are bound to the Government by the expectation of pecuniary favors. If this system is carried much further, no man can fail to see that every generous motive of attachment to the country will be destroyed, and in its place will spring up those low, grovelling, base, and selfish feelings which bind men to the footstool of a despot by bonds as strong and as enduring as those which attach them to free institutions. Sir, I would lay the foundation of this Government in the affections of the People; I would teach them to cling to it by dispensing equal justice, and, above all, by securing the "blessings of liberty to themselves and to their posterity."

The honorable gentleman from Massachusetts has gone out of his way to pass a high eulogium on the State of Ohio. In the most impassioned tones of eloquence, he described her majestic march to greatness. He told us that, having already left all the other States far behind, she was now passing by Virginia, and Pennsylvania, and about to take her station by the side of New York. To all this, sir, I was disposed most cordially to respond. When, however, the gentleman proceeded to contrast the State of Ohio with Kentucky, to the disadvantage of the latter, I listened to him with regret; and when he proceeded further to attribute the great, and, as he supposed, acknowledged superiority of the former in population, wealth, and general prosperity, to the policy of Nathan Dane, of Massachusetts, which had secured to the people of Ohio (by the ordinance of '87) a population of freemen, I will confess that my feelings suffered a revulsion, which I am now unable to describe in any language sufficiently respectful towards the gentleman from Massachusetts. In contrasting the State of Ohio with Kentucky, for the purpose of pointing out the superiority of the former, and of attributing that superiority to the existence of slavery, in the one State, and its absence in the other, I thought I could discern the very spirit of the Missouri question intruded into this debate, for objects best known to the gentleman himself. Did that gentleman, sir, when he formed the determination to cross the southern border, in order to invade the State of South Carolina, deem it pru-

dent, or necessary, to enlist under his banners the prejudices of the world, which, like Swiss troops, may be engaged in any cause, and are prepared to serve under any leader? Did he desire to avail himself of those remorseless allies, the passions of mankind, of which it may be more truly said, than of the savage tribes of the wilderness, "that their known rule of warfare is an indiscriminate slaughter of all ages, sexes, and conditions?" Or was it supposed, sir, that, in a premeditated and unprovoked attack upon the South, it was advisable to begin by a gentle admonition of our supposed weakness, in order to prevent us from making that firm and manly resistance, due to our own character, and our dearest interest? Was the significant hint of the weakness of slave-holding States, when contrasted with the superior strength of free States—like the glare of the weapon half drawn from its scabbard—intended to enforce the lessons of prudence and of patriotism, which the gentleman had resolved, out of his abundant generosity, gratuitously to bestow upon us? [said Mr. H.] The impression which has gone abroad, of the weakness of the South, as connected with the slave question, exposes us to such constant attacks, has done us so much injury, and is calculated to produce such infinite mischief, that I embrace the occasion presented by the remarks of the gentleman from Massachusetts, to declare that we are ready to meet the question promptly and fearlessly. It is one from which we are not disposed to shrink, in whatever form or under whatever circumstances it may be pressed upon us. We are ready to make up the issue with the gentleman, as to the influence of slavery on individual and national character—on the prosperity and greatness, either of the United States, or of particular States. Sir, when arraigned before the bar of public opinion, on this charge of slavery, we can stand up with conscious rectitude, plead not guilty, and put ourselves upon God and our country. Sir, we will not consent to look at slavery in the abstract. We will not stop to inquire whether the black man, as some philosophers have contended, is of an inferior race, nor whether his color and condition are the effects of a curse inflicted for the offences of his ancestors. We deal in no abstractions. We will not look back to inquire whether our fathers were guiltless in introducing slaves into this country. If an inquiry should ever be instituted in these matters, however, it will be found that the profits of the slave trade were not confined to the South. Southern ships and Southern sailors were not the instruments of bringing slaves to the shores of America, nor did our merchants reap the profits of that "accursed traffic." But, sir, we will pass over all this. If slavery, as it now exists in this country, be an evil, we of the present day found it ready made to our hands. Finding our lot cast among a people, whom God had manifestly committed to our care, we did not sit down to speculate on abstract questions of theoretical liberty. We met it as a practical question of obligation and duty. We resolved to make the best of the situation in which Providence had placed us, and to fulfil the high trust which had devolved upon us as the owners of slaves, in the only way in which such a trust could be fulfilled, without spreading misery and ruin throughout the land. We found that we had to deal with a people whose physical, moral, and intellectual habits and character, totally disqualified them from the enjoyment of the blessings of freedom. We could not send them back to the shores from whence their fathers had been taken; their numbers forbade the thought, even if we did not know that their condition here is infinitely preferable to what it possibly could be among the barren sands and savage tribes of Africa; and it was wholly irreconcilable with all our notions of humanity to tear asunder the tender ties which they had formed among us, to gratify the feelings of a false philanthropy. What a commentary on the wisdom, justice, and humanity, of the Southern slave

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owner is presented by the example of certain benevolent associations and charitable individuals elsewhere. Shedding weak tears over sufferings which had existence only in their own sickly imaginations, these "friends of humanity" set themselves systematically to work to seduce the slaves of the South from their masters. By means of missionaries and political tracts, the scheme was in a great measure successful. Thousands of these deluded victims of fanaticism were seduced into the enjoyment of freedom in our Northern cities. And what has been the consequence? Go to these cities now, and ask the question. Visit the dark and narrow lanes, and obscure recesses, which have been assigned by common consent as the abodes of those outcasts of the world—the free people of color. Sir, there does not exist, on the face of the whole earth, a population so poor, so wretched, so vile, so loathsome, so utterly destitute of all the comforts, conveniences, and decencies of life, as the unfortunate blacks of Philadelphia, and New York, and Boston. Liberty has been to them the greatest of calamities, the heaviest of curses. Sir, I have had some opportunities of making comparisons between the condition of the free negroes of the North and the slaves of the South, and the comparison has left not only an indelible impression of the superior advantages of the latter, but has gone far to reconcile me to slavery itself. Never have I felt so forcibly that touching description, "the foxes have holes, and the birds of the air have nests, but the son of man hath not where to lay his head," as when I have seen this unhappy race, naked and houseless, almost starving in the streets, and abandoned by all the world. Sir, I have seen in the neighborhood of one of the most moral, religious, and refined cities of the North, a family of free blacks, driven to the caves of the rock, and there obtaining a precarious subsistence from charity and plunder.

When the gentleman from Massachusetts adopts and reiterates the old charge of weakness as resulting from slavery, I must be permitted to call for the proof of those blighting effects which he ascribes to its influence. I suspect that when the subject is closely examined, it will be found that there is not much force even in the plausible objection of the want of physical power in slave holding States. The power of a country is compounded of its population and its wealth; and, in modern times, where, from the very form and structure of society, by far the greater portion of the people must, even during the continuance of the most desolating wars, be employed in the cultivation of the soil, and other peaceful pursuits, it may be well doubted whether slave holding States, by reason of the superior value of their productions, are not able to maintain a number of troops in the field, fully equal to what could be supported by States with a larger white population, but not possessed of equal resources.

It is a popular error to suppose, that, in any possible state of things, the people of a country could ever be called out *en masse*, or that a half, or a third, or even a fifth part of the physical force of any country could ever be brought into the field. The difficulty is not to procure men, but to provide the means of maintaining them; and in this view of the subject, it may be asked whether the Southern States are not a source of strength and power, and not of weakness, to the country? whether they have not contributed, and are not now contributing, largely, to the wealth and prosperity of every State in this Union? From a statement which I hold in my hand, it appears that, in ten years (from 1818 to 1827 inclusive) the whole amount of the domestic exports of the United States was five hundred and twenty-one millions eight hundred and eleven thousand and forty-five dollars. Of which, three millions, the product of slave labor, namely, cotton, rice, and tobacco, amounted to three hundred and thirty-nine millions two hundred and three thousand two hundred and thirty-five dollars; equal to about two-thirds of the whole. It is

not true, as has been supposed, that the advantages of this labor is confined almost exclusively to the Southern States. Sir, I am thoroughly convinced that, at this time, the States North of the Potomac actually derive greater profits from the labor of our slaves, than we do ourselves. It appears, from our public documents, that, in seven years, (from 1821 to 1827 inclusive) the six Southern States exported to the amount of one hundred and ninety millions three hundred and thirty-seven thousand two hundred and eighty-one dollars; and imported to the value of fifty-five millions six hundred and forty-six thousand three hundred and one dollars. Now, the difference between these two sums, near one hundred and forty millions of dollars, passed through the hands of the Northern merchants, and enabled them to carry on their commercial operations with all the world. Such part of these goods as found its way back to our hands, came charged with the duties, as well as the profits of the merchant, the ship owner, and a host of others, who found employment in carrying on these immense exchanges; and, for such part as was consumed at the North, we received in exchange Northern manufactures, charged with an increased price, to cover all the taxes which the Northern consumer had been compelled to pay on the imported article. It will be seen, therefore, at a glance, how much slave labor has contributed to the wealth and prosperity of the United States; and how largely our Northern brethren have participated in the profits of that labor. Sir, on this subject I will quote an authority which will, I doubt not, be considered by the Senator from Massachusetts as entitled to high respect. It is from the great father of the American System—honest Mathew Carey; no great friend, it is true; at this time, to Southern rights and Southern interests, but not the worst authority, on that account, on the point in question.

Speaking of the relative importance to the Union of the Southern and the Eastern States, Mathew Carey, in the sixth edition of his "Olive Branch," page 278, after exhibiting a number of statistical tables, to show the decided superiority, of the former, thus proceeds:

"But I am tired of this investigation. I sicken for the honor of the human species. What idea must the world form of the arrogance of the pretensions on the one side, [the East] and of the folly and weakness of the rest of the Union, to have so long suffered them to pass without exposure and detection? The naked fact is, that the demagogues in the Eastern States, not satisfied with deriving all the benefit from the Southern section of the Union that they would from so many wealthy colonies; with making princely fortunes by the carriage and exportation of its bulky and valuable productions, and supplying it with their own manufactures, and the productions of Europe, and the East and West Indies, to an enormous amount, and at an immense profit, have uniformly treated it with outrage, insult, and injury. And, regardless of their vital interests, the Eastern States were lately courting their own destruction, by allowing a few restless, turbulent men, to lead them blindfold to a separation, which was pregnant with their certain ruin. Whenever that event takes place they sink into insignificance. If a separation were desirable to any part of the Union, it would be to the Middle and Southern States, particularly the latter, who have been so long harassed with the complaints, the restlessness, the turbulence, and the ingratitude, of the Eastern States, that their patience has been tried almost beyond endurance. 'Jeshurun waxed fat and kicked,' and he will be severely punished for his kicking, in the event of a dissolution of the Union."

Sir, I wish it to be distinctly understood that I do not adopt these sentiments as my own. I quote them to show that very different sentiments have prevailed in former times, as to the weakness of the slave holding States, from those which now seem to have become fashionable in certain quarters. I know it has been supposed, by certain ill in-

formed persons, that the South exists only by the countenance and protection of the North. Sir, this is the idol of all idle and ridiculous fancies that ever entered into the mind of man. In every State of this Union, except one, the free white population actually preponderates; while in the British West India Islands, where the average white population is less than ten per cent. of the whole, the slaves are kept in entire subjection. It is preposterous to suppose that the Southern States could ever find the smallest difficulty in this respect. On this subject, as in all others, we ask nothing of our Northern brethren but to "let us alone;" leave us to the undisturbed management of our domestic concerns, and the direction of our own industry, and we will ask no more. Sir, all our difficulties on this subject have arisen from interference from abroad, which has disturbed, and may again disturb, our domestic tranquillity, just so far as to bring down punishment upon the heads of the unfortunate victims of a fanatical and mistaken humanity.

There is a spirit, which, like the father of evil, is constantly "walking to and fro about the earth, seeking whom it may devour." It is the spirit of false philanthropy. The persons whom it possesses do not indeed throw themselves into the flames, but they are employed in lighting up the torches of discord throughout the community. Their first principle of action is to leave their own affairs, and neglect their own duties, to regulate the affairs and the duties of others. Theirs is the task to feed the hungry and clothe the naked, of other lands, whilst they thrust the naked, famished, and shivering beggar from their own doors; to instruct the heathen, while their own children want the bread of life. When this spirit infuses itself into the bosom of a statesman, (if one so possessed can be called a statesman) it converts him at once into a visionary enthusiast. Then it is that he indulges in golden dreams of national greatness and prosperity. He discovers that "liberty is power;" and not content with vast schemes of improvement at home, which it would bankrupt the treasury of the world to execute, he flies to foreign lands, to fulfil obligations to "the human race," by inculcating the principles of "political and religious liberty," and promoting the "general welfare" of the whole human race. It is a spirit which has long been busy with the slaves of the South, and is even now displaying itself in vain efforts to drive the Government from its wise policy in relation to the Indians. It is this spirit which has filled the land with thousands of wild and visionary projects, which can have no effect but to waste the energies and dissipate the resources of the country. It is the spirit, of which the aspiring politician dexterously avails himself, when, by inscribing on his banner the magical words "liberty and philanthropy," he draws to his support that entire class of persons who are ready to bow down at the very names of their idols.

But, sir, whatever difference of opinion may exist as to the effect of slavery on national wealth and prosperity, if we may trust to experience, there can be no doubt that it has never yet produced any injurious effect on individual or national character. Look through the whole history of the country, from the commencement of the Revolution down to the present hour; where are there to be found brighter examples of intellectual and moral greatness, than have been exhibited by the sons of the South? From the Father of his Country, down to the distinguished chieftain who has been elevated, by a grateful people, to the highest office in their gift, the interval is filled up by a long line of orators, of statesmen, and of heroes, justly entitled to rank among the ornaments of their country, and the benefactors of mankind. Look at "the Old Dominion," great and magnanimous Virginia, "whose jewels are her sons." Is there any State in this Union which has contributed so much to the honor and welfare of the country? Sir, I will yield the whole question; I will acknowledge the

fatal effects of slavery upon character; if any one can say that, for noble disinterestedness, ardent love of country, exalted virtue, and a pure and holy devotion to liberty, the people of the Southern States have ever been surpassed by any in the world. I know, sir, that this devotion to liberty has sometimes been supposed to be at war with our institutions; but it is in some degree the result of those very institutions. Burke, the most philosophical of statesmen, as he was the most accomplished of orators, well understood the operation of this principle, in elevating the sentiments and exalting the principles of the people in slaveholding States. I will conclude my remarks on this branch of the subject, by reading a few passages from his speech "on moving his resolutions for conciliation with the colonies, the 22d of March, 1775."

"There is a circumstance attending the Southern colonies, which makes the spirit of liberty still more high and haughty than in those to the Northward. It is, that in Virginia and the Carolinas they have a vast multitude of slaves. Where this is the case, in any part of the world, those who are free are by far the most proud and jealous of their freedom. Freedom is to them not only an enjoyment, but a kind of rank and privilege. Not seeing there, as in countries where it is a common blessing, and as broad and general as the air, that it may be united with much abject toil, with great misery, with all the exterior servitude, liberty looks among them like something more noble and liberal. I do not mean, sir, to commend the superior morality of this sentiment, which has, at least, as much of pride as virtue in it; but I cannot alter the nature of man. The fact is so, and these people of the Southern colonies are much more strongly, and with a higher and more stubborn spirit, attached to liberty, than those to the Northward. Such were all the ancient commonwealths; such were our Gothic ancestors; such, in our days, were the Poles; and such will be all masters of slaves who are not slaves themselves. In such a people, the haughtiness of domination, combined with the spirit of freedom, fortifies it, and renders it invincible."

In the course of my former remarks, I took occasion to deprecate, as one of the greatest of evils, the consolidation of this Government. The gentleman takes alarm at the sound. "Consolidation," like the "tariff," grates upon his ear. He tells us, "we have heard much, of late, about consolidation; that it is the rallying word for all who are endeavoring to weaken the Union by adding to the power of the States." But consolidation, says the gentleman, was the very object for which the Union was formed; and in support of that opinion, he read a passage from the address of the President of the Convention to Congress (which he assumes to be authority on his side of the question.) But, sir, the gentleman is mistaken. The object of the framers of the constitution, as disclosed in that address, was not the consolidation of the Government, but "the consolidation of the Union." It was not to draw power from the States, in order to transfer it to a great National Government, but, in the language of the constitution itself, "to form a more perfect union;" and by what means? By "establishing justice," "promoting domestic tranquillity," and "securing the blessings of liberty to ourselves and our posterity." This is the true reading of the constitution. But, according to the gentleman's reading, the object of the constitution was to consolidate the Government, and the means would seem to be, the promotion of injustice, causing domestic discord, and depriving the States and the people "of the blessings of liberty" forever. The gentleman boasts of belonging to the party of national republicans. National republicans! a new name, sir, for a very old thing. The national republicans of the present day were the federalists of '98, who became federal republicans during the war of 1812, and were manufactured into national republicans somewhere about the year 1825. As a party, (by whatever

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name distinguished) they have always been animated by the same principles, and have kept steadily in view a common object—the consolidation of the Government.

Sir, the party to which I am proud of having belonged from the very commencement of my political life to the present day, were the democrats of '98. Anarchists, anti-federalists, revolutionists, I think they were sometimes called. They assumed the name of democratic republicans in 1812, and have retained their name and their principles up to the present hour. True to their political faith, they have always, as a party, been in favor of limitations of power; they have insisted that all powers not delegated to the Federal Government are reserved, and have been constantly struggling, as they are now struggling, to preserve the rights of the States, and prevent them from being drawn into the vortex, and swallowed up by one great consolidated Government. Sir, any one acquainted with the history of parties in this country will recognize in the points now in dispute between the Senator from Massachusetts and myself, the very grounds which have, from the beginning, divided the two great parties in this country, and which (call these parties by what names you will, and amalgamate them as you may) will divide them forever. The true distinction between those parties is laid down in a celebrated manifesto issued by the convention of the federalists of Massachusetts, assembled in Boston, in February, 1824, on the occasion of organizing a party opposition to the re-election of Governor Eustis. The gentleman will recognize this as "the canonical book of political scripture," and it instructs us, that "when the American colonies redeemed themselves from British bondage, and became so many independent nations, they proposed to form a national union." (Not a federal union, sir, but a national union.) "Those who were in favor of a union of the States in this form became known by the name of federalists; those who wanted no union of the States, or disliked the proposed form of union, became known by the name of anti-federalists. By means which need not be enumerated, the anti-federalists became, after the expiration of twelve years, our national rulers; and, for a period of sixteen years, until the close of Mr. Madison's administration in 1817, continued to exercise the exclusive direction of our public affairs." Here, sir, is the true history of the origin, rise, and progress, of the party of national republicans, who date back to the very origin of the Government, and who, then, as now, chose to consider the constitution as having created not a federal but a national union; who regarded "consolidation" as no evil, and who doubtless consider it "a consummation devoutly to be wished," to build up a great "central Government," "one and indivisible." Sir, there have existed, in every age and every country, two distinct orders of men—the lovers of freedom, and the devoted advocates of power. The same great leading principles, modified only by peculiarities of manners, habits, and institutions, divided parties in the ancient republics, animated the whigs and tories of Great Britain, distinguished in our own times the liberals and ultras of France, and may be traced even in the bloody struggles of unhappy Spain. Sir, when the gallant Riego, who devoted himself, and all that he possessed, to the liberties of his country, was dragged to the scaffold, followed by the tears and lamentations of every lover of freedom throughout the world, he perished amidst the deafening cries of "Long live the absolute King!" The people whom he represented are the descendants of those who brought with them to this country, as the most precious of their possessions, "an ardent love of liberty;" and while that shall be preserved, they will always be found manfully struggling against the consolidation of the Government, as the worst of evils.

The Senator from Massachusetts, in alluding to the tariff, becomes quite facetious. He tells us that "he hears of nothing but tariff! tariff! tariff!" and if a word could

be found to rhyme with it, he presumes it would be celebrated in verse, and set to music." Sir, perhaps the gentleman, in mockery of our complaints, may be himself disposed to sing the praises of the tariff in doggerel verse to the tune of "Old Hundred." I am not at all surprised, however, at the aversion of the gentleman to the very name of tariff. I doubt not that it must always bring up some very unpleasant recollections to his mind. If I am not greatly mistaken, the Senator from Massachusetts was a leading actor at a great meeting got up in Boston in 1820, against the tariff. It has generally been supposed that he drew up the resolutions adopted by that meeting, denouncing the tariff system as unequal, oppressive, and unjust; and, if I am not much mistaken, denying its constitutionality. Certain it is that the gentleman made a speech on that occasion in support of those resolutions, denouncing the system in no very measured terms; and if my memory serves me, calling its constitutionality in question. I regret that I have not been able to lay my hands on those proceedings, but I have seen them, and I cannot be mistaken in their character. At that time, sir, the Senator from Massachusetts entertained the very sentiments in relation to the tariff which the South now entertains. We next find the Senator from Massachusetts expressing his opinion on the tariff as a member of the House of Representatives from the city of Boston in 1824. On that occasion, sir, the gentleman assumed a position which commanded the respect and admiration of his country. He stood forth the powerful and fearless champion of free trade. He met, in that conflict, the advocates of restriction and monopoly, and they "fled from before his face." With a profound sagacity, a fulness of knowledge, and a richness of illustration that has never been surpassed, he maintained and established the principles of commercial freedom on a foundation never to be shaken. Great indeed was the victory achieved by the gentleman on that occasion; most striking the contrast between the clear, forcible, and convincing arguments by which he carried away the understandings of his hearers, and the narrow views and wretched sophistry of another distinguished orator, who may be truly said to have "held up his fumbling candle to the sun." Sir, the Senator from Massachusetts, on that, (the proudest day of his life) like a mighty giant bore away upon his shoulders the pillars of the temple of error and delusion, escaping himself unhurt, and leaving its adversaries overwhelmed in its ruins. Then it was that he erected to free trade a beautiful and enduring monument, and "inscribed the marble with his name." It is with pain and regret that I now go forward to the next great era in the political life of that gentleman, when he was found upon this floor, supporting, advocating, and finally voting for the tariff of 1828—that "bill of abominations." By that act, sir, the Senator from Massachusetts has destroyed the labors of his whole life, and given a wound to the cause of free trade, never to be healed. Sir, when I recollect the position which that gentleman once occupied, and that which he now holds in public estimation, in relation to this subject, it is not at all surprising that the tariff should be hateful to his ears. Sir, if I had erected to my own fame so proud a monument as that which the gentleman built up in 1824, and I could have been tempted to destroy it with my own hands, I should have the voice that should ring "the accursed tariff" in my ears. I doubt not the gentleman feels very much in relation to the tariff as a certain knight did to "instinct," and with him would be disposed to exclaim—

"Al! no more of that Hal, an thou lo'et me."

But, to be serious, what are we, of the South, to think of what we have heard this day? The Senator from Massachusetts tells us that the tariff is not an Eastern measure, and treats it as if the East had no interest in it. The Senator from Missouri insists it is not a Western measure, and that it has done no good to the West. The



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*Mr. Foot's Resolution.*

[Jan. 25, 1830.]

South comes in, and in the most earnest manner represents to you, that this measure, which we are told "is of no value to the East or the West," is "utterly destructive of our interests." We represent to you, that it has spread ruin and devastation through the land, and prostrated our hopes in the dust. We solemnly declare that we believe the system to be wholly unconstitutional, and a violation of the compact between the States and the Union, and our brethren turn a deaf ear to our complaints, and refuse to relieve us from a system "which not enriches them, but makes us poor indeed." Good God! has it come to this? Do gentlemen hold the feelings and wishes of their brethren at so cheap a rate, that they refuse to gratify them at so small a price? Do gentlemen value so lightly the peace and harmony of the country, that they will not yield a measure of this description to the affectionate entreaties and earnest remonstrances of their friends? Do gentlemen estimate the value of the Union at so low a price, that they will not even make one effort to bind the States together with the cords of affection? And has it come to this? Is this the spirit in which this Government is to be administered? If so, let me tell gentlemen the seeds of dissolution are already sown, and our children will reap the bitter fruit.

The honorable gentleman from Massachusetts [Mr. WABSTER] while he exonerates me personally from the charge, intimates that there is a party in the country who are looking to disunion. Sir, if the gentleman had stopped there, the accusation would "have passed by me as the idle wind which I regard not." But, when he goes on to give to his accusation a local habitation and a name, by quoting the expression of a distinguished citizen of South Carolina, [Dr. Cooper] "that it was time for the South to calculate the value of the Union," and, in the language of the bitterest sarcasm, adds, "surely then the Union cannot last longer than July, 1831," it is impossible to mistake either the allusion or the object of the gentleman. Now I call upon every one who hears me to bear witness that this controversy is not of my seeking. The Senate will do me the justice to remember, that, at the time this unprovoked and uncalled for attack was made upon the South, not one word had been uttered by me in disparagement of New England, nor had I made the most distant allusion, either to the Senator from Massachusetts, or the State he represents. But, sir, that gentleman has thought proper, for purposes best known to himself, to strike the South through me, the most unworthy of her servants. He has crossed the border, he has invaded the State of South Carolina, is making war upon her citizens, and endeavoring to overthrow her principles and her institutions. Sir, when the gentleman provokes me to such a conflict, I meet him at the threshold. I will struggle while I have life, for our altars and our fire sides, and if God gives me strength, I will drive back the invader discomfited. Nor shall I stop there. If the gentleman provokes the war, he shall have war. Sir, I will not stop at the border; I will carry the war into the enemy's territory, and not consent to lay down my arms, until I shall have obtained "indemnity for the past, and security for the future." It is with unfeigned reluctance that I enter upon the performance of this part of my duty. I shrink almost instinctively from a course, however necessary, which may have a tendency to excite sectional feelings, and sectional jealousies. But, sir, the task has been forced upon me, and I proceed right onward to the performance of my duty; be the consequences what they may, the responsibility is with those who have imposed upon me this necessity. The Senator from Massachusetts has thought proper to cast the first stone, and if he shall find, according to a homely adage, "that he lives in a glass house," on his head be the consequences. The gentleman has made a great flourish about his fidelity to Massachusetts. I shall make no professions of zeal for the interests and

honor of South Carolina—of that my constituents shall judge. If there be one State in this Union (and I say it not in a boastful spirit) that may challenge comparison with any other for an uniform, zealous, ardent, and uncalculating devotion to the Union, that State is South Carolina. Sir, from the very commencement of the Revolution, up to this hour, there is no sacrifice, however great, she has not cheerfully made; no service she has ever hesitated to perform. She has adhered to you in your prosperity, but in your adversity she has clung to you with more than filial affection. No matter what was the condition of her domestic affairs, though deprived of her resources, divided by parties, or surrounded by difficulties, the call of the country has been to her as the voice of God. Domestic discord ceased at the sound—every man became at once reconciled to his brethren, and the sons of Carolina were all seen crowding together to the temple, bringing their gifts to the altar of their common country. What, sir, was the conduct of the South during the Revolution? Sir, I honor New England for her conduct in that glorious struggle. But great as is the praise which belongs to her, I think at least equal honor is due to the South. They espoused the quarrel of their brethren with a generous zeal, which did not suffer them to stop to calculate their interest in the dispute. Favorites of the mother country, possessed of neither ships nor seamen to create commercial rivalry, they might have found in their situation a guarantee that their trade would be forever fostered and protected by Great Britain. But trampling on all considerations, either of interest or of safety, they rushed into the conflict, and, fighting for principle, periled all in the sacred cause of freedom. Never was there exhibited, in the history of the world, higher examples of noble daring, dreadful suffering, and heroic endurance, than by the whigs of Carolina, during that Revolution. The whole State, from the mountains to the sea, was overrun by an overwhelming force of the enemy. The fruits of industry perished on the spot where they were produced, or were consumed by the foe. The "plains of Carolina" drank up the most precious blood of her citizens! Black and smoking ruins marked the places which had been the habitations of her children! Driven from their homes, into the gloomy and almost impenetrable swamps, even there the spirit of liberty survived, and South Carolina (sustained by the example of her Sumpters and her Marions) proved by her conduct, that, though her soil might be overrun, the spirit of her people was invincible.

But, sir, our country was soon called upon to engage in another revolutionary struggle, and that too was as struggle for principle—I mean the political revolution which dates back to '98, and which, if it had not been successfully achieved, would have left us none of the fruits of the Revolution of '76. The revolution of '98 restored the constitution, rescued the liberty of the citizen from the grasp of those who were aiming at its life, and in the emphatic language of Mr. Jefferson, "saved the constitution at its last gasp." And by whom was it achieved? By the South, sir, aided only by the democracy of the North and West.

I come now to the war of 1812—a war which I well remember was called, in derision, (while its event was doubtful) the Southern war, and sometimes the Carolina war; but which is now universally acknowledged to have done more for the honor and prosperity of the country, than all other events in our history put together. What, sir, were the objects of that war? "Free trade and sailors' rights!" It was for the protection of Northern shipping and New England seamen that the country flew to arms. What interest had the South in that contest? If they had sat down coldly to calculate the value of their interests involved in it, they would have found that they had every thing to lose and nothing to gain. But, sir, with that generous de-

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*Mr. Foot's Resolution.*

[SENATE.]

votion to country so characteristic of the South, they only asked if the rights of any portion of their fellow-citizens had been invaded; and when told that Northern ships and New England seamen had been arrested on the common highway of nations, they felt that the honor of their country was assailed; and, acting on that exalted sentiment, "which feels a stain like a wound," they resolved to seek, in open war, for redress of those injuries which it did not become freemen to endure. Sir, the whole South, animated as by a common impulse, cordially united in declaring and promoting that war. South Carolina sent to your councils, as the advocates and supporters of that war, the noblest of her sons. How they fulfilled that trust let a grateful country tell. Not a measure was adopted, not a battle fought, not a victory won, which contributed in any degree to the success of that war, to which Southern counsels and Southern valor did not largely contribute. Sir, since South Carolina is assailed, I must be suffered to speak it to her praise, that, at the very moment when, in one quarter, we heard it solemnly proclaimed, "that it did not become a religious and moral people to rejoice at the victories of our army or our navy," her Legislature unanimously

*"Resolved,* That we will cordially support the Government in the vigorous prosecution of the war, until a peace can be obtained on honorable terms; and we will cheerfully submit to every privation that may be required of us, by our Government, for the accomplishment of this object."

South Carolina redeemed that pledge. She threw open her treasury to the Government. She put at the absolute disposal of the officers of the United States all that she possessed—her men, her money, and her arms. She appropriated half a million of dollars, on her own account, in defence of her maritime frontier; ordered a brigade of State troops to be raised; and when left to protect herself by her own means, never suffered the enemy to touch her soil, without being instantly driven off or captured. Such, sir, was the conduct of the South—such the conduct of my own State in that dark hour "which tried men's souls."

When I look back and contemplate the spectacle exhibited, at that time, in another quarter of the Union, when I think of the conduct of certain portions of New England, and remember the part which was acted on that memorable occasion by the political associates of the gentleman from Massachusetts—nay, when I follow that gentleman into the councils of the nation, and listen to his voice during the darkest period of the war, I am indeed astonished that he should venture to touch upon the topics which he has introduced into this debate. South Carolina reproached by Massachusetts! And from whom does the accusation come? Not from the democracy of New England: for they have been, in times past, as they are now, the friends and allies of the South. No, sir, the accusation comes from that party whose acts, during the most trying and eventful period of our national history, were of such a character, that their own Legislature, but a few years ago, actually blotted them out from their records, as a stain upon the honor of the country. But how can they ever be blotted out from the recollections of any one who had a heart to feel, a mind to comprehend, and a memory to retain, the events of that day! Sir, I shall not attempt to write the history of the party in New England, to which I have alluded—the war party in peace, and the peace party in war. That task I shall leave to some future biographer of Nathan Dane, and I doubt not it will be found quite easy to prove that the peace party of Massachusetts were the only defenders of their country, during the war, and actually achieved all our victories by land and sea.

In the mean time, sir, and until that history shall be written, I propose, with the feeble and glimmering lights which I possess, to review the conduct of this party,

in connexion with the war, and the events which immediately preceded it. It will be recollected, sir, that our great causes of quarrel with Great Britain were her depredations on Northern commerce, and the impressment of New England seamen. From every quarter we were called upon for protection. Important as the West is now represented to be, on another subject, the importance of the East on that occasion was far greater. I hold in my hands the evidence of the fact. Here are petitions, memorials, and remonstrances, from all parts of New England, setting forth the injustice, the oppressions, the depredations, the insults, the outrages, committed by Great Britain against the unoffending commerce and seamen of New England, and calling upon Congress for redress. Sir, I cannot stop to read these memorials. In that from Boston, after stating the alarming and extensive condemnation of our vessels by Great Britain, which threatened "to sweep our commerce from the face of the ocean," and "to involve our merchants in bankruptcy," they called upon the Government "to assert our rights and to adopt such measures as will support the dignity and honor of the United States."

From Salem, we heard a language still more decisive; they call explicitly for "an appeal to arms," and pledge their lives and property in support of any measures which Congress might adopt. From Newburyport, an appeal was made "to the firmness and justice of the Government to obtain compensation and protection." It was here, I think, that, when the war was declared, it was resolved "to resist our own Government, even unto blood!"

In other quarters, the common language of that day was, that our commerce and our seamen were entitled to protection, and that it was the duty of the Government to afford it at every hazard. The conduct of Great Britain, we were then told, was "an outrage upon our national independence." These clamors, which commenced as early as January, 1806, were continued up to 1812. In a message from the Governor of one of the New England States, as late as the 10th October, 1811, this language is held: "Amanly and decisive course has become indispensable—a course to satisfy foreign nations that, while we desire peace, we have the means and the spirit to repel aggression. We are false to ourselves, when our commerce or our territory is invaded with impunity."

About this time, however, a remarkable change was observable in the tone and temper of those who had been endeavoring to force the country into a war. The language of complaint was changed into that of insult, and calls for protection, converted into reproaches. "Smoke, smoke!" (says one writer) "my life on it our Executive have no more idea of declaring war, than my grandmother." "The Committee of Ways and Means" (says another) "have come out with their Pandora's Box of taxes, and yet nobody dreams of war." "Congress do not mean to declare war; they dare not." But why multiply examples? An honorable member of the other House, from the city of Boston, [Mr. Quincy] in a speech delivered on the 3d April, 1812, says, "neither promises, nor threats, nor asseverations, nor oaths, will make me believe that you will go to war. The navigation States are sacrificed, and the spirit and character of the country prostrated by fear and avarice;" "you cannot," said the same gentleman on another occasion, "be kicked into a war."

Well, sir, the war at length came, and what did we behold! The very men who had been for six years clamorous for war, and for whose protection it was waged, became at once equally clamorous against it. They had received a miraculous visitation; a new light suddenly beamed upon their minds; the scales fell from their eyes, and it was discovered that the war was declared from "subserviency to France;" and that Congress and the Executive "had sold themselves to Napoleon;" that Great

\* Olive Branch, page 101.

Britain had, in fact, done us no essential injury;" that she was "the bulwark of our religion;" that where "she took one of our ships, she protected twenty;" and that, if Great Britain had impressed a few of our seamen, it was because "she could not distinguish them from her own." And so far did this spirit extend, that a committee of the Massachusetts Legislature actually fell to calculation, and discovered, to their infinite satisfaction, but to the astonishment of all the world beside, that only eleven Massachusetts sailors had ever been impressed. Never shall I forget the appeals that had been made to the sympathies of the South, in behalf of the "thousands of impressed Americans" who had been torn from their families and friends, and "immured in the floating dungeons of Britain." The most touching pictures were drawn of the hard condition of the American sailor, "treated like a slave," forced to fight the battles of his enemies, "lashed to the mast to be shot at like a dog." But, sir, the very moment we had taken up arms in their defence, it was discovered that all these were mere "fictions of the brain," and that the whole number of the State of Massachusetts was but eleven; and that even these had been "taken by mistake." Wonderful discovery! The Secretary of State had collected authentic lists of no less than six thousand impressed Americans. Lord Castlereagh himself acknowledged sixteen hundred. Calculations on the basis of the number found on board of the *Guerriere*, the *Macedonian*, the *Java*, and other British ships, (captured by the skill and gallantry of those heroes whose achievements are the treasured monuments of their country's glory) fixed the number at seven thousand; and yet, it seems, Massachusetts had lost but eleven! Eleven Massachusetts sailors taken by mistake! A cause of war, indeed! Their ships, too, the capture of which had threatened "universal bankruptcy," it was discovered that Great Britain was their friend and protector; "where she had taken one, she had protected twenty." Then was the discovery made, that subserviency to France, hostility to commerce, "a determination on the part of the South and the West to break down the Eastern States," and especially, (as reported by a committee of the Massachusetts Legislature,) "to force the sons of commerce to populate the wilderness," were the true causes of the war.\* But let us look a little further into the conduct of the peace party of New England, at that important crisis. Whatever difference of opinion might have existed as to the causes of the war, the country had a right to expect that, when once involved in the contest, all America would have cordially united in its support. Sir, the war effected, in its progress, a union of all parties at the South. But not so in New England; there, great efforts were made to stir up the minds of the people to oppose it. Nothing was left undone to embarrass the financial operations of the Government, to prevent the enlistment of troops, to keep back the men and money of New England from the service of the Union, to force the President from his seat. Yes, sir, "the Island of Elba! or a halter!" were the alternatives they presented to the excellent and venerable James Madison. Sir, the war was further opposed by openly carrying on illicit trade with the enemy, by permitting that enemy to establish herself on the very soil of Massachusetts, and by opening a free trade between Great Britain and America, with a separate custom house. Yes, sir, those who cannot endure the thought that we should insist on a free trade in time of profound peace, could without scruple claim and exercise the right of carrying on a free trade with the enemy in a time of war; and, finally, by getting up the renowned "Hartford Convention," and preparing the way for an open resistance to the Government, and a separation of the States. Sir, if I am asked for the proof of those things, I fearlessly appeal to cotemporary history, to the public documents of

the country, to the recorded opinions and acts of public assemblies, to the declaration and acknowledgments, since made, of the Executive and Legislature of Massachusetts herself.

Sir, the time has not been allowed me to trace this subject through, even if I had been disposed to do so. But I cannot refrain from referring to one or two documents which have fallen in my way since this debate began. I read, sir, from the Olive Branch of Mathew Carey, in which are collected "the actings and doings" of the peace party of New England, during the continuance of the embargo and the war. I know the Senator from Massachusetts will respect the high authority of his political friend and fellow laborer in the great cause of "domestic industry."

In page 301, et seq. of this work, is a detailed account of the measures adopted in Massachusetts during the war, for the express purpose of embarrassing the financial operations of the Government, by preventing loans, and thereby driving our rulers from their seats, and forcing the country into a dishonorable peace. It appears that the Boston banks commenced an operation by which a run was to be made upon all the banks to the South; at the same time stopping their own discounts, the effect of which was to produce a sudden and most alarming diminution of the circulating medium, and universal distress over the whole country—a distress which they failed not to attribute to the "unholy war."

To such an extent was this system carried, that it appears from a statement of the condition of the Boston banks, made up in January, 1814, that with nearly five millions dollars of specie in their vaults, they had but two millions of dollars of bills in circulation. It is added by Carey, that at this very time an extensive trade was carried on in British Government bills, for which specie was sent to Canada, for the payment of the British troops then laying waste our Northern frontier, and this too at the very moment when New England ships, sailing under British licences, (a trade declared to be lawful by the courts both of Great Britain and Massachusetts) were supplying with provisions those very armies destined for the invasion of our own shores. Sir, the author of the Olive Branch, with a holy indignation, denounces these acts as "treasonable!" "giving aid and comfort to the enemy." I shall not follow his example. But I will ask with what justice or propriety can the South be accused of disloyalty from that quarter. If we had any evidence that the Senator from Massachusetts had admonished his brethren then, he might with a better grace assume the office of admonishing us now.

When I look at the measures adopted in Boston at that day, to deprive the Government of the necessary means for carrying on the war, and think of the success and the consequences of these measures, I feel my pride as an

\*In answer to an address of Governor Estlin, denouncing the conduct of the peace party, during the war, the House of Representatives of Massachusetts, in June, 1823, says: "The change of the political sentiment evinced in the late elections forms indeed a new era in the history of our Commonwealth. It is the triumph of reason over passion, of patriotism over party spirit. Massachusetts has returned to her first love, and is no longer a stranger in the Union. We rejoice that, though, during the late war, such measures were adopted in this State, as occasioned double sacrifice of treasure and of life; covered the friends of the nation with humiliation and mourning, and fixed a stain on the page of our history; a redeeming spirit has at length arisen in our National Government, on the return of power, to disavow the unwarrantable course pursued by this State during the late war; and to hold up the measures of that period as lessons, that the present and succeeding generations may shun that career which most inevitably terminates in the destruction of the individual, or the party who pursue it; and may learn the important lesson that, in all our paths, the path of duty is the path of safety; and that it is never dangerous to rally around the standard of our country."—*Narr. by Mr. H.*

†2d Dodson's Admiralty Reports, 48.—13th Mass. Reports, 26.

\*Olive Branch, pages 124, 201.

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Mr. Foot's Resolution.

[SENATE.]

American humbled in the dust. Hear, sir, the language of that day; I read from pages 301 and 302 of the Olive Branch: "Let no man who wishes to continue the war, by active means, by vote or lending money, dare to prostrate himself at the altar on the fast day." "Will federalists subscribe to the loan? Will they lend money to our national rulers? It is impossible. First, because of the principle, and secondly, because of principal and interest." "Do not prevent the abusers of their trust from becoming bankrupt. Do not prevent them from becoming odious to the public, and being replaced by better men." "Any federalist who lends money to Government, must go and shake hands with James Madison, and claim fellowship with Felix Grundy. [I beg pardon of my honorable friend from Tennessee; but he is in good company. I had thought it was 'James Madison, Felix Grundy, and the Devil.'] Let him no more call himself a federalist, and a friend to his country; he will be called by others, infamous." &c.

Sir, the spirit of the people sunk under these appeals. Such was the effect produced by them on the public mind, that the very agents of the Government (as appears from their public advertisements, now before me) could not obtain loans, without a pledge that "the names of the subscribers should not be known." Here are the advertisements: "The names of all subscribers (say Gilbert and Dean, the brokers employed by Government) shall be known only to the undersigned." As if those who came forward to aid their country in the hour of her utmost need, were engaged in some dark and foul conspiracy, they were assured "that their names should not be known." Can any thing show more conclusively the unhappy state of public feeling which prevailed at that day, than this single fact? Of the same character with these measures was the conduct of Massachusetts, in withholding her militia from the service of the United States, and devising measures for withdrawing her quota of the taxes, thereby attempting, not merely to cripple the resources of the country, but actually depriving the Government (as far as depended upon her) of all the means of carrying on the war: of the bone, and muscle, and sinews of war—"of man and steel—the soldier and his sword." But it seems Massachusetts was to reserve her resources for herself; she was to defend and protect her own shores. And how was that duty performed? In some places on the coast neutrality was declared, and the enemy was suffered to invade the soil of Massachusetts, and allowed to occupy her territory, until the peace, without one effort to rescue it from his grasp. Nay, more, while our own Government and our rulers were considered as enemies, the troops of the enemy were treated like friends; the most intimate commercial relations were established with them, and maintained up to the peace. At this dark period of our national affairs, where was the Senator from Massachusetts? How were his political associates employed? "Calculating the value of the Union?" Yes, sir, that was the propitious moment, when our country stood alone, the last hope of the world, struggling for her existence against the colossal power of Great Britain, "concentrated in one mighty effort to crush us at a blow"—that was the chosen hour to revive the grand scheme of building up "a great Northern Confederacy"—a scheme, which, it is stated in the work before me, had its origin as far back as the year 1796, and which appears never to have been entirely abandoned. In the language of the writers of that day, (1796) "rather than have a constitution such as the anti-Federalists were contending for, [such as we now are contending for] the Union ought to be dissolved; and to prepare the way for that measure, the same methods were resorted to then, that have always been relied on for that purpose—exciting prejudice against the South. Yes, sir, our Northern brethren were then told "that, if the negroes were good for food, their Southern masters would claim the right to de-

stroy them at pleasure." Sir, in 1814, all these topics were revived. Again we heard of "a Northern Confederacy." "The slave States by themselves;" "the mountains are the natural boundary;" we want neither "the counsels nor the power of the West," &c. &c. The papers teemed with accusations against the South and the West, and the calls for a dissolution of all connexion with them were loud and strong. I cannot consent to go through the disgusting details. But to show the height to which the spirit of disaffection was carried, I will take you to the temple of the living God, and show you that sacred place (which should be devoted to the extension of "peace on earth and good will towards men," where "one day's truce ought surely to be allowed to the dissensions and animosities of mankind") converted into a fierce arena of political strife, where, from the lips of the priest standing between the horns of the altar, there went forth the most terrible denunciations against all who should be true to their country, in the hour of her utmost need.

"If you do not wish," said a reverend clergyman, in a sermon preached in Boston, on the 23d July, 1812, "to become the slaves of those who own slaves, and who are themselves the slaves of French slaves, you must either, in the language of the day, cut the connexion, or so far alter the national compact as to ensure to yourselves a due share in the Government." (Olive Branch, page 319.) "The Union," says the same writer, (page 320) "has been long since virtually dissolved, and it is full time that this part of the disunited States should take care of itself."

Another reverend gentleman, pastor of a church at Medford, (page 321) issues his anathema—"let him stand accursed"—against all, all, who by their "personal services," or "loans of money," "conversation," or "writing," or "influence," give countenance or support to the unrighteous war, in the following terms: "that man is an accomplice in the wickedness; he loads his conscience with the blackest crimes; he brings the guilt of blood upon his soul, and in the sight of God and his law he is a murderer!"

One or two more quotations, sir, and I shall have done. A reverend doctor of divinity, the pastor of a church at Byfield, Massachusetts, on the 7th of April, 1814, thus addresses his flock [321.]: "The Israelites became weary of yielding the fruit of their labor to pamper their splendid tyrants. They left their political woes. They separated; where is our Moses? Where the rod of his miracles? Where is our Aaron? Alas! no voice from the burning bush has directed them here."

"We must trample on the mandates of despotism, or remain slaves forever." [P. 322.] "You must drag the chains of Virginian despotism, unless you discover some other mode of escape." "Those Western States, which have been violent for this abominable war, those States which have thirsted for blood—God has given them blood to drink." [323.]—Sir, I can go no further. The records of the day are full of such sentiments, issued from the press, spoken in public assemblies, poured out from the sacred desk! God forbid, sir, that I should charge the people of Massachusetts with participating in these sentiments. The South and the West had there, their friends—men who stood by their country, though encompassed all around by their enemies. The Senator from Massachusetts [Mr. SILSBEE] was one of them, the Senator from Connecticut [Mr. FOOT] was another, and there were others now on this floor. The sentiments I have read were the sentiments of a party embracing the political associates of the gentleman from Massachusetts. If they could only be found in the columns of a newspaper, in a few occasional pamphlets, issued by men of intemperate feeling, I should not consider them as affording any evidence of the opinions even of the peace party of New England. But, sir, they were the common language

Olive Branch, p. 297.

of that day; they pervaded the whole land; they were issued from the legislative hall, from the pulpit, and the press. Our books are full of them; and there is no man who now hears me, but knows, that they were the sentiments of a party, by whose members they were promulgated. Indeed, no evidence of this would seem to be required, beyond the fact that such sentiments found their way even into the pulpits of New England. What must be the state of public opinion, where any respectable clergyman would venture to preach, and to print sermons containing the sentiments I have quoted? I doubt not they were respectable and pious men. But they were men, and they "kindled in a common blaze." And now, sir, I must be suffered to remark, that, at this awful and melancholy period of our national history, the gentleman from Massachusetts, who now manifests so great a devotion to the Union, and so much anxiety lest it should be endangered from the South, was "with his brethren in Israel." He saw all these things passing before his eyes—he heard these sentiments uttered all around him. I do not charge that gentleman with any participation in these acts, or with approving of these sentiments; but I will ask why, if he was animated by the same sentiments then, which he now professes, if he can "augur disunion at a distance, and snuff up rebellion in every tainted breeze," why he did not, at that day, exert his great talents and acknowledged influence with the political associates by whom he was surrounded, (and who then, as now, looked up to him for guidance and direction) in allaying this general excitement, in pointing out to his deluded friends the value of the Union, in instructing them, that, instead of looking "to some prophet to lead them out from the land of Egypt," they should become reconciled to their brethren, and unite with them in the support of a just and necessary war? Sir, the gentleman must excuse me for saying, that, if the records of our country afforded any evidence that he had pursued such a course, then; if we could find it recorded in the history of those times, that, like the immortal Dexter, he had breast that mighty torrent which was sweeping before it all that was great and valuable in our political institutions; if like him he had stood by his country in opposition to his party; sir, we would, like little children, listen to his precepts and abide by his counsels.

As soon as the public mind was sufficiently prepared for the measure, the celebrated Hartford Convention was got up; not as the act of a few unauthorized individuals, but by authority of the Legislature of Massachusetts; and, as has been shown by the able historian of that convention, in accordance with the views and wishes of the party, of which it was the organ. Now, sir, I do not desire to call in question the motives of the gentlemen who composed that assembly: I know many of them to be in private life accomplished and honorable men, and I doubt not there were some among them who did not perceive the dangerous tendency of their proceedings. I will even go further, and say, that, if the authors of the Hartford Convention believed that "gross, deliberate, and palpable violations of the constitution" had taken place, utterly destructive of their rights and interests, I should be the last man to deny their right to resort to any constitutional measures for redress. But, sir, in any view of the case, the time when, and the circumstances under which, that convention assembled, as well as the measures recommended, render their conduct, in my opinion, wholly indefensible. Let us contemplate, for a moment, the spectacle then exhibited to the view of the world. I will not go over the disasters of the war, nor describe the difficulties in which the Government was involved. It will be recollected that its credit was nearly gone; Washington had fallen; the whole coast was blockaded; and an immense force, collected in the West Indies, was about to

make a descent, which it was supposed we had no means of resisting. In this awful state of our public affairs, when the Government seemed almost to be tottering on its base, when Great Britain, relieved from all her other enemies, had proclaimed her purpose of "reducing us to unconditional submission," we beheld the peace party of New England (in the language of the work before us) "pursuing a course calculated to do more injury to their country, and to render England more effective service, than all her armies." Those who could not find it in their hearts to rejoice at our victories, sang to deum at the King's Chapel in Boston, for the restoration of the Bourbons. Those who could not consent to illuminate their dwellings for the capture of the Guerriere, could give visible tokens of their joy at the fall of Detroit. The "beacon fires" of their hills were lighted up, not for the encouragement of their friends, but as signals to the enemy; and in the gloomy hours of midnight, the very lights burned blue. Such were the dark and portentous signs of the times, which ushered into being the renowned Hartford Convention. That convention met, and from their proceedings it appears that their chief object was to keep back the men and money of New England from the service of the Union, and to effect radical changes in the Government; changes that can never be effected without a dissolution of the Union.

Let us now, sir, look at their proceedings. I read from "A short account of the Hartford Convention," (written by one of its members) a very rare book, of which I was fortunate enough a few years ago to obtain a copy. [Here Mr. H. read from the proceedings.\*]

It is unnecessary to trace the matter farther, or to ask

\* It appears at p. 6, of "The Account," that by a vote of the House of Representatives of Massachusetts [200 to 90] delegates to this convention were required to be appointed to consult upon the subject "of their public grievances and concerns," and upon "the best means of preserving their resources," and for procuring a revision of the constitution of the United States, "so as to effectually to secure the support and attachment of all the people, by placing all upon the basis of their representation."

The convention assembled at Hartford, on the 15th December, 1814. On the next day it was

Resolved, "That the most inviolable secrecy shall be observed by each member of this convention, including the Secretary, as to all propositions, debates, and proceedings thereof, until this injunction shall be suspended or altered."

On the 24th December, the committee appointed to prepare and report a general principle of such measures as may be proper for the convention to adopt, reported, among other things:

"1. That it was expedient to recommend to the Legislatures of the States, the adoption of the most efficient and decisive measures to protect the militia and the States from the usurpations contained in these proceedings." [The proceedings of Congress and the Executive in relation to the Alien and the War.]

"2. That it was expedient also to prepare a statement exhibiting the necessity which the impotence and inability of the General Government leave imposed upon the States of providing for their own defence, and the impossibility of their discharging this duty, and at the same time fulfilling the requisitions of the General Government, and also to recommend to the Legislatures of the several States to make provision for mutual defence, and to make an earnest application to the Government of the United States, with a view to some arrangement whereby the States may be enabled to retain a portion of the taxes levied by Congress, for the purposes of self-defence, and for the reimbursement of expenses already incurred on account of the United States."

"3. That it is expedient to recommend to the several State Legislatures to raise no aid or aid to the constitution, viz:

That the power to declare or make war by the Congress of the United States be restricted.

That it is expedient to attempt to make provision for restraining Congress in the exercise of an unlimited power to make new States and admit new into the Union.

That an amendment be proposed respecting slave representation and slave taxation."

On the 19th December, 1814, it was proposed "that the capacity of naturalized citizens to hold offices of trust, honor, or profit, ought to be restrained," &c.

The subsequent proceedings are not given at large. But it seems that the report of the committee was adopted, and also a recommendation of certain measures (of the character of which we are not informed) to the States for their mutual defence, and having voted that the injunction of secrecy, as regarded to all the debates and proceedings of the convention (except so far as relates to the report finally adopted) be continued, "the convention adjourned sine die, but (as it was supposed) to meet again when circumstances should require it."

Note by Mr. H.

JAN. 25, 1830.]

*Mr. Foot's Resolution.*

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what would have been the next chapter in this history, if the measures recommended had been carried into effect; and if, with the men and money of New England withheld from the Government of the United States, she had been withdrawn from the war; if New Orleans had fallen into the hands of the enemy; and if, without troops, and almost destitute of money, the Southern and the Western States had been thrown upon their own resources for the prosecution of the war, and the recovery of New Orleans? Sir, whatever may have been the issue of the contest, the Union must have been dissolved. But a wise and just Providence, which "shapes our ends, rough-hew them as we will," gave us the victory, and crowned our efforts with a glorious peace. The ambassadors of Hartford were seen retracing their steps from Washington, "the bearers of the glad tidings of great joy." Courage and patriotism triumphed; the country was saved; the Union was preserved. And are we, who stood by our country then; who threw open our coffers; who bared our bosoms; who freely periled all in that conflict, to be reproached with want of attachment to the Union? If, sir, we are to have lessons of patriotism read to us, they must come from a different quarter. The Senator from Massachusetts, who is now so sensitive on all subjects connected with the Union, seems to have a memory forgetful of the political events that have passed away. I must, therefore, refresh his recollection a little farther on these subjects. The history of disunion has been written by one, whose authority stands too high with the American people to be questioned—I mean Thomas Jefferson. I know not how the gentleman may receive this authority. When that great and good man occupied the presidential chair, I believe he commanded no portion of that gentleman's respect.

I hold in my hand a celebrated pamphlet on the embargo, in which language is held in relation to Mr. Jefferson, which my respect for his memory will prevent me from reading, unless any gentleman should call for it. But the Senator from Massachusetts has since joined in singing hosannas to his name; he has assisted at his apotheosis, and has fixed him as "a brilliant star in the clear upper sky;" I hope, therefore, he is now prepared to receive with deference and respect the high authority of Mr. Jefferson. In the fourth volume of his memoirs, which has just issued from the press, we have the following history of disunion, from the pen of that illustrious statesman: "Mr. Adams called on me pending the embargo, and while endeavors were making to obtain its repeal; he spoke of the dissatisfaction of the Eastern portion of our confederacy with the restraints of the embargo then existing, and their restlessness under it. That there was nothing which might not be attempted to rid themselves of it. That he had information of the most unquestionable certainty, that certain citizens of the Eastern States, (I think he named Massachusetts particularly) were in negotiation with agents of the British Government, the object of which was an agreement that the New England States should take no further part in the war, [the commercial war, the "war of restrictions," as it was called] then going on, and that, without formally declaring their separation from the Union, they should withdraw from all aid and obedience to them, &c. From that moment [says Mr. J.] I saw the necessity of abandoning it, [the embargo] and, instead of effecting our purpose by this peaceful weapon, we must fight it out, or break the Union." In another letter Mr. Jefferson adds: "I doubt whether a single fact known to the world will carry as clear conviction to it of the correctness of our knowledge of the treasonable views of the federal party of that day, as that disclosed by this the most nefarious and daring attempt to discover the Union, of which the Hartford Convention was a subsequent chapter; and both of these having failed, consolidation becomes the fourth chapter of the next book of

their history. But this opens with a vast accession of strength from their younger recruits, who having nothing in them of the feelings and principles of '76, now look to a single and splendid Government, &c., riding and ruling over the plundered ploughman and beggared yeomanry." —(4 vol. 419, 422.)

The last chapter, says Mr. Jefferson, of that history, is to be found in the conduct of those who are endeavoring to bring about consolidation: ay, sir, that very consolidation for which the gentleman from Massachusetts is contending—the exercise, by the Federal Government, of powers not delegated in relation to "internal improvements," and "the protection of manufactures." And why, sir, does Mr. Jefferson consider consolidation as leading directly to disunion? Because he knew that the exercise by the Federal Government, of the powers contended for, would make this "a Government without limitation of powers," the submission to which he considered as a greater evil than disunion itself. There is one chapter in this history, however, which Mr. Jefferson has not filled up, and I must therefore supply the deficiency. It is to be found in the protest made by New England against the acquisition of Louisiana. In relation to that subject the New England doctrine is thus laid down by one of her learned political doctors of that day, now a doctor of laws, at the head of the great literary institution of the East—I mean Josiah Quincy, President of Harvard College. I quote from the speech delivered by that gentleman on the floor of Congress, on the occasion of the admission of Louisiana into the Union.

"Mr. Quincy repeated and justified a remark he had made, which, to save all misapprehension, he had committed to writing, in the following words: If this bill passes, it is my deliberate opinion that it is virtually a dissolution of the Union; that it will free the States from their moral obligation; and as it will be the right of all, so it will be the duty of some, to prepare for a separation, amicably if they can, violently if they must."

I wish it to be distinctly understood [said Mr. J.] that all the remarks I have made on this subject, are intended to be exclusively applied to a party, which I have described as "the peace party of New England"—embracing the political associates of the Senator from Massachusetts—a party which controlled the operations of that State during the embargo and the war, and who are justly chargeable with all the measures I have reprobated. Sir, nothing has been further from my thoughts than to impeach the character or conduct of the people of New England. For their steady habits and hardy virtues, I trust I entertain a becoming respect. I fully subscribe to the truth of the description given before the Revolution, by one whose praise is the highest eulogy, "that the perseverance of Holland, the activity of France, and the dexterous and firm sagacity of English enterprise, have been more than equalled by this 'recent people.'" Hardy, enterprising, sagacious, industrious, and moral, the people of New England of the present day, are worthy of their ancestors. Still less has it been my intention to say any thing that could be construed into a want of respect for that party, who, trampling on all narrow, sectional feelings, have been true to their principles in the worst of times—I mean the democracy of New England.

Sir, I will declare that, highly as I appreciate the democracy of the South, I consider even higher praise to be due to the democracy of New England—who have maintained their principles "through good and through evil report," who at every period of our national history have stood up manfully for "their country, their whole country, and nothing but their country." In the great political revolution of '98, they were found united with the democracy of the South, marching under the banner of the constitution, led on by the patriarch of liberty, in search

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of the land of political promise, which they lived not only to behold, but to possess and to enjoy. Again, sir, in the darkest and most gloomy period of the war, when our country stood single handed, against "the conqueror of the conquerors of the world," when all about and around them was dark, and dreary, disastrous and discouraging, they stood a Spartan band in that narrow pass, where the honor of their country was to be defended, or to find its grave. And in the last great struggle, involving, as we believe, the very existence of the principle of popular sovereignty, where were the democracy of New England? Where they always have been found, sir, struggling side by side with their brethren of the South and the West for popular rights, and assisting in that glorious triumph by which the man of the people was elevated to the highest office in their gift.

Who, then, are the friends of the Union? [asked Mr. H.] Those who would confine the Federal Government strictly within the limits prescribed by the constitution: who would preserve to the States and the People all powers not expressly delegated; who would make this a Federal and not a National Union, and who, administering the Government in a spirit of equal justice, would make it a blessing, and not a curse. And who are its enemies? Those who are in favor of consolidation; who are constantly stealing power from the States, and adding strength to the Federal Government. Who, assuming an unwarrantable jurisdiction over the States and the People, undertake to regulate the whole industry and capital of the country. But, sir, of all description of men I consider those as the worst enemies of the Union, who sacrifice the equal rights which belong to every member of the Confederacy to combinations of interested majorities, for personal or political objects. But the gentleman apprehends no evil from the dependence of the States on the Federal Government; he can see no danger of corruption from the influence of money or of patronage. Sir, I know that it is supposed to be a wise saying "that patronage is a source of weakness," and in support of that maxim, it has been said, that "every ten appointments make a hundred enemies." But I am rather inclined to think, with the eloquent and sagacious orator now reposing on his laurels on the banks of the Roanoke, that "the power of conferring favors creates a crowd of dependents;" he gave a forcible illustration of the truth of the remark, when he told us of the effect of holding up the savory morsel to the eager eyes of the hungry hounds gathered around his door. It mattered not whether the gift was bestowed on Towzer or Sweetlips, "Tray, Blanche, or Sweetheart;" while held in suspense, they were all governed by a nod, and when the morsel was bestowed, the expectation of the favors of to-morrow kept up the subjection of to-day.

The Senator from Massachusetts, in denouncing what he is pleased to call the Carolina doctrine, has attempted to throw ridicule upon the idea that a State has any constitutional remedy, by the exercise of its sovereign authority, against "a gross, palpable, and deliberate violation of the constitution." He calls it "an idle" or "a ridiculous notion," or something to that effect, and added, it would make the Union "a mere rope of sand." Now, sir, as the gentleman has not condescended to enter into any examination of the question, and has been satisfied with throwing the weight of his authority into the scale, I do not deem it necessary to do more than to throw into the opposite scale the authority on which South Carolina relies, and there, for the present, I am perfectly willing to leave the controversy. The South Carolina doctrine, that is to say, the doctrine contained in an exposition reported by a Committee of the Legislature in December, 1828, and published by their authority, is the good old Republican doctrine of '98; the doctrine of the celebrated "Virginia Resolutions" of that year, and of "Madison's

Report of '99. It will be recollected that the Legislature of Virginia, in December, '98, took into consideration the alien and sedition laws, then considered by all Republicans as a gross violation of the constitution of the United States, and on that day passed, among others, the following resolution:

"The General Assembly doth explicitly and peremptorily declare, that it views the powers of the Federal Government, as resulting from the compact to which the States are parties, as limited by the plain sense and intention of the instrument constituting that compact, as no further valid than they are authorized by the grants enumerated in that compact; and that, in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the States who are parties thereto have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights, and liberties, appertaining to them."

In addition to these resolutions, the General Assembly of Virginia "appealed to the other States, in the confidence that they would concur with that Commonwealth that the acts aforesaid [the alien and sedition laws] are unconstitutional, and that the necessary and proper measures would be taken by each for co-operating with Virginia in maintaining unimpaired the authorities, rights, and liberties, reserved to the States, respectively, or to the people."

The Legislatures of several of the New England States having, contrary to the expectation of the Legislature of Virginia, expressed their dissent from these doctrines, the subject came up again for consideration, during the session of 1799, 1800, when it was referred to a Select Committee, by whom was made that celebrated report which is familiarly known as "Madison's Report," and which deserves to last as long as the constitution itself. In that report, which was subsequently adopted by the Legislature, the whole subject was deliberately re-examined, and the objections urged against the Virginia doctrines carefully considered. The result was, that the Legislature of Virginia re-affirmed all the principles laid down in the resolutions of 1798, and issued to the world that admirable report which has stamped the character of Mr. Madison as the preserver of that constitution which he had contributed so largely to create and establish. I will here quote, from Mr. Madison's report, one or two passages which bear more immediately on the point in controversy. "The resolution, having taken this view of the federal compact, proceeds to infer 'that, in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the States, who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties, appertaining to them.'"

"It appears to your Committee to be a plain principle, founded on common sense, illustrated by common practice, and essential to the nature of compacts, that, where resort can be had to no tribunal superior to the authority of the parties, the parties themselves must be the rightful judges, in the last resort, whether the bargain made has been pursued or violated. The constitution of the United States was formed by the sanction of the States, given by each, in its sovereign capacity. It adds to the stability and dignity, as well as to the authority of the constitution, that it rests on this legitimate and solid foundation. The States, then, being the parties to the constitutional compact, and in their sovereign capacity, it follows, of necessity, that there can be no tribunal, above their authority, to decide, in the last resort, whether the compact made by them be violated; and, consequently, that, as the parties to it, they must, themselves, decide, in the last resort, such questions as may be of sufficient magnitude to require their interposition."

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Mr. Foot's Resolution.

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"The resolution has guarded against any misapprehension of its object, by expressly requiring, for such an interposition, 'the case of a deliberate, palpable, and dangerous breach of the constitution, by the exercise of powers not granted by it.' It must be a case, not of a light and transient nature, but of a nature dangerous to the great purposes for which the constitution was established."

"But the resolution has done more than guard against misconstruction, by expressly referring to cases of a deliberate, palpable, and dangerous nature. It specifies the object of the interposition, which it contemplates to be, solely, that of arresting the progress of the evil of usurpation, and of maintaining the authorities, rights, and liberties, appertaining to the States, as parties to the constitution."

"From this view of the resolution, it would seem inconceivable that it can incur any just disapprobation from those who, laying aside all momentary impressions, and recollecting the genuine source and object of the federal constitution, shall candidly and accurately interpret the meaning of the General Assembly. If the deliberate exercise of dangerous powers, palpably withheld by the constitution, could not justify the parties to it in interposing, even so far as to arrest the progress of the evil, and thereby to preserve the constitution itself, as well as to provide for the safety of the parties to it, there would be an end to all relief from usurped power, and a direct subversion of the rights specified or recognized under all the State constitutions, as well as a plain denial of the fundamental principles on which our independence itself was declared."

But, sir, our authorities do not stop here. The State of Kentucky responded to Virginia, and, on the 10th of November, 1798, adopted those celebrated resolutions, well known to have been penned by the author of the Declaration of American Independence. In those resolutions, the Legislature of Kentucky declare "that the Government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself, since that would have made its discretion, and not the constitution, the measure of its powers; but that, as in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions, as of the mode and measure of redress."

At the ensuing session of the Legislature, the subject was re-examined, and, on the 14th of November, 1799, the resolutions of the preceding year were deliberately re-affirmed, and it was, among other things, solemnly declared, "that, if those who administer the General Government be permitted to transgress the limits fixed by that compact, by a total disregard to the special delegations of power therein contained, an annihilation of the State Governments, and the erection, upon their ruins, of a General consolidated Government, will be the inevitable consequence. That the principle and construction contended for, by several of the State Legislatures, that the General Government is the exclusive judge of the extent of the powers delegated to it, stop nothing short of despotism; since the discretion of those who administer the Government, and not the constitution, would be the measure of their powers. That the several States who formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infraction; and, that a nullification, by those sovereignties, of all unauthorized acts, done under color of that instrument, is the rightful remedy."

Time and experience confirmed Mr. Jefferson's opinion on this all-important point. In the year 1821, he expressed himself in this emphatic manner: "It is a fatal heresy to suppose that either our State Governments are superior to the Federal, or the Federal to the State; neither

is authorized literally to decide which belongs to itself or its co-partner in Government; in differences of opinion, between their different sets of public servants, the appeal is to neither, but to their employers, peaceably assembled by their representatives in convention." The opinions of Mr. Jefferson, on this subject, have been so repeatedly and so solemnly expressed, that they may be said to have been the most fixed and settled convictions of his mind.

In the protest prepared by him for the Legislature of Virginia, in December, 1825, in respect to the powers exercised by the Federal Government in relation to the Tariff and Internal Improvements, which he declares to be "usurpations of the powers retained by the States, mere interpolations into the compact, and direct infractions of it," he solemnly re-asserts all the principles of the Virginia resolutions of '98, protests against "these acts of the Federal branch of the Government as null and void, and declares that, although Virginia would consider a dissolution of the Union as among the greatest calamities that could befall them, yet it is not the greatest. There is one yet greater: submission to a Government of unlimited powers. It is only when the hope of this shall become absolutely desperate, that further forbearance could not be indulged."

In his letter to Mr. Giles, written about the same time, he says:

"I see as you do, and with the deepest affliction, the rapid strides with which the Federal branch of our Government is advancing towards the usurpation of all the rights reserved to the States, and the consolidation in itself of all powers, foreign and domestic, and that, too, by constructions which leave no limits to their powers, &c. Under the power to regulate commerce, they assume indefinitely that also over agriculture and manufactures, &c. Under the authority to establish post roads, they claim that of cutting down mountains for the construction of roads and digging canals, &c. And what is our resource for the preservation of the constitution? Reason and argument? You might as well reason and argue with the marble columns encircling them, &c. Are we then to stand to our arms, with the hot-headed Georgian? No—[and I say no, and South Carolina has said no]—that must be the last resource. We must have patience and long endurance with our brethren, &c. and separate from our companions only when the sole alternatives left are a dissolution of our Union with them, or submission to a Government without limitation of powers. Between these two evils, when we must make a choice, there can be no hesitation."

Such, sir, are the high and imposing authorities in support of the "Carolina doctrine," which is, in fact, the doctrine of the Virginia resolutions of 1798.

Sir, at that day the whole country was divided on this very question. It formed the line of demarcation between the federal and republican parties, and the great political revolution which then took place turned upon the very question involved in these resolutions. That question was decided by the people, and by that decision the constitution was, in the emphatic language of Mr. Jefferson, "saved at its last gasp." I should suppose, sir, it would require more self-respect than any gentleman here would be willing to assume, to treat lightly doctrines derived from such high sources. Resting on authority like this, I will ask gentlemen whether South Carolina has not manifested a high regard for the Union, when, under a tyranny ten times more grievous than the alien and sedition laws, she has, hitherto, gone no further than to petition, remonstrate, and solemnly to protest against a series of measures which she believes to be wholly unconstitutional, and utterly destructive of her interests? Sir, South Carolina has not gone one step further than Mr. Jefferson himself was disposed to go, in relation to the very subject of our present complaints; not a step further than



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*Mr. Ford's Resolution.*

[JAN. 26, 27, 1830.]

the statesmen from New England were disposed to go under similar circumstances; no further than the Senator from Massachusetts himself once considered as within "the limits of a constitutional opposition." The doctrine that it is the right of a State to judge of the violations of the constitution on the part of the Federal Government, and to protect her citizens from the operation of unconstitutional laws, was held by the enlightened citizens of Boston, who assembled in Faneuil Hall, on the 25th January, 1809. They state, in that celebrated memorial, that "they looked only to the State Legislature, who were competent to devise relief against the unconstitutional acts of the General Government. That your power [say they] is adequate to that object is evident from the organization of the confederacy."

A distinguished Senator from one of the New England States, [Mr. Hillhouse] in a speech delivered here, on a bill for enforcing the embargo, declared: "I feel myself bound in conscience to declare, lest the blood of those who shall fall in the execution of this measure shall be on my head, that I consider this to be an act which directs a mortal blow at the liberties of my country: an act containing unconstitutional provisions, to which the people are not bound to submit, and to which, in my opinion, they will not submit."

And the Senator from Massachusetts, himself, in a speech delivered on the same subject, in the other House, said, "This opposition is constitutional and legal; it is, also, conscientious. It rests on settled and sober conviction, that such policy is destructive to the interests of the people, and dangerous to the being of the Government. The experience of every day confirms these sentiments. Men who act from such motives are not to be discouraged by trifling obstacles nor awed by any dangers. They know the limit of constitutional opposition; up to that limit, at their own discretion, they will walk, and walk fearlessly." How "the being of the Government" was to be endangered by "constitutional opposition to the embargo," I leave to the gentleman to explain.

Thus, it will be seen, [said Mr. H.] that the South Carolina doctrine is the republican doctrine of '98; that it was first promulgated by the fathers of the faith; that it was maintained by Virginia and Kentucky in the worst of times; that it constituted the very pivot on which the political revolution of that day turned; that it embraces the very principles the triumph of which, at that time, saved her constitution at its last gasp, and which New England statesmen were not unwilling to adopt, when they believed themselves to be the victims of unconstitutional legislation. Sir, as to the doctrine that the Federal Government is the exclusive judge of the extent, as well as the limitations of its powers, it seems to me to be utterly subversive of the sovereignty and independence of the States. It makes but little difference, in my estimation, whether Congress or the Supreme Court are invested with this power. If the Federal Government, in all or any of its departments, are to prescribe the limits of its own authority, and the States are bound to submit to the decision, and are not to be allowed to examine and decide for themselves, when the barriers of the constitution shall be overleaped, this is practically "a government without limitation of powers." The States are at once reduced to mere petty corporations, and the people are entirely at your mercy. I have but one word more to add. In all the efforts that have been made by South Carolina to resist the unconstitutional laws which Congress has extended over them, she has kept steadily in view the preservation of the Union, by the only means by which she believes it can be long preserved—a firm, manly, and steady resistance against usurpation. The measures of the Federal Government have, it is true, prostrated her interests, and will soon involve the whole South in irretrievable ruin. But even this evil, great as it is, is not the chief ground of

our complaints. It is the principle involved in the contest—a principle which, substituting the discretion of Congress for the limitations of the constitution, brings the States and the people to the feet of the Federal Government, and leaves them nothing they can call their own. Sir, if, the measures of the Federal Government were less oppressive, we should still strive against this usurpation. The South is acting on a principle she has always held sacred—resistance to unauthorized taxation. These, sir, are the principles which induced the immortal Hampden to resist the payment of a tax of twenty shillings. Would twenty shillings have ruined his fortune? No; but the payment of half twenty shillings, on the principle on which it was demanded, would have made him a slave. Sir, if, in acting on these high motives, if, animated by that ardent love of liberty which has always been the most prominent trait in the Southern character, we should be hurried beyond the bounds of a cold and calculating prudence, who is there, with one noble and generous sentiment in his bosom, that would not be disposed, in the language of Burke, to exclaim, "You must pardon something to the spirit of liberty!"

Mr. WEBSTER here rose to reply; but as the hour was advanced, (it being then near four o'clock) he yielded the floor to

Mr. BELL, who moved an adjournment, which motion was agreed to.

THURSDAY, JANUARY 26, 1830.

The Senate resumed the consideration of Mr. FOOT'S resolution, when Mr. WEBSTER addressed the Senate in reply to the last speech of Mr. HAYNE. About half past three o'clock he gave way to a request of one of the members for an adjournment.

WEDNESDAY, JANUARY 27, 1830.

The Senate resumed the consideration of Mr. FOOT'S resolution; when

Mr. WEBSTER, in a speech of three hours' length, concluded his argument.

[The speech, as delivered yesterday and to-day, was as follows:]

MR. PRESIDENT: When the mariner has been tossed, for many days, in thick weather, and on an unknown sea, he naturally avails himself of the first pause in the storm, the earliest glance of the sun, to take his latitude, and ascertain how far the elements have driven him from his true course. Let us imitate this prudence, and, before we float farther, on the waves of this debate, refer to the point from which we departed, that we may, at least, be able to form some conjecture where we now are. I ask for the reading of the resolution.

[The Secretary read the resolution, as follows:

"Resolved, That the Committee on Public Lands be instructed to inquire and report the quantity of the public lands remaining unsold within each State and Territory, and whether it be expedient to limit, for a certain period, the sales of the public lands to such lands only as have heretofore been offered for sale, and are now subject to entry at the minimum price. And, also, whether the office of Surveyor General, and some of the land offices, may not be abolished, without detriment to the public interest; or whether it be expedient to adopt measures to hasten the sales, and extend more rapidly the surveys of the public lands."

We have thus heard, sir, what that resolution is, which is actually submitted for our consideration; and it will readily occur to every one, that it is almost the only subject about which something has not been said in the speech, running through two days, by which the Senate has been now entertained by the gentleman from South Carolina. Every topic in the wide range of our public affairs, wheth-

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er past or present; every thing, general or local, whether belonging to national politics, or party politics, seems to have attracted more or less of the honorable member's attention, save only the resolution before us. He has spoken of every thing but the public lands. They have escaped his notice. To that subject, in all his excursions, he has not paid even the cold respect of a passing glance.

When this debate, sir, was to be resumed on Thursday morning, it so happened that it would have been convenient for me to be elsewhere. The honorable member, however, did not incline to put off the discussion to another day. He had a shot, he said, to return, and he wished to discharge it. That shot, sir, which it was kind thus to inform us was coming, that we might stand out of the way, or prepare ourselves to fall before it, and die with decency, has now been received. Under all advantages, and with expectation awakened by the tone which preceded it, it has been discharged, and has spent its force. It may become me to say no more of its effect, than that, if nobody is found, after all, either killed or wounded by it, it is not the first time, in the history of human affairs, that the vigor and success of the war have not quite come up to the lofty and sounding phrase of the manifesto.

The gentleman, sir, in declining to postpone the debate, told the Senate, with the emphasis of his hand upon his heart, that there was something rankling here, which he wished to relieve. [Mr. HAYNE rose, and disclaimed having used the word rankling.] It would not [said Mr. W.] be safe for the honorable member to asperse to those around him, upon the question, whether he did, in fact, make use of that word. But he may have been unconscious of it. At any rate, it is enough that he disclaims it. But still, with or without the use of that particular word, he had yet something here, of which he wished to rid himself by an immediate reply. In this respect, sir, I have a great advantage over the honorable gentleman. There is nothing here, sir, which gives me the slightest uneasiness; neither fear, nor anger, nor that which is sometimes more troublesome than either—the consciousness of having been in the wrong. There is nothing, either originating here, or now received here, by the gentleman's shot. Nothing original: for I had not the slightest feeling of disrespect or unkindness towards the honorable member. Some passages, it is true, had occurred since our acquaintance in this body, which I could have wished might have been otherwise; but I had used philosophy and forgotten them. When the honorable member rose, in his first speech, I paid him the respect of attentive listening; and when he sat down, though surprised, and, I must say, even astonished, at some of his opinions, nothing was farther from my intention than to commence any personal warfare; and through the whole of the few remarks I made in answer, I avoided, studiously and carefully, every thing which I thought possible to be construed into disrespect. And, sir, while there is thus nothing originating here, which I wished, at any time, or now wish to discharge, I must repeat, also, that nothing has been received here, which rankles, or, in any way, gives me annoyance. I will not accuse the honorable member of violating the rules of civilized war. I will not say that he poisoned his arrows. But whether his shafts were, or were not, dipped in that which would have caused rankling, if they had reached, there was not, as it happened, quite strength enough in the blow to bring them to their mark. If he wishes now to gather up those shafts, he must look for them elsewhere: they will not be found fixed and quivering in the object at which they were aimed.

The honorable member complained that I had slept on his speech. Sir, I must have slept on it, or not slept at all. The moment the honorable member sat down, his friend from Missouri rose, and, with much honeyed commendation of the speech, suggested that the impressions which it had produced were too charming and delightful to be disturbed by other sentiments, or other sounds, and proposed

that the Senate should adjourn. Would it have been quite amiable in me, sir, to interrupt this excellent good feeling? Must I not have been absolutely malicious, if I could have thrust myself forward, to destroy sensations thus pleasing? Was it not much better and kinder, both to sleep upon them myself, and to allow others, also, the pleasure of sleeping upon them? But if it be meant, by sleeping upon his speech, that I took time to prepare a reply to it, it is quite a mistake: owing to other engagements, I could not employ even the interval, between the adjournment of the Senate and its meeting the next morning, in attention to the subject of this debate. Nevertheless, sir, the mere matter of fact is undoubtedly true—I did sleep on the gentleman's speech, and slept soundly; and I slept equally well on his speech of yesterday, to which I am now replying. It is quite possible that, in this respect, also, I possess some advantage over the honorable member, attributable, doubtless, to a cooler temperament on my part: for, in truth, I slept upon his speeches remarkably well. But the gentleman inquires why he was made the object of such a reply? Why was he singled out? If an attack had been made on the East, he, he assures us, did not begin it; it was the gentleman from Missouri. Sir, I answered the gentleman's speech, because I happened to hear it; and because, also, I chose to give an answer to that speech, which, if unanswered, I thought most likely to produce injurious impressions. I did not stop to inquire who was the original drawer of the bill. I found a responsible endorser before me, and it was my purpose to hold him liable, and to bring him to his just responsibility, without delay. But, sir, this interrogatory of the honorable member was only introductory to another. He proceeded to ask me, whether I had turned upon him, in this debate, from the consciousness that I should find an overmatch, if I ventured on a contest with his friend from Missouri. If, sir, the honorable member, *ex gratia modestia*, had chosen thus to defer to his friend, and to pay him a compliment, without intentional disparagement to others, it would have been quite according to the friendly courtesies of debate, and not at all ungrateful to my own feelings. I am not one of those, sir, who esteem any tribute of regard, whether light and occasional, or more serious and deliberate, which may be bestowed on others, as so much unjustly withheld from themselves. But the tone and manner of the gentleman's question forbid me that I thus interpret it. I am not at liberty to consider it as nothing more than a civility to his friend. It had an air of taunt and disparagement, a little of the loftiness of asserted superiority, which does not allow me to pass it over without notice. It was put as a question for me to answer—and so put as if it were difficult for me to answer—whether I deemed the member from Missouri an overmatch for myself, in debate here? It seems to me, sir, that this is extraordinary language, and an extraordinary tone, for the discussions of this body.

Matches and over-matches! Those terms are more applicable elsewhere than here, and fitter for other assemblies than this. Sir, the gentleman seems to forget where, and what, we are. This is a Senate—a Senate of equals: of men of individual honor and personal character, and of absolute independence. We know no masters: we acknowledge no dictators. This is a hall for mutual consultation and discussion; not an arena for the exhibition of champions. I offer myself, sir, as a match for no man; I throw the challenge of debate at no man's feet. But, then, sir, since the honorable member has put the question in a manner that calls for an answer; I will give him an answer; and I tell him, that, holding myself to be the humblest of the members here, I yet know nothing in the arm of his friend from Missouri, either alone, or when aided by the arm of his friend from South Carolina, that need deter, even me, from espousing whatever opinions I may choose to espouse; from debating whenever I may choose

to debate; or from speaking whatever I may see fit to say, on the floor of the Senate. Sir, when uttered as matter of commendation or compliment, I should dissent from nothing which the honorable member might say of his friend. Still less do I put forth any pretensions of my own. But, when put to me as matter of taunt, I throw it back, and say to the gentleman that he could possibly have said nothing less likely than such a comparison to wound my pride of personal character. The anger of its tone rescued the remark from intentional irony, which otherwise, probably, would have been its general acceptation. But, sir, if it be imagined that, by this mutual quotation and commendation; if it be supposed that, by casting the characters of the drama, assigning to each his part: to one the attack; to another the cry of onset; or, if it be thought that, by a loud and empty vaunt of anticipated victory, any laurels are to be won here; if it be imagined, especially, that any, or all these things will shake any purpose of mine, I can tell the honorable member, once for all, that he is greatly mistaken, and that he is dealing with one of whose temper and character he has yet much to learn. Sir, I shall not allow myself, on this occasion, I hope on no occasion, to be betrayed into any loss of temper; but, if provoked, as I trust I never shall be, into crimination and recrimination, the honorable member may, perhaps, find, that, in that contest, there will be blows to take as well as blows to give; that others can state comparisons as significant, at least, as his own, and that his impunity may, perhaps, demand of him whatever powers of taunt and sarcasm he may possess. I commend him to a prudent husbandry of his resources.

But, sir, the coalition! the coalition! "ay, the murdered coalition!" The gentleman asks if I were led or frightened into this debate by the spectre of the coalition! "Was it the ghost of the murdered coalition, (he exclaims) which haunted the member from Massachusetts, and which, like the ghost of Banquo, would never down?" "The murdered coalition!" Sir, this charge of a coalition, in reference to the late administration, is not original with the honorable member. It did not spring up in the Senate. Whether as a fact, as an argument, or as an embellishment, it is all borrowed. He adopts it, indeed, from a very low origin, and a still lower present condition. It is one of the thousand calumnies with which the press teemed, during an excited political canvass. It was a charge, of which there was not only no proof or probability, but which was, in itself, wholly impossible to be true. No man of common information ever believed a syllable of it. Yet it was of that class of falsehoods, which, by continued repetition, through all the organs of detraction and abuse, are capable of misleading those who are already far misled; and of farther fanning passions already kindling into flame. Doubtless it served, in its day, and in greater or less degree, the end designed by it. Having done that, it has sunk into the general mass of stale and loathed calumnies. It is the very cast-off slough of a polluted and shameless press. Incapable of further mischief, it lies in the sewer, lifeless and despised. It is not now, sir, in the power of the honorable member to give it dignity or decency, by attempting to elevate it, and to introduce it into the Senate. He cannot change it from what it is—an object of general disgust and scorn. On the contrary, the contact, if he choose to touch it, is more likely to drag him down, down, to the place where it lies itself.

But, sir, the honorable member was not, for other reasons, entirely happy in his allusion to the story of Banquo's murder, and Banquo's ghost. It was not, I think, the friends, but the enemies of the murdered Banquo, at whose bidding his spirit would not down. The honorable gentleman is fresh in his reading of the English classics, and can put me right if I am wrong; but, according to my poor recollection, it was at those who had begun with carresses, and ended with foul and treacherous murder, that the gory

locks were shaken! The ghost of Banquo, like that of Hamlet, was an honest ghost; it disturbed no innocent man. It knew where its appearance would strike terror, and who would cry out, a ghost! It made itself visible in the right quarter, and compelled the guilty and the conscience smitten, and none others, to start, with—

"Pr'y thee, see there! behold! he!"

"If I stand here, I saw him!"

Their eye balls were scared (was it not so, sir?) who had thought to shield themselves, by concealing their own hand, and laying the imputation of the crime on a low and hireling agency in wickedness, who had vainly attempted to stifle the workings of their own coward consciences, by ejaculating, through white lips and chattering teeth, "thou canst not say I did it!" I have misread the great poet, if it was those who had no part taken in the deed of the death, who either found that they were, or feared that they should be, pushed from their stools by the ghost of the slain, or who exclaimed, to a spectre created by their own fears, and their own remorse, "avaunt! and quit our sight!"

There is another particular, sir, in which the honorable member's quick perception of resemblances might, I should think, have seen something in the story of Banquo, making it not altogether a subject of the most pleasant contemplation. Those who murdered Banquo, what did they win by it? substantial good? permanent power? or disappointment, rather, and sore mortification; dust and ashes, the common fate of vaulting ambition, overlapping itself? Did not even-handed justice, ere long, commend the poisoned chalice to their own lips? Did they not soon find that for another they had "filed their mind"? that their ambition, though apparently for the moment successful, had but put a barren sceptre in their grasp? Ay, sir,

"A barren sceptre in their gripe,

"Thence to be wrenched by an unfeeling hand.

"No son of their's succeeding."

Sir, I need pursue the allusion no farther. I leave the honorable gentleman to run it out at his leisure, and to derive from it all the gratification it is calculated to administer. If he finds himself pleased with the associations, and prepared to be quite satisfied, though the parallel should be entirely completed, I had almost said I am satisfied also—but that I shall think of. Yes, sir, I will think of that.

In the course of my observations, the other day, I paid a passing tribute of respect to a very worthy man, Mr. Dane, of Massachusetts. It so happened that he drew the ordinance of 1787, for the government of the Northwestern Territory. A man of so much ability, and so little pretence; of so great a capacity to do good, and so unmixed a disposition to do it, for its own sake; a gentleman who acted an important part, forty years ago, in a measure, the influence of which is still deeply felt in the very matter which was the subject of debate, might, I thought, receive from me a commendatory recognition. But the honorable member was inclined to be facetious on the subject. He was rather disposed to make it matter of ridicule that I had introduced into the debate the name of one Nathan Dane, of whom, he assures us, he had never before heard. Sir, if the honorable member had never before heard of Mr. Dane, I am sorry for it. It shows him less acquainted with the public men of the country than I had supposed. Let me tell him, however, that a sneer from him, at the mention of the name of Mr. Dane, is in bad taste. It may well be a high mark of ambition, sir, either with the honorable gentleman or myself, to accomplish as much to make our names known to advantage, and remembered with gratitude, as Mr. Dane has accomplished. But the truth is, sir, I suspect that Mr. Dane lives a little too far North. He is of Massachusetts, and too near the North star, to be

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reached by the honorable gentleman's telescope. If his sphere had happened to range South of Mason's and Dixon's line, he might, probably, have come within the scope of his vision!

I spoke, sir, of the ordinance of 1787, which prohibited slavery, in all future times, Northwest of the Ohio, as a measure of great wisdom and foresight, and one which had been attended with highly beneficial and permanent consequences. I supposed that, on this point, no two gentlemen in the Senate could entertain different opinions. But, the simple expression of this sentiment has led the gentleman not only into a labored defence of slavery, in the abstract, and on principle, but, also, into a warm accusation against me, as having attacked the system of domestic slavery, now existing in the Southern States. For all this, there was not the slightest foundation in any thing said or intimated by me. I did not utter a single word, which any ingenuity could torture into an attack on the slavery of the South. I said, only, that it was highly wise and useful, in legislating for the Northwestern country, while it was yet a wilderness, to prohibit the introduction of slaves; and added, that I presumed in the neighboring State of Kentucky, there was no reflecting and intelligent gentleman who would doubt that, if the same prohibition had been extended, at the same early period, over that commonwealth, her strength and population would, at this day, have been far greater than they are. If these opinions be thought doubtful, they are, nevertheless, I trust, neither extraordinary or disrespectful. They attack nobody, and menace nobody. And yet, sir, the gentleman's optics have discovered, even in the mere expression of this sentiment, what he calls the very spirit of the Missouri question! He represents me as making an onset on the whole South, and manifesting a spirit which would interfere with and disturb their domestic condition! Sir, this injustice no otherwise surprises me, than as it is done here, and done without the slightest pretence of ground for it. I say, it only surprises me, as being done here: for, I know, full well, that it is, and has been, the settled policy of some persons in the South, for years, to represent the people of the North as disposed to interfere with them in their own exclusive and peculiar concerns. This is a delicate and sensitive point in Southern feeling; and, of late years, it has always been touched, and generally with effect, whenever the object has been to unite the whole South against Northern men, or Northern measures. This feeling, always carefully kept alive, and maintained at too intense a heat to admit discrimination or reflection, is a lever of great power in our political machine. It moves vast bodies, and gives to them one and the same direction. But the feeling is without all adequate cause, and the suspicion which exists wholly groundless. There is not, and never has been, a disposition in the North to interfere with these interests of the South. Such interference has never been supposed to be within the power of Government; nor has it been, in any way, attempted. It has always been regarded as a matter of domestic policy, left with the States themselves, and with which the Federal Government had nothing to do. Certainly, sir, I am, and ever have been, of that opinion. The gentleman, indeed, argues, that slavery, in the abstract, is no evil. Most assuredly, I need not say I differ with him, altogether and most widely, on that point. I regard domestic slavery as one of the greatest of evils, both moral and political. But, though it be a malady, and whether it be curable, and, if so, by what means; or, on the other hand, whether it be the *vulnus inmedicabile* of the social system, I leave it to those whose right and duty it is to inquire and to decide. And this, I believe, sir, is, and uniformly has been, the sentiment of the North. Let us look a little at the history of this matter.

When the present constitution was submitted for the ratification of the people, there were those who imagined

that the powers of the Government which it proposed to establish, might, perhaps, in some possible mode, be exerted in measures tending to the abolition of slavery. This suggestion would, of course, attract much attention in the Southern conventions. In that of Virginia, Gov. Randolph said:

"I hope there is none here, who, considering the subject in the calm light of philosophy, will make an objection dishonorable to Virginia; that at the moment they are securing the rights of their citizens, an objection is started that there is a spark of hope that those unfortunate men now held in bondage, may, by the operation of the General Government, be made free."

At the very first Congress, petitions on the subject were presented, if I mistake not, from several States. The Pennsylvania Society for promoting the Abolition of Slavery, took a lead, and had before Congress a memorial, praying Congress to promote the abolition by such powers as it possessed. This memorial was referred, in the House of Representatives, to a Select Committee, consisting of Mr. Foster, of New Hampshire, Mr. Gerry, of Massachusetts, Mr. Huntington, of Connecticut, Mr. Lawrence of New York, Mr. Sinickson, of New Jersey, Mr. Hartley, of Pennsylvania, and Mr. Parker, of Virginia; all of them, sir, as you will observe, Northern men, but the last. This committee made a report, which was committed to a Committee of the Whole House, and there considered and discussed on several days; and, being amended, although in no material respect, it was made to express three distinct propositions, on the subjects of slavery and the slave trade. First, in the words of the constitution, that Congress could not, prior to the year 1808, prohibit the migration or importation of such persons as any of the States, then existing, should think proper to admit. Second, that Congress had authority to restrain the citizens of the United States from carrying on the African slave trade, for the purpose of supplying foreign countries. On this proposition, our early laws against those who engage in that traffic are founded. The third proposition, and that which bears on the present question, was expressed in the following terms:

"Resolved, That Congress have no authority to interfere in the emancipation of slaves, or in the treatment of them in any of the States, it remaining with the several States, alone, to provide rules and regulations therein, which humanity and true policy may require."

This resolution received the sanction of the House of Representatives so early as March, 1790. And now, sir, the honorable member will allow me to remind him, that, not only were the Select Committee who reported the resolution, with a single exception, all Northern men, but also that, of the members then composing the House of Representatives, a large majority, I believe nearly two-thirds, were Northern men also.

The House agreed to insert these resolutions in its journal; and from that day to this, it has never been maintained or contended that Congress had any authority to regulate, or interfere with, the condition of slaves, in the several States. No Northern gentleman, to my knowledge, has moved any such question in either House of Congress.

The fears of the South, whatever fears they might have entertained, were allayed and quieted by this early decision; and so remained, till they were excited afresh, without cause, but for collateral and indirect purposes. When it became necessary, or was thought so, by some political persons, to find an unvarying ground for the exclusion of Northern men from confidence and from lead in the affairs of the republic, then, and not till then, the cry was raised, and the feeling industriously excited, that the influence of Northern men in the public councils would endanger the relation of master and slave. For myself, I claim no other merit than that this gross and enormous injustice towards the whole North, has not wrought upon

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me to change my opinions, or my political conduct. I hope I am above violating my principles, even under the smart of injury and false imputations. Unjust suspicions and undeserved reproach, whatever pain I may experience from them, will not induce me, I trust, nevertheless, to overstep the limits of constitutional duty, or to encroach on the rights of others. The domestic slavery of the South I leave where I find it—in the hands of their own Governments. It is their affair, not mine. Nor do I complain of the peculiar effect which the magnitude of that population has had in the distribution of power, under this Federal Government. We know, sir, that the representation of the States in either House is not equal. We know that great advantage, in that respect, is enjoyed by the slave-holding States; and we know, too, that the intended equivalent for that advantage, that is to say, the imposition of direct taxes in the same ratio, has become merely nominal; the habit of the Government being almost invariably to collect its revenues from other sources, and in other modes. Nevertheless, I do not complain: nor would I countenance any movement to alter this arrangement of representation. It is the original bargain—the compact—let it stand: let the advantage of it be fully enjoyed. The Union itself is too full of benefit to be hazarded in propositions for changing its original basis. I go for the Constitution as it is, and for the Union as it is. But I am resolved not to submit, in silence, to accusations, either against myself individually, or against the North, wholly unfounded and unjust—accusations which impute to us a disposition to evade the constitutional compact, and to extend the power of the Government over the internal laws and domestic condition of the States. All such accusations, wherever and whenever made—all insinuations of the existence of any such purposes, I know, and feel, to be groundless and injurious. And we must confide in Southern gentlemen themselves; we must trust to those whose integrity of heart and magnanimity of feeling will lead them to a desire to maintain and disseminate truth, and who possess the means of its diffusion with the Southern public; we must leave it to them to disabuse that public of its prejudices. But, in the mean time, for my own part, I shall continue to act justly, whether those towards whom justice is exercised receive it with candor or with contumely.

Having had occasion to recur to the ordinance of 1787, in order to defend myself against the inferences which the honorable member has chosen to draw from my former observations on that subject, I am not willing, now, entirely to take leave of it, without another remark. It need hardly be said, that that paper expresses just sentiments on the great subjects of civil and religious liberty. Such sentiments were common, and abound in all our state papers of that day. But this ordinance did that which was not so common, and which is not, even now, universal, that is, it set forth and declared, as a high and binding duty of Government itself, the obligation to encourage schools, and advance the means of education; on the plain reason, that religion, morality, and knowledge, are necessary to good government and to the happiness of mankind. One observation further. The important provision incorporated into the constitution of the United States, and several of those of the States, and recently, as we have seen, adopted into the reformed constitution of Virginia, restraining legislative power, in questions of private right, and from impairing the obligation of contracts, is first introduced and established, as far as I am informed, as matter of express written constitutional law, in this ordinance of 1787. And I must add, also, in regard to the author of the ordinance, who has not had the happiness to attract the gentleman's notice heretofore, nor to avoid his sarcasm now, that he was chairman of that Select Committee of the old Congress whose report first expressed the strong sense of that body, that the old confederation was not ade-

quate to the exigencies of the country, and recommending to the States to send delegates to the convention which formed the present constitution.—(Note 1.)

An attempt has been made to transfer, from the North to the South, the honor of this exclusion of slavery from the Northwestern territory. The journal, without argument or comment, refutes such attempt. The cession by Virginia was made March, 1784. On the 19th of April following, a Committee, consisting of Messrs. Jefferson, Chase, and Howell, reported a plan for a temporary government of the territory, in which was this article: "That, after the year 1800, there shall be neither slavery, nor involuntary servitude, in any of the said States, otherwise than in the punishment of crimes, whereof the party shall have been convicted." Mr. Speight, of North Carolina, moved to strike out this paragraph. The question was put, according to the form then practised: "Shall these words stand, as part of the plan," &c. New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania, seven States, voted in the affirmative. Maryland, Virginia, and South Carolina, in the negative. North Carolina was divided. As the consent of nine States was necessary, the words could not stand, and were struck out accordingly. Mr. Jefferson voted for the clause, but was overruled by his colleagues.

In March of the next year, (1785) Mr. King, of Massachusetts, seconded by Mr. Ellery, of Rhode Island, proposed the formerly rejected article, with this addition: "And that this regulation shall be an article of compact, and remain a fundamental principle of the constitutions between the thirteen original States, and each of the States described in the resolve," &c. On this clause, which provided the adequate and thorough security, the eight Northern States at that time voted affirmatively; and the four Southern States negatively. The votes of nine States were not yet obtained, and thus the provision was again rejected by the Southern States. The perseverance of the North held out, and two years afterwards the object was obtained. It is no derogation from the credit, whatever that may be, of drawing the ordinance, that its principles had before been prepared and discussed, in the form of resolutions. If one should reason in that way, what would become of the distinguished honor of the author of the Declaration of Independence? There is not a sentiment in that paper which had not been voted and resolved in the assemblies, and other popular bodies in the country, over and over again.

But the honorable member has now found out that this gentleman (Mr. Dane) was a member of the Hartford Convention. However uninformed the honorable member may be of characters and occurrences at the North, it would seem that he has at his elbow, on this occasion, some high-minded and lofty spirit, some magnanimous and true-hearted monitor, possessing the means of local knowledge, and ready to supply the honorable member with every thing, down even to forgotten and moth-eaten two-penny pamphlets, which may be used to the disadvantage of his own country. But, as to the Hartford Convention, sir, allow me to say, that the proceedings of that body seem, now, to be less read and studied in New England, than farther South. They appear to be looked to, not in New England, but elsewhere, for the purpose of seeing how far they may serve as a precedent. But they will not answer the purpose—they are quite too tame. The latitude in which they originated was too cold. Other conventions, of more recent existence, have gone a whole bar's length beyond it. The learned doctors of Colleton and Abbeville have pushed their commentaries on the Hartford Collect so far, that the original text-writers are thrown entirely into the shade. I have nothing to do, sir, with the Hartford Convention. Its journal, which the gentleman has quoted, I never read. So far as the honorable member may discover in its proceedings a spirit, in

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any degree resembling that which was avowed and justified in these other conventions to which I have alluded, or so far as those proceedings can be shown to be disloyal to the constitution, or tending to disunion, so far I shall be as ready as any one to bestow on them reprehension and censure.

Having dwelt long on this convention, and other occurrences of that day, in the hope, probably, (which will not be gratified) that I should leave the course of this debate to follow him, at length, in those excursions, the honorable member returned, and attempted another object. He referred to a speech of mine, in the other House, the same which I had occasion to allude to myself the other day; and has quoted a passage or two from it, with a bold, though uneasy and laboring air of confidence, as if he had detected in me an inconsistency. Judging from the gentleman's manner, a stranger to the course of the debate, and to the point in discussion, would have imagined, from so triumphant a tone, that the honorable member was about to overwhelm me with a manifest contradiction. Any one who had heard him, and who had not heard what I had, in fact, previously said, must have thought me routed and discounted, as the gentleman had promised. Sir, a breath blows all this triumph away. There is not the slightest difference in the sentiments of my remarks on the two occasions. What I said here on Wednesday is in exact accordance with the opinions expressed by me in the other House in 1825. Though the gentleman had the metaphysics of Hudibras—though he were able

"To sever and divide

"A hair 'twixt North and Northwest side,"

he yet could not insert his metaphysical scissors between the fair reading of my remarks in 1825, and what I said here last week. There is not only no contradiction, no difference, but, in truth, too exact a similarity, both in thought and language, to be entirely in just taste. I had myself quoted the same speech, had recurred to it, and spoke with it open before me; and much of what I said was little more than a repetition from it. In order to make finishing work with this alleged contradiction, permit me to recur to the origin of this debate, and review its course. This seems expedient, and may be done as well now as at any time.

Well, then, its history is this: The honorable member from Connecticut moved a resolution, which constitutes the first branch of that which is now before us; that is to say, a resolution instructing the Committee on Public Lands to inquire into the expediency of limiting, for a certain period, the sales of the public lands, to such as have hitherto been offered for sale; and whether sundry offices, connected with the sales of the lands, might not be abolished, without detriment to the public service.

In the progress of the discussion which arose on this resolution, an honorable member from New Hampshire moved to amend the resolution, so as entirely to reverse its object; that is, to strike it all out, and insert a direction to the Committee to inquire into the expediency of adopting measures to hasten the sales, and to extend more rapidly the surveys of the lands.

The honorable member from Maine [Mr. SPRAGUE] suggested that both those propositions might well enough go, for consideration, to the Committee; and in this state of the question the member from South Carolina addressed the Senate in his first speech. He rose, he said, to give us his own free thought on the public lands. I saw him rise with pleasure, and listened with expectation, though, before he concluded, I was filled with surprise. Certainly, I was never more surprised than to find him following up, to the extent he did, the sentiments and opinions which the gentleman from Missouri had put forth, and which it is known he has long entertained.

I need not repeat at large the general topics of the honorable gentleman's speech. When he said, yesterday,

that he did not attack the Eastern States, he certainly must have forgotten not only particular remarks, but the whole drift and tenor of his speech; unless he means, by not attacking, that he did not commence hostilities—but that another had preceded him in the attack. He, in the first place, disapproved of the whole course of the Government, for forty years, in regard to its dispositions of the public lands; and then turning northward and eastward, and fancying he had found a cause for alleged narrowness and niggardliness in the "accursed policy" of the tariff, to which he represented the people of New England as wedded, he went on, for a full hour, with remarks, the whole scope of which was to exhibit the results of this policy, in feelings and in measures unfavorable to the West. I thought his opinions unfounded and erroneous, as, to the general course of the Government, and ventured to reply to them.

The gentleman had remarked on the analogy of other cases, and quoted the conduct of European Governments towards their own subjects, settling on this continent, as in point to show that we had been harsh and rigid in selling, when we should have given, the public lands to settlers. I thought the honorable member had suffered his judgment to be betrayed by a false analogy; that he was struck with an appearance of resemblance, where there was no real similitude. I think so still. The first settlers of North America were enterprising spirits, engaged in private adventure, or fleeing from tyranny at home. When arrived here, they were forgotten by the mother country, or remembered only to be oppressed. Carried away again by the appearance of analogy, or struck with the eloquence of the passage, the honorable member yesterday observed, that the conduct of Government towards the Western emigrants, or my representation of it, brought to his mind a celebrated speech in the British Parliament. It was, sir, the speech of Col. Barre. On the question of the stamp act, or tea tax, I forget which, Col. Barre had heard a member on the Treasury Bench argue, that the people of the United States, being British colonists, planted by the maternal care, nourished by the indulgence, and protected by the arms of England, would not grudge their mite to relieve the mother country from the heavy burthen under which she groaned. The language of Col. Barre, in reply to this, was: They planted by your care! Your oppression planted them in America. They fled from your tyranny, and grew by your neglect of them. So soon as you began to care for them, you showed your care by sending persons to spy out their liberties, misrepresent their character, prey upon them, and eat out their substance.

And now, does the honorable gentleman mean to maintain that language like this is applicable to the conduct of the Government of the United States towards the Western emigrants, or to any representation given by me of that conduct? Were the settlers in the West driven thither by our oppression? Have they flourished only by our neglect of them? Has the Government done nothing but to prey upon them, and eat out their substance? Sir, this servid eloquence of the British speaker, just, when and where it was uttered, and fit to remain an exercise for the schools, is not a little out of place when it is brought thence, to be applied here, to the conduct of our own country towards her own citizens. From America to England, it may be true; from Americans to their own Government it would be strange language. Let us leave it to be recited and declaimed by our boys, against a foreign nation; not introduce it here, to recite and declaim ourselves against our own.

But I come to the point of the alleged contradiction. In my remarks on Wednesday, I contended that we could not give away gratuitously all the public lands; that we held them in trust; that the Government had solemnly pledged itself to dispose of them as a common fund for

the common benefit, and to sell and to settle them as its discretion should dictate. Now, sir, what contradiction does the gentleman find to this sentiment in his speech of 1825? He quotes me as having then said, that we ought not to hug these lands as a very great treasure. Very well, sir; supposing me to be accurately reported, in that expression, what is the contradiction? I have not now said that we should hug these lands as a favorite source of pecuniary income. No such thing. It is not my view. What I have said, and what I do say, is, that they are a common fund; to be disposed of for the common benefit; to be sold at low prices for the accommodation of settlers, keeping the object of settling the lands as much in view as that of raising money from them. This I say now, and this I have always said. Is this hugging them as a favorite treasure? Is there no difference between hugging and hoarding this fund, on the one hand, as a great treasure, and on the other, of disposing of it at low prices, placing the proceeds in the general treasury of the Union? My opinion is, that as much is to be made of the land as fairly and reasonably may be, selling it all the while at such rates as to give the fullest effect to settlement. This is not giving it all away to the States, as the gentleman would propose; nor is it hugging the fund closely and tenaciously, as a favorite treasure; but it is, in my judgment, a just and wise policy, perfectly according with all the various duties which rest on Government. So much for my contradiction. And what is it? Where is the ground of the gentleman's triumph? What inconsistency, in word or doctrine, has he been able to detect? Sir, if this be a sample of that discomfiture with which the honorable gentleman threatened me, commend me to the word discomfiture for the rest of my life.

But, after all, this is not the point of debate; and I must now bring the gentleman back to that which is the point.

The real question between me and him is, where has the doctrine been advanced, at the South or the East, that the population of the West should be retarded, or at least need not be hastened, on account of its effect to drain off the people from the Atlantic States? Is this doctrine, as has been alleged, of Eastern origin? That is the question. Has the gentleman found any thing, by which he can make good his accusation? I submit to the Senate that he has entirely failed; and as far as this debate has shown, the only person who has advanced such sentiments, is a gentleman from South Carolina, and a friend to the honorable member himself. The honorable gentleman has given no answer to this; there is none which can be given. The simple fact, while it requires no comment to enforce it, defies all argument to refute it. I could refer to the speeches of another Southern gentleman, in years before, of the same general character, and to the same effect, as that which has been quoted; but I will not consume the time of the Senate by the reading of them.

So, then, sir, New England is guiltless of the policy of retarding Western population, and of all envy and jealousy of the growth of the new States. Whatever there be of that policy in the country, no part of it is her's. If it has a local habitation, the honorable member has probably seen, by this time, where he is to look for it; and if it now has received a name, he has himself christened it.

We approach, at length, sir, to a more important part of the honorable gentleman's observations. Since it does not accord with my views of justice and policy to give away the public lands altogether, as a mere matter of gratuity, I am asked by the honorable gentleman on what ground it is that I consent to vote them away, in particular instances? How, he inquires, do I reconcile with these professed sentiments, my support of measures appropriating portions of the lands to particular roads, particular canals, particular improvements of rivers, and particular institutions of education in the West? This leads, sir, to the real and wide difference, in political opinion, between the

honorable gentleman and myself. On my part, I look upon all these objects as connected with the common good, fairly embraced in its object and its terms; he, on the contrary, deems them all, if good at all, only of local good. This is our difference. The interrogatory which he proceeded to put, at once explains this difference. "What interest," asks he, "has South Carolina in a canal in Ohio?" Sir, this very question is full of significance. It develops the gentleman's whole political system, and its answer expounds mine. Here we differ, *to the core*. I look upon a road over the Alleghany, a canal round the falls of the Ohio, or a canal or rail-way from the Atlantic to the Western waters, as being objects large and extensive enough to be fairly said to be for the common benefit. The gentleman thinks otherwise; and this is the key to open his construction of the powers of the Government. He may well ask, upon his system, what interest has South Carolina in a canal in Ohio? On that system, it is true, she has no interest. On that system, Ohio and Carolina are different Governments and different countries, connected here, it is true, by some slight and ill-defined bond of union, but, in all main respects, separate and diverse. On that system, Carolina has no more interest in a canal in Ohio than in Mexico. The gentleman, therefore, only follows out his own principles; he does no more than arrive at the natural conclusions of his own doctrines; he only announces the true results of that creed, which he has adopted himself, and would persuade others to adopt, when he thus declares that South Carolina has no interest in a public work in Ohio. Sir, we narrow-minded people of New England do not reason thus. Our notion of things is entirely different. We look upon the States, not as separated, but as united. We love to dwell on that Union, and on the mutual happiness which it has so much promoted, and the common renown which it has so greatly contributed to acquire. In our contemplation, Carolina and Ohio are parts of the same country; States, united under the same General Government, having interests, common, associated, intermingled. In whatever is within the proper sphere of the constitutional power of this Government, we look upon the States as one. We do not impose geographical limits to our patriotic feeling or regard; we do not follow rivers and mountains, and lines of latitude, to find boundaries, beyond which public improvements do not benefit us. We who come here, as agents and representatives of these narrow minded and selfish men of New England, consider ourselves as bound to regard, with equal eye, the good of the whole, in whatever is within our power of legislation. Sir, if a rail-road or a canal, beginning in South Carolina, and ending in South Carolina, appeared to me to be of national importance and national magnitude, believing, as I do, that the power of Government extends to the encouragement of works of that description, if I were to stand up here, and ask what interest has Massachusetts in rail-roads in South Carolina, I should not be willing to face my constituents. These same narrow-minded men would tell me, that they had sent me to act for the whole country, and that one who possessed too little comprehension, either of intellect or feeling; one who was not large enough, in mind and heart, to embrace the whole, was not fit to be entrusted with the interest of any part. Sir, I do not desire to enlarge the powers of the Government by unjustifiable construction, nor to exercise any not within a fair interpretation. But when it is believed that a power does exist, then it is, in my judgment, to be exercised for the general benefit of the whole. So far as respects the exercise of such a power, the States are one. It was the very object of the constitution to create unity of interests, to the extent of the powers of the General Government. In war and peace, we are one; in commerce, one; because the authority of the General Government reaches to war and peace, and to the regulation of commerce. I have

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never seen any more difficulty, in erecting light houses on the Lakes, than on the Ocean; in improving the harbors of inland seas, than if they were within the ebb and flow of the tide; or of removing obstructions in the vast streams of the West, more than in any work to facilitate commerce on the Atlantic coast. If there be power for one, there is power also for the other; and they are all and equally for the country.

There are other objects, apparently more local, or the benefit of which is less general, towards which, nevertheless, I have concurred, with others, to give aid, by donations of land. It is proposed to construct a road in or through one of the new States, in which this Government possesses large quantities of land. Have the United States no right, as a great and untaxed proprietor; are they under no obligation, to contribute to an object thus calculated to promote the common good of all the proprietors, themselves included? And even with respect to education, which is the extreme case, let the question be considered. In the first place, as we have seen, it was made matter of compact with these States that they should do their part to promote education. In the next place, our whole system of land laws proceeds on the idea that education is for the common good; because, in every division, a certain portion is uniformly reserved and appropriated for the use of schools. And finally, have not these new States singularly strong claims, founded on the ground already stated, that the Government is a great untaxed proprietor in the ownership of the soil? It is a consideration of great importance, that, probably, there is, in no part of the country, or of the world, so great call for the means of education, as in those new States; owing to the vast numbers of persons within those ages in which education and instruction are usually received, if received at all. This is the natural consequence of recency of settlement and rapid increase. The census of these States shows how great a proportion of the whole population occupies the classes between infancy and manhood. These are the wide fields, and here is the deep and quick soil for the seeds of knowledge and virtue; and this is the favored season, the very spring-time for sowing them. Let them be disseminated without stint. Let them be scattered with a bountiful broad cast. Whatever the Government can fairly do towards these objects, in my opinion, ought to be done.

These, sir, are the grounds, succinctly stated, on which my votes for grants of lands for particular objects rest; while I maintain, at the same time, that it is all a common fund, for the common benefit. And reasons like these, I presume, have influenced the votes of other gentlemen from New England. Those who have a different view of the powers of the Government, of course, come to different conclusions, on these, as on other questions. I observed, when speaking on this subject before, that, if we looked to any measure, whether for a road, a canal, or any thing else, intended for the improvement of the West, it would be found that, if the New England ayes were struck out of the list of votes, the Southern noes would always have rejected the measure. The truth of this has not been denied, and cannot be denied. In stating this, I thought it just to ascribe it to the constitutional scruples of the South, rather than to any other less favorable or less charitable cause. But no sooner had I done this, than the honorable gentleman asks if I reproach him and his friends with their constitutional scruples. Sir, I reproach nobody; I stated a fact, and gave the most respectable reason for it that occurred to me. The gentleman cannot deny the fact; he may, if he choose, disclaim the reason. It is not long since I had occasion, in presenting a petition from his own State, to account for its being entrusted to my hands, by saying, that the constitutional opinions of the gentleman and his worthy colleague prevented them from supporting it. Did I state this as matter of reproach?

Far from it. Did I attempt to find any other cause than an honest one for these scruples? Sir, I did not. It did not become me to doubt, nor to insinuate, that the gentleman had either changed his sentiments, or that he had made up a set of constitutional opinions, accommodated to any particular combination of political occurrences. Had I done so, I should have felt that, while I was entitled to little credit, in thus questioning other people's motives, I justified the whole world in suspecting my own. But how has the gentleman returned this respect for others' opinions? His own candor and justice, how have they been exhibited towards the motives of others, while he has been at so much pains to maintain, what nobody has disputed, the purity of his own? Why, sir, he has asked when, and how, and why, New England votes were found going for measures favorable to the West? He has demanded to be informed whether all this did not begin in 1825, and while the election of President was still pending? Sir, to these questions retort would be justified, and it is both cogent and at hand. Nevertheless, I will answer the inquiry, not by retort, but by facts. I will tell the gentleman when, and how, and why, New England has supported measures favorable to the West. I have already referred to the early history of the Government; to the first acquisition of the lands; to the original laws for disposing of them, and for governing the territories where they lie; and have shown the influence of New England men and New England principles in all these leading measures. I should not be pardoned were I to go over that ground again. Coming to more recent times, and to measures of a less general character, I have endeavored to prove that every thing of this kind, designed for Western improvement, has depended on the votes of New England; all this is true, beyond the power of contradiction.

And now, sir, there are two measures to which I will refer, not so ancient as to belong to the early history of the public lands, and not so recent as to be on this side of the period when the gentleman charitably imagines a new direction may have been given to New England feeling and New England votes. These measures, and the New England votes in support of them, may be taken as samples and specimens of all the rest.

In 1820, (observe, in 1820) the people of the West besought Congress for a reduction in the price of lands. In favor of that reduction, New England, with a delegation of forty members in the other House, gave thirty-three votes, and one only against it. The four Southern States, with fifty members, gave thirty-two votes for it, and seven against it. Again, in 1821, (observe again, sir, the time) the law passed for the relief of the purchasers of the public lands. This was a measure of vital importance to the West, and more especially to the Southwest. It authorized the relinquishment of contracts for lands which had been entered into at high prices, and a reduction in the other cases of not less than thirty-seven and one-half per cent. on the purchase money. Many millions of dollars—six or seven I believe, at least, probably much more—were relinquished by this law. On this bill, New England, with her forty members, gave more affirmative votes than the four Southern States, with their fifty-two or fifty-three members.

These two are far the most important measures respecting the public lands which have been adopted within the last twenty years. They took place in 1820 and 1821. That is the time when. And as to the manner how, the gentleman already sees that it was by voting, in solid column, for the required relief: and, lastly, as to the cause why, I tell the gentleman, it was because the members from New England thought the measures just and salutary; because they entertained towards the West neither envy, hatred, nor malice; because they deemed it becoming them, as just and enlightened public men, to meet the exigency



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which had arisen in the West with the appropriate measure of relief; because they felt it due to their own characters, and the characters of their New England predecessors in this Government, to act towards the new States in a spirit of liberal, patronizing, magnanimous policy. So much, sir, for the cause why; and I hope, that, by this time, the honorable gentleman is satisfied; if not, I do not know when, or how, or why, he ever will be.

Having recurred to these two important measures, in answer to the gentleman's inquiries, I must now beg permission to go back to a period yet something earlier, for the purpose of still further showing how much, or rather how little, reason there is for the gentleman's insinuation that political hopes or fears, or party associations, were the grounds of these New England votes. And, after what has been said, I hope it may be forgiven me if I allude to some political opinions and votes of my own, of very little public importance, certainly, but which, from the time at which they were given and expressed, may pass for good witnesses on this occasion.

This Government, from its origin to the peace of 1815, had been too much engrossed with various other important concerns to be able to turn its thoughts inward, and look to the development of its vast internal resources. In the early part of President Washington's administration, it was fully occupied with organizing the Departments, providing for the public debt, defending the frontiers, and maintaining domestic peace. Before the termination of that administration, the fires of the French Revolution blazed forth, as from a new opened volcano, and the whole breadth of the ocean did not entirely secure us from its effects. The smoke and the cinders reached us, though not the burning lava. Difficult and agitating questions, embarrassing to Government, and dividing public opinion, sprang out of the new state of our foreign relations, and were succeeded by others, and yet again by others, equally embarrassing, and equally exciting division and discord, through the long series of twenty years; till they finally issued in another war with England. Down to the close of that war, no distinct, marked, and deliberate attention had been given, or could have been given, to the internal condition of the country, its capacities of improvement, or the constitutional power of the Government in regard to objects connected with such improvement.

The peace brought about an entirely new, and the most interesting state of things: it opened to us other prospects, and suggested other duties. We ourselves were changed, and the whole world was changed. The pacification of Europe, after June, 1815, assumed a firm and permanent aspect. The nations evidently manifested that they were disposed for peace. Some agitation of the waves might be expected, even after the storm had subsided, but the tendency was, strongly and rapidly, towards settled repose.

It so happened, sir, that I was, at that time, a member of Congress, and, like others, naturally turned my attention to the contemplation of the newly altered condition of the country and of the world. It appeared plainly enough to me, as well as to wiser and more experienced men, that the policy of the Government would necessarily take a start in a new direction; because new directions would be given to the pursuits and occupations of the people. We had pushed our commerce far and fast, under the advantage of a neutral flag. But there were now no longer flags either neutral or belligerent. The harvest of neutrality had been great, but we had gathered it all. With the peace of Europe, it was obvious there would spring up, in the circle of nations, a revived and invigorated spirit of trade, and a new activity in all the business and objects of civilized life. Hereafter, our commercial gains were to be earned only by success in a close and intense competition. Other nations would produce for themselves, and carry for themselves, and manu-

facture for themselves, to the full extent of their abilities. The crops of our plains would no longer sustain European armies, nor our ships longer supply those whom war had rendered unable to supply themselves. It was obvious that, under these circumstances, the country would begin to survey itself, and to estimate its own capacity of improvement. And this improvement—how was it to be accomplished, and who was to accomplish it? We were ten or twelve millions of people, spread over almost half a world. We were twenty-four States, some stretching along the same sea board, some along the same line of inland frontier, and others on opposite banks of the same vast rivers. Two considerations at once presented themselves, at looking at this state of things, with great force. One was, that that great branch of improvement, which consisted in furnishing new facilities of intercourse, necessarily ran into different States, in every leading instance, and would benefit the citizens of all such States. No one State, therefore, in such cases, would assume the whole expense, nor was the co-operation of several States to be expected. Take the instance of the Delaware breakwater. It will cost several millions of money. Would Pennsylvania alone have ever constructed it? Certainly never, while this Union lasts; because it is not for her sole benefit. Would Pennsylvania, New Jersey, and Delaware, have united to accomplish it at their joint expense? Certainly not, for the same reason. It could not be done, therefore, but by the General Government. The same may be said of the large inland undertakings, except that, in them, Government, instead of bearing the whole expense, co-operates with others who bear a part. The other consideration is, that the United States have the means. They enjoy the revenues derived from commerce, and the States have no abundant and easy sources of public income. The custom houses fill the general treasury, while the States have scanty resources, except by resort to heavy direct taxes.

Under this view of things, I thought it necessary to settle, at least for myself, some definite notions, with respect to the powers of the Government in regard to internal affairs. It may not savor too much of self-commendation to remark, that, with this object, I considered the constitution, its judicial construction, its contemporaneous exposition, and the whole history of the legislation of Congress under it; and I arrived at the conclusion, that Government had power to accomplish sundry objects, or aid in their accomplishment, which are now commonly spoken of as Internal Improvements. That conclusion, sir, may have been right, or it may have been wrong. I am not about to argue the grounds of it at large. I say only that it was adopted and acted on even so early as in 1816. Yes, I made up my opinion, and determined on my intended course of political conduct, on these subjects, in the Fourteenth Congress, in 1816. And now, I have further to say, that I made up these opinions, and entered on this course of political conduct, *Teuero duce*. Yes, sir, I pursued, in all this, a South Carolina track. On the doctrines of Internal Improvement, South Carolina, as she was then represented in the other House, set forth, in 1816, under a fresh and leading breeze, and I was among the followers. But if my leader sees new lights, and turns a sharp corner, unless I see new lights also, I keep straight on in the same path. I repeat, that leading gentlemen from South Carolina were first and foremost in behalf of the doctrines of Internal Improvements, when those doctrines first came to be considered and acted upon in Congress. The debate on the Bank question, on the Tariff of 1816, and on the Direct Tax, will show who was who, and what was what, at that time. The tariff of 1816, one of the plain cases of oppression and usurpation, from which, if the Government does not recede, individual States, it is said, may justly secede from the Government, is, sir, in truth, a South Carolina tariff;

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supported by South Carolina votes. But for those votes, it could not have passed in the form in which it did pass; whereas, if it had depended on Massachusetts votes, it would have been lost. Does not the honorable gentleman well know all this? There are certainly those who do, full well, know it all. I do not say this to reproach South Carolina. I only state the fact; and I think it will appear to be true, that, among the earliest and boldest advocates of the tariff, as a measure of protection, and on the express ground of protection, were leading gentlemen of South Carolina in Congress. I did not then, and cannot now, understand their language in any other sense. While this tariff of 1816 was under discussion, in the House of Representatives, an honorable gentleman from Georgia, now of this House, [Mr. FOSBERT] moved to reduce the proposed duty on cotton. He failed by four votes, South Carolina giving three votes (enough to have turned the scale) against his motion. The act, sir, then passed, and received, on its passage, the support of a majority of the Representatives of South Carolina present and voting. This act is the first in the order of those now denounced as plain usurpations. We see it daily, in the list, by the side of those of 1824 and 1828, as a case of manifest oppression, justifying disunion. I put it home to the honorable member from South Carolina, that his own State was not only "art and part" in this measure, but the *causa causans*. Without her aid this seminal principle of mischief, this root of Uvas, could not have been planted. I have already said, and it is true, that this act proceeded on the ground of protection. It interfered directly with existing interests of great value and amount. It cut up the Calcutta cotton trade by the roots, but it passed, nevertheless, and it passed on the principle of protecting manufactures, on the principle against free trade, on the principle opposed to that which lets us alone. (Note 2.)

Such [said Mr. W.] were the opinions of important and leading gentlemen from South Carolina, on the subject of Internal Improvement, in 1816. I went out of Congress the next year, and returning again, in 1823, thought I found South Carolina where I had left her. I really supposed that all things remained as they were, and that the South Carolina doctrine of Internal Improvements would be defended by the same eloquent voices, and the same strong arms, as formerly. In the lapse of these six years, it is true, political associations had assumed a new aspect, and new divisions. A party had arisen in the South hostile to the doctrine of Internal Improvements, and had vigorously attacked that doctrine. Anti-consolidation was the flag under which this party fought; and its supporters inveighed against Internal Improvements much after the manner in which the honorable gentleman has now inveighed against them, as part and parcel of the system of consolidation. Whether this party arose in South Carolina herself, or in her neighborhood, is more than I know. I think the latter. However that may have been, there were those found in South Carolina ready to make war upon it, and who did make intrepid war upon it. Names being regarded as things, in such controversies, they bestowed on the anti-improvement gentlemen the appellation of Radicals. Yes, sir, the name of Radicals, as a term of distinction, applicable and applied to those who denied the liberal doctrines of Internal Improvements, originated, according to the best of my recollection, somewhere between North Carolina and Georgia. Well, sir, these mischievous Radicals were to be put down; and the strong arm of South Carolina was stretched out to put them down. About this time, sir, I returned to Congress. The battle with the Radicals had been fought, and our South Carolina champions of the doctrines of Internal Improvements had nobly maintained their ground, and were understood to have achieved a victory. They have driven back the enemy with discomfiture—a thing, by the way, sir, which

is not always performed when it is promised. A gentleman, to whom I have already referred in this debate, had come into Congress during my absence from it, from South Carolina, and had brought with him a high reputation for ability. He came from a school with which we had been acquainted, *et nascitur a sociis*. I hold in my hand, sir, a printed speech of this distinguished gentleman, [Mr. McDUFFIE] "on Internal Improvements," delivered about the period to which I now refer, and printed, with a few introductory remarks upon consolidation, in which, sir, I think he quite consolidated the arguments of his opponents, the Radicals, if to crush be to consolidate. I give you a short but substantive quotation from these remarks. He is speaking of a pamphlet then recently published, entitled "Consolidation;" and having alluded to the question of renewing the charter of the former Bank of the United States, he says: "Moreover, in the early history of parties, and when Mr. Crawford advocated a renewal of the old charter, it was considered a federal measure, which Internal Improvements never was, as this author erroneously states. This latter measure originated in the administration of Mr. Jefferson, with the appropriation for the Cumberland Road; and was first proposed, as a system, by Mr. Calhoun, and carried through the House of Representatives by a large majority of the republicans, including almost every one of the leading men who carried us through the late war."

So, then, Internal Improvement is not one of the federal heresies. One paragraph more, sir:

"The author in question, not content with denouncing as federalists Gen. Jackson, Mr. Adams, Mr. Calhoun, and the majority of the South Carolina delegation in Congress, modestly extends the denunciation to Mr. Monroe, and the whole republican party. Here are his words: 'During the administration of Mr. Monroe, much has passed which the republican party would be glad to approve, if they could! But the principal feature, and that which has chiefly elicited these observations, is the renewal of the system of Internal Improvements.' Now this measure was adopted by a vote of 115 to 86, of a republican Congress, and sanctioned by a republican President. Who, then, is this author, who assumes the high prerogative of denouncing, in the name of the republican party, the republican administration of the country? A denunciation including within its sweep Calhoun, Lowndes, and Cheves, men who will be regarded as the brightest ornaments of South Carolina, and the strongest pillars of the republican party, as long as the late war shall be remembered, and talents and patriotism shall be regarded as the proper objects of the admiration and gratitude of a free people!"

Such are the opinions, sir, which were maintained by South Carolina gentlemen, in the House of Representatives, on the subject of Internal Improvements, when I took my seat there, as a member from Massachusetts, in 1823. But this is not all. We had a bill before us, and passed it in that House, entitled "An act to procure the necessary surveys, plans, and estimates, upon the subject of roads and canals." It authorized the President to cause surveys and estimates to be made of the routes of such roads and canals as he might deem of national importance, in a commercial or military point of view, or for the transportation of the mail, and appropriated thirty thousand dollars, out of the treasury, to defray the expense. This act, though preliminary in its nature, covered the whole ground. It took for granted the complete power of Internal Improvement, as far as any of its advocates had ever contended for it. Having passed the other House, the bill came up to the Senate, and was here considered and debated in April, 1824. The honorable member from South Carolina was a member of the Senate at that time. While the bill was under consideration here, a motion was made to add the following proviso:

"Provided, That nothing herein contained shall be con-

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strued to affirm or admit a power in Congress, on their own authority, to make roads or canals, within any of the States of the Union." The yeas and nays were taken on this proviso, and the honorable member voted in the negative! The proviso failed.

A motion was then made to add this proviso, viz:

"*Provided*, That the faith of the United States is hereby pledged, that no money shall ever be expended for roads and canals, except it shall be among the several States, and in the same proportion as direct taxes are laid and assessed by the provisions of the constitution."

The honorable member voted against this proviso, also, and it failed. The bill was then put on its passage, and the honorable member voted for it, and it passed, and became a law.

Now it strikes me, sir, that there is no maintaining these votes, but upon the power of Internal Improvement, in its broadest sense. In truth, these bills for surveys and estimates have always been considered as test questions: they show who is for and who against Internal Improvement. This law itself went the whole length, and assumed the full and complete power. The gentleman's vote sustained that power, in every form in which the various propositions to amend presented it. He went for the entire and unrestrained authority, without consulting the States, and without agreeing to any proportionate distribution. And now suffer me to remind you, that it is this very same power, thus sanctioned, in every form, by the gentleman's own opinion, that is now so plain and manifest a usurpation, that the State of South Carolina is supposed to be justified in refusing submission to any laws carrying the power into effect. Truly, sir, is this not a little too hard? May we not crave some mercy, under favor and protection of the gentleman's own authority? Admitting that a road, or a canal, must be written down flat usurpation as ever was committed, may we find no mitigation in our respect for his place, and his vote, as one that knows the law?

The tariff, which South Carolina had an efficient hand in establishing, in 1816, and this asserted power of Internal Improvement, advanced by her in the same year, and, as we have seen, approved and sanctioned by her Representatives in 1824, these two measures are the great grounds on which she is now thought to be justified in breaking up the Union, if she sees fit to break it up!

I may now safely say, I think, that we have had the authority of leading and distinguished gentlemen from South Carolina, in support of the doctrine of Internal Improvement. I repeat that, up to 1824, I, for one, followed South Carolina; but, when that star, in its ascension, veered off, in an unexpected direction, I relied on its light no longer. [Here the VICE PRESIDENT said: Does the Chair understand the gentleman from Massachusetts to say that the person now occupying the chair of the Senate has changed his opinions on the subject of Internal Improvements?] From nothing ever said to me, sir, have I had reason to know of any change in the opinions of the person filling the chair of the Senate. If such change has taken place, I regret it. I speak generally of the State of South Carolina. Individuals, we know there are, who hold opinions favorable to the power. An application for its exercise, in behalf of a public work in South Carolina itself, is now pending, I believe, in the other House, presented by members from that State.

I have thus, sir, perhaps not without some tediousness of detail, shown that, if I am in error, on the subjects of Internal Improvement, how, and in what company I fell into that error. If I am wrong, it is apparent who misled me.

I go to other remarks of the honorable member, and I have to complain of an entire misapprehension of what I said on the subject of the national debt, though I can hardly perceive how any one could misunderstand me. What I said was, not that I wished to put off the payment

of the debt, but, on the contrary, that I had always voted for every measure for its reduction, as uniformly as the gentleman himself. He seems to claim the exclusive merit of a disposition to reduce the public charge. I do not allow it to him. As a debt, I was, I am, for paying it, because it is a charge on our finances, and on the industry of the country. But I observed that I thought I perceived a morbid fervor on that subject—an excessive anxiety to pay off the debt, not so much because it is a debt simply, as because, while it remains, it furnishes one objection to disunion. It is a tie of common interest while it lasts. I did not impute such motives to the honorable gentleman himself, but that there is such a feeling in existence I have not a particle of doubt. The most I said was, that, if one effect of the debt was to strengthen our Union, that effect itself was not regretted by me, however much others might regret it. The gentleman has not seen how to reply to this, otherwise than by supposing me to have advanced the doctrine that a national debt is a national blessing. Others, I must hope, will find less difficulty in understanding me. I distinctly and pointedly cautioned the honorable member not to understand me as expressing an opinion favorable to the continuance of the debt. I repeated this caution, and repeated it more than once; but it was thrown away. On yet another point, [said Mr. W.] I was still more unaccountably misunderstood. The gentleman had harangued against "consolidation." I told him, in reply, that there was one kind of consolidation to which I was attached, and that was the consolidation of our Union; and that this was precisely that consolidation to which I feared others were not attached. That such consolidation was the very end of the constitution; the leading object, as they had informed us themselves, which its framers kept in view. I turned to their communication, and read their very words—"the consolidation of the Union"—and expressed my devotion to this sort of consolidation. I said, in terms, that I wished not, in the slightest degree, to augment the powers of this Government; that my object was to preserve, not to enlarge; and that, by consolidating the Union, I understood no more than the strengthening of the Union, and perpetuating it. Having been thus explicit, having thus read from the printed book the precise words which I adopted, as expressing my own sentiments, it passes comprehension how any man could understand me as contending for an extension of the powers of the Government, or for consolidation, in that odious sense in which it means an accumulation in the Federal Government of the powers properly belonging to the States.

I repeat, sir, that, in adopting the sentiments of the framers of the constitution, I read their language audibly, and word for word; and I pointed out the distinction, just as fully as I have now done, between the consolidation of the Union and that other obnoxious consolidation which I disclaimed. And yet the honorable member misunderstood me. The gentleman had said that he wished for no fixed revenue—not a shilling. If, by a word, he could convert the capitol into gold, he would not do it. Why all this fear of revenue? Why, sir, because, as the gentleman told us, it tends to consolidation. Now, this can mean neither more nor less than that a common revenue is a common interest, and that all common interests tend to hold the Union of the States together. I confess I like that tendency; if the gentleman dislikes it, he is right in deprecating a shilling's fixed revenue. So much, sir, for consolidation.

As well as I recollect the course of his remarks, the honorable gentleman next recurred to the subject of the tariff. He did not doubt the word must be of unpleasant sound to me, and proceeded, with an effort neither new nor attended with new success, to involve me and my votes in inconsistency and contradiction. I am happy the gentleman has furnished me an opportunity of a timely

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remark or two on that subject. I was glad he approached it for it is a question I enter upon without fear from any body. The strenuous toil of the gentleman has been to raise an inconsistency between my dissent to the tariff in 1824 and my vote in 1828. It is labor lost. He pays undeserved compliment to my speech in 1824; but this is only to raise me high, that my fall, as he would have it, in 1828, may be more signal. Sir, there was no fall at all. Between the ground I stood on in 1824, and that I took in 1828, there was not only no precipice, but no declivity. It was a change of position to meet new circumstances, but on the same level. A plain tale explains the whole matter. In 1816, I had not acquiesced in the tariff, then supported by South Carolina. To some parts of it, especially, I felt and expressed great repugnance. I held the same opinions in 1821, at the meeting in Faneuil Hall, to which the gentleman has alluded. I said then, and say now, that, as an original question, the authority of Congress to exercise the revenue power, with direct reference to the protection of manufactures, is a questionable authority; far more questionable, in my judgment, than the power of Internal Improvements. I must confess, sir, that, in one respect, some impression has been made on my opinions lately. Mr. Madison's publication has put the power in a very strong light. He has placed it, I must acknowledge, upon grounds of construction and argument, which seem impregnable. But even if the power were doubtful, on the face of the constitution itself, it had been assumed and asserted in the first revenue law ever passed under that same constitution; and, on this ground, as a matter settled by cotemporaneous practice, I had refrained from expressing the opinion that the tariff laws transcended constitutional limits, as the gentleman supposes. What I did say at Faneuil Hall, as far as I now remember, was, that this was originally matter of doubtful construction. The gentleman himself, I suppose, thinks there is no doubt about it, and that the laws are plainly against the constitution. Mr. Madison's letters, already referred to, contain, in my judgment, by far the most able exposition extant of this part of the constitution. He has satisfied me, so far as the practice of the Government had left it an open question.

With a great majority of the Representatives of Massachusetts, I voted against the tariff of 1824. My reasons were then given, and I will not now repeat them. But, notwithstanding our dissent, the great States of New York, Pennsylvania, Ohio, and Kentucky, went for the bill, in almost unbroken column, and it passed. Congress and the President sanctioned it, and it became the law of the land. What, then, were we to do? Our only option was, either to fall in with this settled course of public policy, and accommodate ourselves to it as well as we could, or to embrace the South Carolina doctrine, and talk of nullifying the statute by State interference.

This last alternative did not suit our principles, and, of course, we adopted the former. In 1827, the subject came again before Congress, on a proposition favorable to wool and woollens. We looked upon the system of protection as being fixed and settled. The law of 1824 remained. It had gone into full operation, and, in regard to some objects intended by it, perhaps most of them, had produced all its expected effects. No man proposed to repeal it; no man attempted to renew the general contest on its principle. But, owing to subsequent and unforeseen occurrences, the benefit intended by it to wool and woollen fabri's had not been realized. Events, not known here when the law passed, had taken place, which defeated its object in that particular respect. A measure was accordingly brought forward to meet this precise deficiency, to remedy this particular defect. It was limited to wool and woollens. Was ever any thing more reasonable? If the policy of the tariff laws had become established in principle, as the permanent policy of Government,

should they not be revised and amended, and made equal like other laws, as exigencies should arise, or justice require? Because we had doubted about adopting the system, were we to refuse to cure its manifest defects, after it became adopted, and when no one attempted its repeal? And this, sir, is the inconsistency so much bruited. I had voted against the tariff of 1824—but it passed; and in 1827 and 1828 I voted to amend it, in a point essential to the interests of my constituents. Where is the inconsistency? Could I do otherwise? Sir, does political consistency consist in always giving negative votes? Does it require of a public man to refuse to concur in amending laws, because they passed against his consent? Having voted against the tariff originally, does consistency demand that I should do all in my power to maintain an unequal tariff, burdensome to my own constituents, in many respects, favorable in none? To consistency of that sort, I lay no claim; and there is another sort to which I lay as little, and that is, a kind of consistency by which persons feel themselves as much bound to oppose a proposition after it has become a law of the land, as before.

The bill of 1827, limited, as I have said, to the single object in which the tariff of 1824 had manifestly failed in its effect, passed the House of Representatives, but was lost here. We had then the act of 1828. I need not recur to the history of a measure so recent. Its enemies spiced it with whatsoever they thought would render it distasteful; its friends took it, drugged as it was. Vast amounts of property, many millions, had been invested in manufactures, under the inducements of the act of 1824. Events called loudly, as I thought, for further regulation to secure the degree of protection intended by that act. I was disposed to vote for such regulation, and desired nothing more; but certainly was not to be bantered out of my purpose by a threatened augmentation of duty on molasses, put into the bill for the avowed purpose of making it obnoxious. The vote may have been right or wrong, wise or unwise; but it is little less than absurd to allege against it an inconsistency with opposition to the former law.

Sir, as to the general subject of the tariff, I have little now to say. Another opportunity may be presented. I remarked the other day, that this policy did not begin with us in New England; and yet, sir, New England is charged, with vehemence, as being favorable, or charged with equal vehemence, as being unfavorable to the tariff policy, just as best suits the time, place, and occasion, for making some charge against her. The credulity of the public has been put to its extreme capacity of false impression, relative to her conduct in this particular. Through all the South, during the late contest, it was New England policy, and a New England administration, that was afflicting the country with a tariff beyond all endurance; while, on the other side of the Alleghany, even the act of 1828, itself, the very sublimated essence of oppression, according to Southern opinions, was pronounced to be one of those blessings for which the West was indebted to the "generous South."

With large investments in manufacturing establishments, and many and various interests connected with and dependent on them, it is not to be expected that New England, any more than other portions of the country, will now consent to any measure, destructive, or highly dangerous. The duty of the Government, at the present moment, would seem to be to preserve, not to destroy; to maintain the position which it has assumed; and, for one, I shall feel it an indispensable obligation to hold it steady, as far as in my power, to that degree of protection which it has undertaken to bestow. No more of the tariff.

Professing to be provoked by what he chose to consider a charge made by me against South Carolina, the honorable member has taken up a new crusade against New England. Leaving, altogether, the subject of

the public lands, in which his success, perhaps, had been neither distinguished nor satisfactory, and letting go, also, of the topic of the tariff, he sallied forth in a general assault on the opinions, politics, and parties, of New England, as they have been exhibited in the last thirty years. This is natural. The "narrow policy" of the public lands had proved a legal settlement in South Carolina, and was not to be removed. The "accursed policy" of the tariff, also, had established the fact of its birth and parentage, in the same State. No wonder, therefore, the gentleman wished to carry the war, as he expressed it, into the enemy's country. Prudently willing to quit these subjects, he was, doubtless, desirous of fastening on others, which could not be transferred south of Mason and Dixon's line. The politics of New England became his theme; and it was in this part of his speech, I think, that he menaced me with such sore discomfiture. Discomfiture! Why, sir, when he attacks any thing which I maintain, and overthrows it; when he turns the right or left of any position which I take up; when he drives me from any ground I choose to occupy; he may then talk of discomfiture—but not till that distant day. What has he done? Has he maintained his own charges? Has he proved what he alleged? Has he sustained himself in his attack on the Government, and on the history of the North, in the matter of the public lands? Has he disproved a fact, refuted a proposition, weakened an argument, maintained by me? Has he come within beat of drum of any position of mine? Oh, no, but he has "carried the war into the enemy's country!" Carried the war into the enemy's country! Yes, sir; and what sort of a war has he made of it? Why, sir, he has stretched a drag-net over the whole surface of perished pamphlets, indiscreet sermons, frothy paragraphs, and fuming popular addresses; over whatever the pulpit, in its moments of alarm, the press in its heats, and parties in their extravagance, have severally thrown off, in times of general excitement and violence. He has thus swept together a mass of such things as, but that they are now old, the public health would have required him rather to leave in their state of dispersion. For a good long hour or two, we had the unbroken pleasure of listening to the honorable member, while he recited, with his usual grace and spirit, and with evident high gusto, speeches, pamphlets, addresses, and all the *de cæteris* of the political press, such as warm heads produce in warm times; and such as it would be "discomfiture," indeed, for any one, whose taste did not delight in that sort of reading, to be obliged to peruse at any time. This is his war. This it is to carry the war into the enemy's country. It is in an invasion of this sort, that he flatters himself with the expectation of gaining laurels fit to adorn a Senator's brow.

I shall not [said Mr. W.]—it will, I trust, not be expected that I should, either now, or at any time—separate this farrago into parts, and examine and answer its components. I shall hardly bestow upon it all, a general remark or two. In the run of forty years, sir, under this constitution, we have experienced sundry successive violent party contests. Party arose, indeed, with the constitution itself, and, in some form or other, has attended it through the greater part of its history. Whether any other constitution than the old Articles of Confederation was desirable, was, itself, a question on which parties formed: if a new constitution were framed, what powers should be given to it, was another question; and, when it had been formed, what was, in fact, the just extent of the powers actually conferred, was a third. Parties, as we know, existed under the first administration, as distinctly marked as those which manifested themselves at any subsequent period. The contest immediately preceding the political change in 1801, and that, again, which existed at the commencement of the late war, are other instances of party excitement, of something more than usual strength

and intensity. In all these conflicts, there was, no doubt, much of violence on both and all sides. It would be impossible, if one had a fancy for such employment, to adjust the relative *quantum* of violence between these contending parties. There was enough in each, as must always be expected in popular Governments. With a great deal of proper and decorous discussion, there was mingled a great deal, also, of declamation, virulence, crimination, and abuse. In regard to any party, probably, at one of these leading epochs in the history of parties, enough may be found to make out another equally inflamed exhibition as that with which the honorable member has edified us. For myself, sir, I shall not rake among the rubbish of by-gone times, to see what I can find, or whether I cannot find something, by which I can fix a blot on the escutcheon of any State, any party, or any part of the country. General Washington's administration was steadily and zealously maintained, as we all know, by New England. It was violently opposed elsewhere. We know in what quarter he had the most earnest, constant, and persevering support, in all his great and leading measures. We know where his private and personal character were held in the highest degree of attachment and veneration; and we know, too, where his measures were opposed, his services slighted, and his character vilified. We know, or we might know, if we turned to the Journals, who expressed respect, gratitude, and regret, when he retired from the Chief Magistracy; and who refused to express either respect, gratitude, or regret. I shall not open those Journals. Publications more abusive or scurrilous never saw the light, than were sent forth against Washington, and all his leading measures, from presses South of New England. But I shall not look them up. I employ no scavengers; no one is in attendance on me, tendering such means of retaliation; and if there were, with an ass's load on them, with a bulk as huge as that which the gentleman himself has produced, I would not touch one of them. I see enough of the violence of our own times, to be no way anxious to rescue from forgetfulness the extravagancies of times past. Besides, what is all this to the present purpose? It has nothing to do with the public lands, in regard to which the attack was begun; and it has nothing to do with those sentiments and opinions, which, I have thought, tend to disunion, and all of which the honorable member seems to have adopted himself, and undertaken to defend. New England has, at times, so argues the gentleman, held opinions as dangerous as those which he now holds. Suppose this were so; why should he, therefore, abuse New England? If he finds himself countenanced by acts of hers, how is it that, while he relies on these acts, he covers, or seeks to cover, their authors with reproach? But, sir, if, in the course of forty years, there have been undue effervescences of party in New England, has the same thing happened nowhere else? Party animosity, and party outrage, not in New England, but elsewhere, denounced President Washington, not only as a Federalist, but as a Tory; a British agent; a man who, in his high office, sanctioned corruption! But does the honorable member suppose, that, if I had a tender here, who should put such an effusion of wickedness and folly in my hand, that I would stand up and read it against the South? Parties ran into great heats, again, in 1799 and 1800. What was said, sir, or rather what was not said, in those years, against John Adams, one of the signers of the Declaration of Independence, and its admitted ablest defender on the floor of Congress? If the gentleman wishes to increase his stores of party abuse and frothy violence; if he has a determined proclivity to such pursuits; there are treasures of that sort south of the Potomac, much to his taste, yet untouched: I shall not touch them.

The parties which divided the country at the commencement of the late war, were violent. But, then, there was

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violence on both sides, and violence in every State. Minorities and majorities were equally violent. There was no more violence against the war in New England, than in other States; nor any more appearance of violence, except that, owing to a dense population, greater facility of assembling, and more presses, there may have been more in quantity, spoken and printed there, than in some other places. In the article of sermons, too, New England is somewhat more abundant than South Carolina; and, for that reason, the chance of finding here and there an exceptional one, may be greater. I hope, too, there are more good ones. Opposition may have been more formidable in New England, as it embraced a larger portion of the whole population; but it was no more unrestrained in its principles, or violent in manner. The minorities dealt quite as harshly with their own State Governments as the majorities dealt with the administration here. There were presses on both sides, popular meetings on both sides, ay, and pulpits on both sides, also. The gentleman's purveyors have only catered for him among the productions of one side. I certainly shall not supply the deficiency by furnishing samples of the other. I leave to him, and to them, the whole concern.

It is enough for me to say, that if, in any part of this, their grateful occupation; if, in all their researches, they find any thing in the history of Massachusetts, or New England, or in the proceedings of any legislature, or other public body, disloyal to the Union, speaking slightly of its value, proposing to break it up, or recommending non-intercourse with neighboring States, on account of difference of political opinion, then, sir, I give them all up to the honorable gentleman's unrestrained rebuke; expecting, however, that he will extend his buffetings, in like manner, to all similar proceedings, wherever else to be found.

The gentleman, sir, has spoken at large of former parties, now no longer in being, by their received appellations, and has undertaken to instruct us, not only in the knowledge of their principles, but of their respective pedigrees also. He has ascended to the origin, and run out their genealogies. With most exemplary modesty, he speaks of the party to which he professes to have belonged himself, as the true pure, the only honest, patriotic party, derived by regular descent, from father to son, from the time of the virtuous Romans! Spreading before us the family tree of political parties, he takes especial care to show himself snugly perched on a popular bough! He is wakeful to the expediency of adopting such rules of descent as shall bring him in, in exclusion of others, as an heir to the inheritance of all public virtue, and all true political principles. His party, and his opinions, are sure to be orthodox; heterodoxy is confined to his opponents. He spoke, sir, of the federalists, and I thought I saw some eyes begin to open and stare a little, when he ventured on that ground. I expected he would draw his sketches rather lightly, when he looked on the circle round him, and especially if he should cast his thoughts to the high places out of the Senate. Nevertheless, he went back to Rome, *ad annum urbe condita*, and found the fathers of the federalists in the primeval aristocrats of that renowned empire! He traced the flow of federal blood down, through successive ages and centuries, till he brought it into the veins of the American tor.ea, (of whom, by the way, there were twenty in the Carolinas for one in Massachusetts.) From the tories, he followed it to the federalists: and as the federal party was broken up, and there was no possibility of transmitting it further on this side of the Atlantic, he seems to have discovered that it has gone off, collaterally, though against all the canons of descent, into the ultras of France, and finally become extinguished, like exploded gas, among the adherents of Don Miguel! This, sir, is an abstract of the gentleman's history of federalism. I am not about to con-

trovert it. It is not, at present, worth the pains of refutation; because, sir, if, at this day, any one feels the sin of federalism lying heavily on his conscience, he can easily obtain remission. He may even have an indulgence, if he be desirous of repeating the same transgression. It is an affair of no difficulty to get into this same right line of patriotic descent. A man, now-a-days, is at liberty to choose his political parentage. He may elect his own father. Federalist, or not, he may, if he choose, claim to belong to the favored stock, and his claim will be allowed. He may carry back his pretensions just as far as the honorable gentleman himself; nay, he may make himself out the honorable gentleman's own cousin, and prove, satisfactorily, that he is descended from the same political great grandfather. All this is allowable. We all know a process, sir, by which the whole Essex Junto could, in one hour, be all washed white from their ancient federalism, and come out, every one of them, an original democrat, dyed in the wool! Some of them have actually undergone the operation, and they say it is quite easy. The only inconvenience it occasions, as they tell us, is a slight tendency of the blood to the face, a soft suffusion, which however is very transient, since nothing is said by those whom they join, calculated to deepen the red on the cheek, but a prudent silence observed in regard to all the past. Indeed, sir, some smiles of approbation have been bestowed, and some crumbs of comfort have fallen, not a thousand miles from the door of the Hartford Convention itself. And if the author of the ordinance of 1787 possessed the other requisite qualifications, there is no knowing, notwithstanding his federalism, to what heights of favor he might not yet attain.

In carrying his warfare, such as it was, into New England, the honorable gentleman all along professes to be acting on the defensive. He elects to consider me as having assailed South Carolina, and insists that he comes forth only as her champion, and in her defence. Sir, [said Mr. W.] I do not admit that I made any attack whatever on South Carolina. Nothing like it. The honorable member, in his first speech, expressed opinions in regard to revenue, and some other topics, which I heard both with pain and with surprise. I told the gentleman that I was aware that such sentiments were entertained out of the Government, but had not expected to find them advanced in it; that I knew there were persons in the South who speak of our Union with indifference, or doubt, taking pains to magnify its evils, and to say nothing of its benefits; that the honorable member himself, I was sure, could never be one of these; and I regretted the expression of such opinions as he had avowed, because I thought their obvious tendency was to encourage feelings of disrespect to the Union, and to weaken its connexion. This, sir, is the sum and substance of all I said on the subject. And this constitutes the attack which called on the chivalry of the gentleman, in his opinion, to harry us with such a foray, among the party pamphlets and party proceedings of Massachusetts! If he means that I spoke with dissatisfaction or disrespect of the ebullitions of individuals in South Carolina, it is true. But, if he means that I had assailed the character of the State, her honor, or patriotism; that I had reflected on her history or her conduct; he had not the slightest ground for any such assumption. I did not even refer, I think, in my observations, to any collection of individuals. I said nothing of the recent conventions. I spoke in the most guarded and careful manner, and only expressed my regret for the publication of opinions which I presumed the honorable member disapproved as much as myself. In this it seems I was mistaken. I do not remember that the gentleman has discriminated any sentiment, or any opinion, of a supposed anti-union tendency, which on all, or any of the recent occasions, has been expressed. The whole drift of his speech has been rather to prove that, in divers times and manners, sentiments equally lia-

ble to my objection have been promulgated in New England. And one would suppose that his object, in this reference to Massachusetts, was to find a precedent to justify proceedings in the South, were it not for the reproach and contumely with which he labors, all along, to load these, his own chosen precedents. By way of defending South Carolina from what he chuses to think an attack on her, he first quotes the example of Massachusetts, and then denounces that example in good set terms. This two-fold purpose, not very consistent with itself, one would think, was exhibited more than once in the course of his speech. He referred, for instance, to the Hartford Convention. Did he do this for authority, or for a topic of reproach? Apparently for both: for he told us that he should find no fault with the mere fact of holding such a convention, and considering and discussing such questions as he supposes were then and there discussed: but what rendered it obnoxious was the time in which it was holden, and the circumstances of the country, then existing. We were in war, he said, and the country needed all our aid; the hand of Government required to be strengthened, not weakened; and patriotism should have postponed such proceedings to another day. The thing itself, then, is a precedent; the time and manner of it only, a subject of censure. Now, sir, I go much further, on this point, than the honorable member. Supposing, as the gentleman seems to, that the Hartford Convention assembled for any such purpose as breaking up the Union, because they thought unconstitutional laws had been passed, or to consult on that subject, or to calculate the value of the Union; supposing this to be their purpose, or any part of it, then I say the meeting itself was disloyal, and was obnoxious to censure, whether held in time of peace or time of war, or under whatever circumstances. The material question is the object. Is dissolution the object? If it be, external circumstances may make it a more or less aggravated case, but cannot affect the principle. I do not hold, therefore, sir, that the Hartford Convention was pardonable, even to the extent of the gentleman's admission, if its objects were really such as have been imputed to it. Sir, there never was a time, under any degree of excitement, in which the Hartford Convention, or any other convention, could maintain itself one moment in New England, if assembled for any such purpose as the gentleman says would have been an allowable purpose. To hold conventions to decide questions of constitutional law! To try the binding validity of statutes, by votes in a convention! Sir, the Hartford Convention, I presume, would not desire that the honorable gentleman should be their defender or advocate, if he puts their case upon such untenable and extravagant grounds.

Then, sir, the gentleman has no fault to find with these recently promulgated South Carolina opinions. And, certainly, he need have none: for his own sentiments, as now advanced, and advanced on reflection, as far as I have been able to comprehend them, go the full length of all these opinions. I propose, sir, to say something on these, and to consider how far they are just and constitutional. Before doing that, however, let me observe, that the eulogium pronounced on the character of the State of South Carolina, by the honorable gentleman, for her revolutionary and other merits, meets my hearty concurrence. I shall not acknowledge that the honorable member goes before me in regard for whatever of distinguished talent, or distinguished character, South Carolina has produced. I claim part of the honor, I partake in the pride of her great names. I claim them for countrymen, one and all. The Laurenses, the Rutledges, the Pinkneys, the Sumpters, the Marions—Americans all—whose fame is no more to be hemmed in by State lines, than their talents and patriotism were capable of being circumscribed within the same narrow limits. In their day and generation, they served and honored the country, and the

whole country; and their renown is of the treasures of the whole country. Him, whose honored name the gentleman himself bears—does he suppose me less capable of gratitude for his patriotism, or sympathy for his sufferings, than if his eyes had first opened upon the light in Massachusetts, instead of South Carolina? Sir, does he suppose it in his power to exhibit a Carolina name so bright as to produce envy in my bosom? No, sir, increased gratification and delight, rather. Sir, I thank God that, if I am gifted with little of the spirit which is able to raise mortals to the skies, I have yet none, as I trust, of that other spirit, which would drag angels down. When I shall be found, sir, in my place, here in the Senate, or elsewhere, to sneer at public merit, because it happened to spring up beyond the little limits of my own State or neighborhood; when I refuse, for any such cause, or for any cause, the homage due to American talent, to elevated patriotism, to sincere devotion to liberty and the country; or if I see an uncommon endowment of heaven—if I see extraordinary capacity and virtue in any son of the South—and if, moved by local prejudice, or gangrened by State jealousy, I get up here to abate the title of a hair from his just character and just fame, may my tongue cleave to the roof of my mouth!

Sir, let me recur to pleasing recollections; let me indulge in refreshing remembrance of the past; let me remind you that, in early times, no States cherished greater harmony, both of principle and feeling, than Massachusetts and South Carolina. Would to God, that harmony might again return! Shoulder to shoulder they went through the Revolution—hand in hand they stood round the administration of Washington, and felt his own great arm lean on them for support. Unkind feeling, if it exist; alienation and distrust are the growth, unnatural to such soils, of false principles since sown. They are weeds, the seeds of which that same great arm never scattered.

I shall enter on no encomiums upon Massachusetts; she needs none. There she is; behold her, and judge for yourselves. There is her history; the world knows it by heart. The past, at least, is secure. There is Boston, and Concord, and Lexington, and Bunker Hill; and there they will remain forever. The bones of her sons, fallen in the great struggle for Independence, now lie mingled with the soil of every State, from New England to Georgia; and there they will lie forever. And, sir, where American liberty raised its infant voice; and where its youth was nurtured and sustained; there it still lives, in the strength of its manhood, and full of its original spirit. If discord and disunion shall wound it; if party strife and blind ambition shall hawk at and tear it; if folly and madness; if uneasiness, under salutary and necessary restraint, shall succeed to separate it from that Union, by which alone its existence is made sure, it will stand, in the end, by the side of that cradle in which its infancy was rocked; it will stretch forth its arm, with whatever of vigor it may still retain, over the friends who may gather round it; and it will fall at last, if fall it must, amidst the proudest monuments of its own glory, and on the very spot of its origin.

There yet remains to be performed, [said Mr. W.] by far the most grave and important duty, which I feel to be devolved on me, by this occasion. It is to state, and to defend, what I conceive to be the true principles of the constitution under which we are here assembled. I might well have desired that so weighty a task should have fallen into other and abler hands. I could have wished that it should have been executed by those, whose character and experience give weight and influence to their opinions, such as cannot possibly belong to mine. But, sir, I have met the occasion, not sought it; and I shall proceed to state my own sentiments, without challenging for them any particular regard, with studied plainness, and as much precision as possible.

I understand the honorable gentleman from South Caro-

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lins to maintain, that it is a right of the State Legislatures to interfere, whenever, in their judgment, this Government transcends its constitutional limits, and to arrest the operation of its laws.

I understand him to maintain this right, as a right existing under the constitution; not as a right to overthrow it, on the ground of extreme necessity, such as would justify violent revolution.

I understand him to maintain an authority, on the part of the States, thus to interfere, for the purpose of correcting the exercise of power by the General Government, of checking it, and of compelling it to conform to their opinion of the extent of its powers.

I understand him to maintain that the ultimate power of judging of the constitutional extent of its own authority is not lodged exclusively in the General Government, or any branch of it; but that, on the contrary, the States may lawfully decide for themselves, and each State for itself, whether, in a given case, the act of the General Government transcends its power.

I understand him to insist that, if the exigency of the case, in the opinion of any State Government, require it, such State Government may, by its own sovereign authority, annul an act of the General Government, which it deems plainly and palpably unconstitutional.

This is the sum of what I understand from him to be the South Carolina doctrine; and the doctrine which he maintains. I propose to consider it, and to compare it with the constitution. Allow me to say, as a preliminary remark, that I call this the South Carolina doctrine, only because the gentleman himself has so denominated it. I do not feel at liberty to say that South Carolina, as a State, has ever advanced these sentiments. I hope she has not, and never may. That a great majority of her people are opposed to the tariff laws is doubtless true. That a minority, somewhat less than that just mentioned, conscientiously believe those laws unconstitutional, may probably also be true. But, that any majority holds to the right of direct State interference, at State discretion, the right of nullifying acts of Congress by acts of State legislation, is more than I know, and what I shall be slow to believe.

That there are individuals, besides the honorable gentleman, who do maintain these opinions, is quite certain. I recollect the recent expression of a sentiment, which circumstances attending its utterance and publication justify as in supposing was not unpremeditated. "The sovereignty of the State—never to be controlled, construed, or decided on, but by her own feelings of honorable justice."

[Mr. HAYNE here rose, and said that, for the purpose of being clearly understood, he would state, that his proposition was in the words of the Virginia resolution, as follows:

"That this Assembly doth explicitly and peremptorily declare, that it views the powers of the Federal Government as resulting from the compact, to which the States are parties, as limited by the plain sense and intention of the instrument constituting that compact, as no farther valid than they are authorized by the grants enumerated in that compact; and that, in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the States who are parties thereto have the right, and are in duty bound, to interpose, for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties, appertaining to them."

Mr. WEBSTER resumed: I am quite aware of the existence of the resolution which the gentleman read, and has now repeated, and that he relies on it as his authority. I know the source, too, from which it is understood to have proceeded. I need not say that I have much respect for the constitutional opinions of Mr. Madison; they would weigh greatly with me, always. But, before the authority of his opinion be vouched for the gentleman's proposition, it will be proper

to consider what is the fair interpretation of that resolution to which Mr. Madison is understood to have given his sanction. As the gentleman construes it, it is an authority for him. Possibly, he may not have adopted the right construction. That resolution declares, that, in the case of the dangerous exercise of powers not granted to the General Government, the States may interpose to arrest the progress of the evil. But how interpose, and what does this declaration purport? Does it mean no more than that there may be extreme cases, in which the people, in any mode of assembling, may resist usurpation, and relieve themselves from a tyrannical government? No one will deny this. Such resistance is not only acknowledged to be just in America, but in England, also. Blackstone admits as much, in his theory, and practice, too, of the English constitution. We, sir, who oppose the Carolina doctrine, do not deny that the people may, if they choose, throw off any government when it becomes oppressive and intolerable, and erect a better in its stead. We all know that civil institutions are established for the public benefit, and that, when they cease to answer the ends of their existence, they may be changed. But I do not understand the doctrine now contended for to be that which, for the sake of distinctness, we may call the right of revolution. I understand the gentleman to maintain, that, without revolution, without civil commotion, without rebellion, a remedy for supposed abuse and transgression of the powers of the General Government lies in a direct appeal to the interference of the State Governments. [Mr. HAYNE here rose: He did not contend, he said, for the mere right of revolution, but for the right of constitutional resistance. What he maintained was, that, in case of plain, palpable violation of the constitution, by the General Government, a State may interpose; and that this interposition is constitutional.] Mr. W. resumed: So, sir, I understood the gentleman, and am happy to find that I did not misunderstand him. What he contends for, is, that it is constitutional to interrupt the administration of the constitution itself, in the hands of those who are chosen and sworn to administer it, by the direct interference, in form of law, of the States, in virtue of their sovereign capacity. The inherent right in the people to reform their government, I do not deny; and they have another right, and that is, to resist unconstitutional laws, without overturning the Government. It is no doctrine of mine, that unconstitutional laws bind the people. The great question is, whose prerogative is it to decide on the constitutionality or unconstitutionality of the laws? On that, the main debate hinges. The proposition, that, in case of a supposed violation of the constitution by Congress, the States have a constitutional right to interfere, and annul the law of Congress, is the proposition of the gentleman: I do not admit it. If the gentleman had intended no more than to assert the right of revolution, for justifiable cause, he would have said only what all agree to. But I cannot conceive that there can be a middle course, between submission to the laws, when regularly pronounced constitutional, on the one hand, and open resistance, which is revolution, or rebellion, on the other. I say, the right of a State to annul a law of Congress, cannot be maintained but on the ground of the unalienable right of man to resist oppression; that is to say, upon the ground of revolution. I admit that there is an ultimate violent remedy, above the constitution, and in defiance of the constitution, which may be resorted to, when a revolution is to be justified. But I do not admit that, under the constitution, and in conformity with it, there is any mode in which a State Government, as a member of the Union, can interfere and stop the progress of the General Government, by force of her own laws, under any circumstances whatever.

This leads us to inquire into the origin of this Government, and the source of its power. Whose agent is it? Is



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it the creature of the State Legislatures, or the creature of the people? If the Government of the United States be the agent of the State Governments, then they may control it, provided they can agree in the manner of controlling it; if it be the agent of the people, then the people alone can control it, restrain it, modify, or reform it. It is observable enough, that the doctrine for which the honorable gentleman contends leads him to the necessity of maintaining, not only that this General Government is the creature of the States, but that it is the creature of each of the States, severally; so that each may assert the power, for itself, of determining whether it acts within the limits of its authority. It is the servant of four and twenty masters, of different wills and different purposes, and yet bound to obey all. This absurdity (for it seems no less) arises from a misconception as to the origin of this Government in its true character. It is, sir, the people's constitution, the people's Government; made for the people; made by the people; and answerable to the people. The people of the United States have declared that this constitution shall be the supreme law. We must either admit the proposition, or dispute their authority. The States are, unquestionably, sovereign, so far as their sovereignty is not affected by this supreme law. But the State Legislatures, as political bodies, however sovereign, are yet not sovereign over the people. So far as the people have given power to the General Government, so far the grant is unquestionably good, and the Government holds of the people, and not of the State Governments. We are all agents of the same supreme power, the people. The General Government and the State Governments derive their authority from the same source. Neither can, in relation to the other, be called primary, though one is definite and restricted, and the other general and residuary. The National Government possesses those powers which it can show the people have conferred on it, and no more. All the rest belongs to the State Governments or to the people themselves. So far as the people have restrained State sovereignty, by the expression of their will, in the constitution of the United States, so far, it must be admitted, State sovereignty is effectually controlled. I do not contend that it is, or ought to be, controlled farther. The sentiment to which I have referred, propounds that State sovereignty is only to be controlled by its own "feeling of justice;" that is to say, that it is not to be controlled at all: for one who is to follow his own feelings is under no legal control. Now, however men may think this ought to be, the fact is, that the people of the United States have chosen to impose control on State sovereignties. There are those, doubtless, who wish they had been left without restraint; but the constitution has ordered the matter differently. To make war, for instance, is an exercise of sovereignty; but the constitution declares that no State shall make war. To coin money is another exercise of sovereign power; but no State is at liberty to coin money. Again, the constitution says that no sovereign State shall be so sovereign as to make a treaty. These prohibitions, it must be confessed, are a control on the State sovereignty of South Carolina, as well as of the other States, which does not arise "from her own feelings of honorable justice." Such an opinion, therefore, is in defiance of the plainest provisions of the constitution.

There are other proceedings of public bodies which have already been alluded to, and to which I refer again, for the purpose of ascertaining more fully what is the length and breadth of that doctrine, denominated the Carolina doctrine, which the honorable gentleman has now stood up on this floor to maintain. In one of them I find it resolved, that "the tariff of 1828, and every other tariff designed to promote one branch of industry at the expense of others, is contrary to the meaning and intention of the Federal compact; and, as such, a dangerous, palpable, and deliberate usurpation of power, by a determin-

ed majority, wielding the General Government beyond the limits of its delegated powers, as calls upon the States which compose the suffering minority, in their sovereign capacity, to exercise the powers which, as sovereigns, necessarily devolve upon them, when their compact is violated."

Observe, sir, that this resolution holds the tariff of 1828, and every other tariff, designed to promote one branch of industry at the expense of another, to be such a dangerous, palpable, and deliberate usurpation of power, as calls upon the States, in their sovereign capacity, to interfere by their own authority. This denunciation, you will please to observe, includes our old tariff, of 1816, as well as all others; because that was established to promote the interest of the manufacturers of cotton, to the manifest and admitted injury of the Calcutta cotton trade. Observe again, that all the qualifications are here rehearsed and charged upon the tariff, which are necessary to bring the case within the gentleman's proposition. The tariff is a usurpation; it is a dangerous usurpation; it is a palpable usurpation; it is a deliberate usurpation. It is such a usurpation, therefore, as calls upon the States to exercise their right of interference. Here is a case, then, within the gentleman's principles, and all his qualifications of his principles. It is a case for action. The constitution is plainly, dangerously, palpably, and deliberately violated; and the States must interpose their own authority to arrest the law. Let us suppose the State of South Carolina to express this same opinion, by the voice of her Legislature. That would be very imposing; but what then? Is the voice of one State conclusive? It so happens that, at the very moment when South Carolina resolves that the tariff laws are unconstitutional, Pennsylvania and Kentucky resolve exactly the reverse. They hold those laws to be both highly proper and strictly constitutional. And now, sir, how does the honorable member propose to deal with this case? How does he relieve us from this difficulty, upon any principle of his? His construction gets us into it; how does he propose to get us out?

In Carolina, the tariff is a palpable, deliberate usurpation; Carolina, therefore, may nullify it, and refuse to pay the duties. In Pennsylvania, it is both clearly constitutional, and highly expedient; and there, the duties are to be paid. And yet we live under a Government of uniform laws, and under a constitution, too, which contains an express provision, as it happens, that all duties shall be equal in all the States! Does not this approach absurdity?

If there be no power to settle such questions, independent of either of the States, is not the whole Union a rope of sand? Are we not thrown back again, precisely upon the old Confederation?

It is too plain to be argued. Four and twenty interpreters of constitutional law, each with a power to decide for itself, and none with authority to bind any body else, and this constitutional law the only bond of their union! What is such a state of things, but a mere connexion during pleasure; or, to use the phraseology of the times, during feeling? And that feeling, too, not the feeling of the people who established the constitution, but the feeling of the State Governments.

In another of the South Carolina addresses, having premised that the crisis requires "all the concentrated energy of passion," an attitude of open resistance to the laws of the Union is advised. Open resistance to the laws, then, is the constitutional remedy, the conservative power of the State, which the South Carolina doctrines teach, for the redress of political evils, real or imaginary. And its authors further say, that, appealing with confidence to the constitution itself, to justify their opinions, they cannot consent to try their accuracy by the courts of justice. In one sense, indeed, sir, [said Mr. W.] this is assuming an attitude of open resistance in favor of liberty. But what sort of liberty? The liberty of establishing their own

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opinions, in defiance of the opinions of all others; the liberty of judging and deciding exclusively themselves, in a matter in which others have as much right to judge and decide as they; the liberty of placing their own opinions above the judgment of all others, above the laws, and above the constitution. This is their liberty; and this is the fair result of the proposition contended for by the honorable gentleman. Or, it may be more properly said, it is identical with it, rather than a result from it.

In the same publication we find the following: "Previously to our Revolution, when the arm of oppression was stretched over New England, where did our Northern brethren meet with a braver sympathy than that which sprang from the bosoms of Carolinians? We had no extortion, no oppression, no collision with the King's ministers, no navigation interests springing up in envious rivalry of England."

This seems extraordinary language. South Carolina no collision with the King's ministers in 1775! No extortion! No oppression! But, sir, it is, also, most significant language. Does any man doubt the purpose for which it was penned? Can any one fail to see that it was designed to raise in the reader's mind the question, whether, at this time—that is to say, in 1828, South Carolina has any collision with the King's ministers, any oppression, or extortion, to fear from England? Whether, in short, England is not as naturally the friend of South Carolina, as New England, with her navigation interests springing up in envious rivalry of England?

Is it not strange, sir, that an intelligent man in South Carolina, in 1828, should thus labor to prove, that, in 1775, there was no hostility, no cause of war between South Carolina and England? That she had no occasion, in reference to her own interest, or from a regard to her own welfare, to take up arms in the revolutionary contest? Can any one account for the expression of such strange sentiments, and their circulation through the State, otherwise than by supposing the object to be, what I have already intimated, to raise the question, if they had no "collision" (mark the expression) with the ministers of King George the third, in 1775, what collision have they in 1828, with the ministers of King George the fourth? What is there now, in the existing state of things, to separate Carolina from Old, more, or rather, than from New England?

Resolutions, sir, have been recently passed by the Legislature of South Carolina. I need not refer to them: they go no farther than the honorable gentleman himself has gone, and, I hope, not so far. I content myself, therefore, with debating the matter with him.

And now, sir, what I have first to say on this subject is, that at no time, and under no circumstances, has New England, or any State in New England, or any respectable body of persons in New England, or any public man of standing in New England, put forth such a doctrine as this Carolina doctrine.

The gentleman has found no case, he can find none, to support his own opinions by New England authority. New England has studied the constitution in other schools, and under other teachers. She looks upon it with other regards, and deems more highly and reverently, both of its just authority, and its utility and excellence. The history of her legislative proceedings may be traced; the ephemeral effusions of temporary bodies, called together by the excitement of the occasion, may be hunted up—they have been hunted up. The opinions and votes of her public men, in and out of Congress, may be explored; it will all be in vain. The Carolina doctrine can derive from her neither countenance nor support. She rejects it now; she always did reject it; and till she loses her senses, she always will reject it. The honorable member has referred to expressions on the subject of the embargo law, made in this place by an honorable and venerable gentleman, [Mr. Hillhouse] now favoring us with his

presence. He quotes that distinguished Senator as saying, that, in his judgment, the embargo law was unconstitutional, and that, therefore, in his opinion, the people were not bound to obey it. That, sir, is perfectly constitutional language. An unconstitutional law is not binding; but then it does not rest with a resolution, or a law of a State Legislature, to decide whether an act of Congress be, or be not, constitutional. An unconstitutional act of Congress would not bind the people of this District, although they have no Legislature to interfere in their behalf; and, on the other hand, a constitutional law of Congress does bind the citizens of every State, although all their Legislatures should undertake to annul it, by act or resolution. The venerable Connecticut Senator is a constitutional lawyer, of sound principles, and enlarged knowledge; a statesman, practised and experienced; bred in the company of Washington, and holding just views upon the nature of our Governments. He believed the embargo unconstitutional, and so did others; but what then? Who, did he suppose, was to decide that question? The State Legislatures? Certainly not. No such sentiment ever escaped his lips. Let us follow up, sir, this New England opposition to the embargo laws; let us trace it till we discern the principle which controlled and governed New England, throughout the whole course of that opposition. We shall then see what similarity there is between the New England school of constitutional opinions, and this modern Carolina school. The gentleman, I think, read a petition from some single individual, addressed to the Legislature of Massachusetts, asserting the Carolina doctrine—that is, the right of State interference to arrest the laws of the Union. The fate of that petition shows the sentiments of the Legislature. It met no favor. The opinions of Massachusetts were otherwise. They had been expressed in 1798, in answer to the resolutions of Virginia, and she did not depart from them, nor bend them to the times. Misgoverned, wronged, oppressed, as she felt herself to be, she still held fast her integrity to the Union. The gentleman may find in her proceedings much evidence of dissatisfaction with the measures of the Government, and great and deep dislike to the embargo; all this makes the case so much the stronger for her: for, notwithstanding all this dissatisfaction and dislike, she claimed no right, still, to sever asunder the bonds of the Union. There was heat, and there was anger, in her political feelings. Be it so; her heat or her anger did not, nevertheless, betray her into infidelity to the Government. The gentleman labors to prove that she disliked the embargo; as much as South Carolina dislikes the tariff, and expressed her dislike as strongly. Be it so; but did she propose the Carolina remedy? Did she threaten to interfere, by State authority, to annul the laws of the Union? That is the question for the gentleman's consideration.

No doubt, sir, a great majority of the people of New England conscientiously believed the embargo law, of 1807, unconstitutional; as conscientiously, certainly, as the people of South Carolina hold that opinion of the tariff. They reasoned thus: Congress has power to regulate commerce; but here is a law, they said, stopping all commerce, and stopping it indefinitely. The law is perpetual; that is, it is not limited in point of time, and must, of course, continue until it shall be repealed by some other law. It is as perpetual, therefore, as the law against treason or murder. Now, is this regulating commerce, or destroying it? Is it guiding, controlling, giving the rule to commerce, as a subsisting thing, or is it putting an end to it altogether? Nothing is more certain than that a majority in New England deemed this law a violation of the constitution. The very case required by the gentleman, to justify State interference, had then arisen. Massachusetts believed this law to be "a deliberate, palpable, and dangerous exercise of a power not granted by the constitution." Deliberate it was, for it was long continued; palpable she thought it,

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as no words in the constitution gave the power, and only a construction, in her opinion most violent, raised it; dangerous it was, since it threatened utter ruin to her most important interests. Here, then, was a Carolina case. How did Massachusetts deal with it? It was, as she thought, a plain, manifest, palpable violation of the constitution; and it brought ruin to her doors. Thousands of families, and hundreds of thousands of individuals, were beggared by it. While she saw and felt all this, she saw and felt also, that, as a measure of national policy, it was perfectly futile; that the country was no way benefited by that which caused so much individual distress; that it was efficient only for the production of evil, and all that evil inflicted on ourselves. In such a case, under such circumstances, how did Massachusetts demean herself? Sir, she remonstrated, she memorialized, she addressed herself to the General Government, not exactly "with the concentrated energy of passion," but with her own strong sense, and the energy of sober conviction. But she did not interpose the arm of her own power to arrest the law and break the embargo. Far from it. Her principles bound her to two things; and she followed her principles, lead where they might. First, to submit to every constitutional law of Congress; and secondly, if the constitutional validity of the law be doubted, to refer that question to the decision of the proper tribunals. The first principle is vain and ineffectual without the second. A majority of us in New England believed the embargo law unconstitutional; but the great question was, and always will be, in such cases, who is to decide this? Who is to judge between the people and the Government? And, sir, it is quite plain, that the constitution of the United States confers on the Government itself, to be exercised by its appropriate department, and under its own responsibility to the people, this power of deciding ultimately and conclusively upon the just extent of its own authority. If this had not been done, we should not have advanced a single step beyond the old confederation.

Being fully of opinion that the embargo law was unconstitutional, the people of New England were yet equally clear in the opinion—it was a matter they did not doubt upon—that the question, after all, must be decided by the judicial tribunals of the United States. Before those tribunals, therefore, they brought the question. Under the provisions of the law, they had given bonds, to millions in amount, and which were alleged to be forfeited. They suffered the bonds to be sued, and thus raised the question. In the old fashioned way of settling disputes, they went to law. The case came to hearing, and solemn argument; and he who espoused their cause, and stood up for them against the validity of the embargo act, was none other than that great man, of whom the gentleman has made honorable mention—Samuel Dexter. He was then, sir, in the fullness of his knowledge and the maturity of his strength. He had retired from long and distinguished public service here, to the renewed pursuit of professional duties; carrying with him all that enlargement and expansion, all the new strength and force, which an acquaintance with the more general subjects discussed in the National Councils is capable of adding to professional attainment in a mind of true greatness and comprehension. He was a lawyer, and he was also a statesman. He had studied the constitution, when he filled a public station, that he might defend it; he had examined its principles, that he might maintain them. More than all men, or at least as much as any man, he was attached to the General Government and to the union of the States. His feelings and opinions all ran in that direction. A question of constitutional law, too, was, of all subjects, that one which was best suited to his talents and learning. Aloof from technicality, and unfettered by artificial rules, such a question gave opportunity for that deep and clear analysis, that mighty grasp of principle, which so much distinguish-

ed his higher efforts. His very statement was argument; his inference seemed demonstration. The earnestness of his own conviction wrought conviction in others. One was convinced, and believed, and assented, because it was gratifying, delightful, to think, and feel, and believe, in union with an intellect of such evident superiority.

Mr. Dexter, sir, such as I have described him, argued the New England cause. He put into his effort his whole heart, as well as all the powers of his understanding; for he had avowed, in the most public manner, his entire concurrence with his neighbors on the point in dispute. He argued the cause: it was lost—and New England submitted. The established tribunals pronounced the law constitutional, and New England acquiesced. Now, sir, is not this the exact opposite of the doctrine of the gentleman from South Carolina? According to him, instead of referring to the judicial tribunals, we should have broken up the embargo, by laws of our own; we should have repealed it, *quoad* New England; for we had a strong, palpable, and oppressive case. Sir, we believed the embargo unconstitutional; but still, that was matter of opinion, and who was to decide it? We thought it a clear case; but, nevertheless, we did not take the law into our own hands, because we did not wish to bring about a revolution, nor to break up the Union: for, I maintain, that, between submission to the decision of the constituted tribunals, and revolution, or dissolution, there is no middle ground; there is no ambiguous condition, half allegiance, and half rebellion. And, sir, how futile, how very futile, it is, to admit the right of State interference, and then attempt to save it from the character of unlawful resistance, by adding terms of qualification to the causes and occasions, leaving all these qualifications, like the case itself, in the discretion of the State Governments. It must be a clear case, it is said; a deliberate case; a palpable case; a dangerous case. But, then, the State is still left at liberty to decide for herself what is clear, what is deliberate, what is palpable, what is dangerous. Do adjectives and epithets avail any thing? Sir, the human mind is so constituted that the merits of both sides of a controversy appear very clear and very palpable to those who respectively espouse them; and both sides usually grow clearer, as the controversy advances. South Carolina sees unconstitutionality in the tariff; she sees oppression there, also; and she sees danger. Pennsylvania, with a vision not less sharp, looks at the same tariff, and sees no such thing in it; she sees it all constitutional, all useful, all safe. The faith of South Carolina is strengthened by opposition, and she now not only sees, but resolves, that the tariff is palpably unconstitutional, oppressive, and dangerous: but Pennsylvania, not to be behind her neighbors, and equally willing to strengthen her own faith by a confident asseveration, resolves, also, and gives to every warm affirmative of South Carolina, a plain, downright, Pennsylvania negative. South Carolina, to show the strength and unity of her opinion, brings her Assembly to a unanimity, within seven voices; Pennsylvania, not to be outdone in this respect more than others, reduces her dissentient fraction to a single vote. Now, sir, again I ask the gentleman, what is to be done? Are these States both right? Is he bound to consider them both right? If not, which is in the wrong? or rather, which has the best right to decide? And if he, and if I, are not to know what the constitution means, and what it is, till those two State Legislatures and the twenty-two others shall agree in its construction, what have we sworn to, when we have sworn to maintain it? I was forcibly struck, sir, with one reflection, as the gentleman went on in his speech. He quoted Mr. Madison's resolutions to prove that a State may interfere, in a case of deliberate, palpable, and dangerous exercise of a power not granted. The honorable member supposes the tariff law to be such an exercise of power; and that, consequently, a case has arisen in which the State may, if it see fit, interfere by its

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own law. Now it so happens, nevertheless, that Mr. Madison himself deems this same tariff law quite constitutional. Instead of a clear and palpable violation, it is, in his judgment, no violation at all. So that, while they use his authority for a hypothetical case, they reject it in the very case before them. All this, sir, shows the inherent futility—I had almost used a stronger word—of conceding this power of interference to the States, and then attempting to secure it from abuse by imposing qualifications, of which the States themselves are to judge. One of two things is true: either the laws of the Union are beyond the discretion and beyond the control of the States, or else we have no constitution of General Government, and are thrust back again to the days of the confederacy.

Let me here say, sir, that, if the gentleman's doctrine had been received and acted upon in New England, in the times of the embargo and non-intercourse, we should probably not now have been here. The Government would, very likely, have gone to pieces, and crumbled into dust. No stronger case can ever arise than existed under those laws; no States can ever entertain a clearer conviction than the New England States then entertained; and if they had been under the influence of that heresy of opinion, as I must call it, which the honorable member espouses, this Union would, in all probability, have been scattered to the four winds. I ask the gentleman, therefore, to apply his principles to that case; I ask him to come forth and declare, whether, in his opinion, the New England States would have been justified in interfering to break up the embargo system, under the conscientious opinions which they held upon it? Had they a right to annul that law? Does he admit or deny? If that which is thought palpably unconstitutional in South Carolina, justifies that State in arresting the progress of the law, tell me, whether that which was thought palpably unconstitutional also in Massachusetts, would have justified her in doing the same thing? Sir, I deny the whole doctrine. It has not a foot of ground in the constitution to stand on. No public man of reputation ever advanced it in Massachusetts, in the warmest times, or could maintain himself upon it there at any time.

I wish now, sir, to make a remark upon the Virginia resolutions of 1798. I cannot undertake to say how these resolutions were understood by those who passed them. Their language is not a little indefinite. In the case of the exercise, by Congress, of a dangerous power, not granted to them, the resolutions assert the right, on the part of the State, to interfere, and arrest the progress of the evil. This is susceptible of more than one interpretation. It may mean no more than that the States may interfere by complaint and remonstrance; or by proposing to the people an alteration of the Federal constitution. This would all be quite unobjectionable; or, it may be, that no more is meant than to assert the general right of revolution, as against all governments, in cases of intolerable oppression. This no one doubts; and this, in my opinion, is all that he who framed the resolutions could have meant by it: for I shall not readily believe that he was ever of opinion that a State, under the constitution, and in conformity with it, could, upon the ground of her own opinion of its unconstitutionality, however clear and palpable she might think the case, annul a law of Congress, so far as it should operate on herself, by her own Legislative power.

I must now beg to ask, sir, whence is this supposed right of the States derived? Where do they find the power to interfere with the laws of the Union? Sir, the opinion which the honorable gentleman maintains, is a notion founded on a total misapprehension, in my judgment, of the origin of this Government, and of the foundation on which it stands. I hold it to be a popular Government, erected by the people; those who administer it, responsible to the people; and itself capable of being amended and modified, just as the people may choose it should be. It

is as popular, just as truly emanating from the people, as the State Governments. It is created for one purpose; the State Governments for another. It has its own powers; they have theirs. There is no more authority with them to arrest the operation of a law of Congress, than with Congress to arrest the operation of their laws. We are here to administer a constitution emanating immediately from the people, and trusted, by them, to our administration. It is not the creature of the State Governments. It is of no moment to the argument, that certain acts of the State Legislatures are necessary to fill our seats in this body. That is not one of their original State powers—a part of the sovereignty of the State. It is a duty which the people, by the constitution itself, have imposed on the State Legislatures; and which they might have left to be performed elsewhere if they had seen fit. So they have left the choice of President with electors; but all this does not affect the proposition that this whole Government—President, Senate, and House of Representatives—is a popular Government. It leaves it still all its popular character. The Governor of a State (in some of the States) is chosen, not directly by the people, but by those who are chosen by the people, for the purpose of performing, among other duties, that of electing a Governor. Is the Government of a State, on that account, not a popular Government? This Government, sir, is the independent offspring of the popular will. It is not the creature of State Legislatures. Nay, more, if the whole truth must be told, the people brought it into existence, established it, and have hitherto supported it, for the very purpose, amongst others, of imposing certain salutary restraints on State sovereignties. The States cannot now make war; they cannot contract alliances; they cannot make, each for itself, separate regulations of commerce; they cannot lay imposts; they cannot coin money. If this constitution, sir, be the creature of State Legislatures, it must be admitted that it has obtained a strange control over the volitions of its creators.

The people, then, sir, erected this Government. They gave it a constitution; and in that constitution they have enumerated the powers which they bestow on it. They have made it a limited Government. They have defined its authority. They have restrained it to the exercise of such powers as are granted; and all others, they declare, are reserved to the States or to the people. But, sir, they have not stopped here. If they had, they would have accomplished but half their work. No definition can be so clear as to avoid possibility of doubt; no limitation so precise, as to exclude all uncertainty. Who then shall construe this grant of the people? Who shall interpret their will, where it may be supposed they have left it doubtful? With whom do they repose this ultimate right of deciding on the powers of the Government? Sir, they have settled all this in the fullest manner. They have left it to the Government itself, in its appropriate branches. Sir, the very chief end, the main design, for which the whole constitution was framed and adopted was, to establish a Government that should not be obliged to act through State agency, or depend on State opinion and State discretion. The people had had quite enough of that kind of government, under the Confederacy. Under that system, the legal action, the application of law to individuals, belonged exclusively to the States. Congress could only recommend; their acts were not of binding force, till the States had adopted and sanctioned them. Are we in that condition still? Are we yet at the mercy of State discretion, and State construction? Sir, if we are, then vain will be our attempt to maintain the constitution under which we sit. But, sir, the people have wisely provided, in the constitution itself, a proper, suitable mode and tribunal for settling questions of constitutional law. There are, in the constitution, grants of powers to Congress, and restrictions on these powers. There are, also, prohibitions on

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the States. Some authority must, therefore, necessarily exist, having the ultimate jurisdiction to fix and ascertain the interpretation of these grants, restrictions, and prohibitions. The constitution has, itself, pointed out, ordained, and established, that authority. How has it accomplished this great and essential end? By declaring, sir, that "the constitution, and the laws of the United States made in pursuance thereof, shall be the supreme law of the land, any thing in the constitution or laws of any State to the contrary notwithstanding."

This, sir, was the first great step. By this, the supremacy of the constitution and laws of the United States is declared. The people so will it. No State law is to be valid which comes in conflict with the constitution or any law of the United States. But who shall decide this question of interference? To whom lies the last appeal? This, sir, the constitution itself decides also, by declaring "that the judicial power shall extend to all cases arising under the constitution and laws of the United States." These two provisions, sir, cover the whole ground. They are, in truth, the key-stone of the arch. With these, it is a constitution; without them, it is a confederacy. In pursuance of these clear and express provisions, Congress established, at its very first session, in the Judicial Act, a mode for carrying them into full effect, and for bringing all questions of constitutional power to the final decision of the Supreme Court. It then, sir, became a Government. It then had the means of self protection; and, but for this, it would, in all probability, have been now among things which are past. Having constituted the Government, and declared its powers, the people have farther said, that, since somebody must decide on the extent of these powers, the Government shall itself decide; subject, always, like other popular governments, to its responsibility to the people. And now, sir, I repeat, how is it that a State Legislature acquires any power to interfere? Who or what gives them the right to say to the people, "we, who are your agents and servants for one purpose, will undertake to decide that your other agents and servants, appointed by you for another purpose, have transcended the authority you gave them?" The reply would be, I think, not impertinent: "Who made you a judge over another's servants? To their own masters they stand or fall."

Sir, I deny this power of State Legislatures altogether. It cannot stand the test of examination. Gentlemen may say that, in an extreme case, a State Government might protect the people from intolerable oppression. Sir, in such a case, the people might protect themselves, without the aid of the State Governments. Such a case warrants revolution. It must make, when it comes, a law for itself. A nullifying act of a State Legislature cannot alter the case, nor make resistance any more lawful. In maintaining these sentiments, sir, I am but asserting the rights of the people. I state what they have declared, and insist on their right to declare it. They have chosen to repose this power in the General Government, and I think it my duty to support it, like other constitutional powers.

For myself, sir, I do not admit the jurisdiction of South Carolina, or any other State, to prescribe my constitutional duty, or to settle, between me and the people, the validity of laws of Congress, for which I have voted. I decline her umpirage. I have not sworn to support the constitution according to her construction of its clauses. I have not stipulated, by my oath of office, or otherwise, to come under any responsibility, except to the people, and those whom they have appointed to pass upon the question, whether laws, supported by my votes, conform to the constitution of the country. And, sir, if we look to the general nature of the case, could any thing have been more preposterous than to make a government for the whole Union, and yet leave its powers subject, not to one interpretation, but to thirteen, or twenty-four, inter-

pretations? Instead of one tribunal, established by all, responsible to all, with power to decide for all, shall constitutional questions be left to four and twenty popular bodies, each at liberty to decide for itself, and none bound to respect the decisions of others; and each at liberty, too, to give a new construction on every new election of its own members? Would any thing, with such a principle in it, or rather with such a destitution of all principle, be fit to be called a government? No, sir. It should not be denominated a constitution. It should be called, rather, a collection of trumps, for everlasting controversy; heads of debate for a disputatious people. It would not be a government. It would not be adequate to any practical good, nor fit for any country to live under. To avoid all possibility of being misunderstood, allow me to repeat again, in the fullest manner, that I claim no powers for the Government by forced or unfair construction. I admit that it is a Government of strictly limited powers, of enumerated, specified, and particularized powers; and that whatsoever is not granted, is withheld. But notwithstanding all this, and however the grant of powers may be expressed, its limit and extent may yet, in some cases, admit of doubt; and the General Government would be good for nothing, it would be incapable of long existing, if some mode had not been provided, in which these doubts, as they should arise, might be peaceably, but authoritatively, solved.

And now let me run the honorable gentleman's doctrine a little into its practical application. Let us look at his probable *modus operandi*. If a thing can be done, an ingenious man can tell how it is to be done. Now, I wish to be informed how this State interference is to be put in practice without violence, bloodshed, and rebellion. We will take the existing case of the tariff law. South Carolina is said to have made up her opinion upon it. If we do not repeal it, (as we probably shall not) she will then apply to the case the remedy of her doctrine. She will, we must suppose, pass a law of her Legislature, declaring the several acts of Congress, usually called the tariff laws, null and void, so far as they respect South Carolina, or the citizens thereof. So far, all is a paper transaction, and easy enough. But the collector at Charleston is collecting the duties imposed by these tariff laws; he, therefore, must be stopped. The collector will seize the goods if the tariff duties are not paid. The State authorities will undertake their rescue: the marshal, with his posse, will come to the collector's aid, and here the contest begins. The militia of the State will be called out to sustain the nullifying act. They will march, sir, under a very gallant leader: for I believe the honorable member himself commands the militia of that part of the State. He will raise the nullifying act on his standard, and spread it out as his banner! It will have a preamble, bearing, that the tariff laws are palpable, deliberate, and dangerous violations of the constitution! He will proceed, with this banner flying, to the custom house in Charleston:

"All the while,

"Numerous metal blowing martial sounds."

Arrived at the custom house, he will tell the collector that he must collect no more duties under any of the tariff laws. This he will be somewhat puzzled to say, by the way, with a grave countenance, considering what hand South Carolina herself had in that of 1816. But, sir, the collector would, probably, not desist at his bidding. Here would ensue a pause: for they say that a certain stillness precedes the tempest. Before this military array should fall on the custom house, collector, clerks, and all, it is very probable some of those composing it would request, of their gallant commander in chief, to be informed a little upon the point of law: for they have, doubtless, a just respect for his opinions as a lawyer, as well as for his bravery as a soldier. They know he has read Blackstone and the constitution, as well as Turenne and

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Vauban. They would ask him, therefore, something concerning their rights in this matter. They would inquire whether it was not somewhat dangerous to resist a law of the United States. What would be the nature of their offence, they would wish to learn, if they, by military force and array, resisted the execution, in Carolina, of a law of the United States, and it should turn out, after all, that the law was constitutional? He would answer, of course, treason. No lawyer could give any other answer. John Fries, he would tell them, had learned that some years ago. How, then, they would ask, do you propose to defend us? We are not afraid of bullets; but treason has a way of taking people off, that we do not much relish. How do you propose to defend us? "Look at my floating banner," he would reply; "see there the nullifying law!" Is it your opinion, gallant commander, they would then say, that, if we should be indicted for treason, that same floating banner of your's would make a good plea in bar? "South Carolina is a sovereign State," he would reply. That is true; but would the judge admit our plea? "These tariff laws," he would repeat, "are unconstitutional, palpably, deliberately, dangerously." That all may be so; but if the tribunals should not happen to be of that opinion, shall we swing for it? We are ready to die for our country, but it is rather an awkward business, this dying without touching the ground! After all, that is a sort of hemp tax, worse than any part of the tariff. The honorable gentleman would be in a dilemma like that of another great general: he would have a knot before him which he could not untie. He must cut it with his sword: he must say to his followers, defend yourselves with your bayonets!—and this is war—civil war.

Direct collision, therefore, between force and force, is the unavoidable result of that remedy for the revision of unconstitutional laws which the gentleman contends for. It must happen in the very first case to which it is applied. Is not this the plain result? To resist, by force, the execution of a law, generally, is treason. Can the courts of the United States take notice of the indulgence of a State to commit treason? The common saying that a State cannot commit treason herself, is nothing to the purpose. Can she authorize others to do it? If John Fries had produced an act of Pennsylvania, annulling the law of Congress, would it have helped his case? Talk about it as we will, these doctrines go the length of revolution. They are incompatible with any peaceable administration of the Government. They lead directly to disunion and civil commotion; and therefore it is, that, at their commencement, when they are first found to be maintained by respectable men, and in a tangible form, I enter my public protest against them all.

The honorable gentleman argues that, if this Government be the sole judge of the extent of its own powers, whether that right of judging be in Congress or the Supreme Court, it equally subverts State sovereignty. This the gentleman sees, or thinks he sees, although he cannot perceive how the right of judging, in this matter, if left to the exercise of State Legislatures, has any tendency to subvert the Government of the Union. The gentleman's opinion may be, that the right ought not to have been lodged with the General Government; he may like better such a constitution as we should have under the right of State interference; but I ask him to meet me on the plain matter of fact; I ask him to meet me on the constitution itself; I ask him if the power is not found there, clearly and visibly found there?—(Note 3.)

—But, sir, what is this danger, and what the grounds of it? Let it be remembered that the constitution of the United States is not unalterable. It is to continue in its present form no longer than the people, who established it, shall choose to continue it. If they shall become convinced that they have made an injudicious or inexpedient partition and distribution of power, between the State

Governments and the General Government, they can alter that distribution at will.

If any thing be found in the national constitution, either by original provision, or subsequent interpretation, which ought not to be in it, the people know how to get rid of it. If any construction be established, unacceptable to them, so as to become, practically, a part of the constitution, they will amend it at their own sovereign pleasure. But while the people choose to maintain it as it is; while they are satisfied with it, and refuse to change it, who has given, or who can give, to the State Legislatures, a right to alter it, either by interference, construction, or otherwise? Gentlemen do not seem to recollect that the people have any power to do any thing for themselves; they imagine there is no safety for them any longer than they are under the close guardianship of the State Legislatures. Sir, the people have not trusted their safety, in regard to the general constitution, to these hands. They have required other security, and taken other bonds. They have chosen to trust themselves, first, to the plain words of the instrument, and to such construction as the Government itself, in doubtful cases, should put on its own powers, under their oaths of office, and subject to their responsibility to them; just as the people of a State trust their own State Governments with a similar power. Secondly, they have reposed their trust in the efficacy of frequent elections, and in their own power to remove their own servants and agents, whenever they see cause. Thirdly, they have reposed their trust in the Judicial power, which, in order that it might be trust-worthy, they have made as respectable, as disinterested, and as independent as was practicable. Fourthly, they have seen fit to rely, in case of necessity, or high expediency, on their known and admitted power to alter or amend the constitution, peaceably and quietly, whenever experience shall point out defects or imperfections. And, finally, the people of the United States have, at no time, in no way, directly or indirectly, authorized any State Legislature to construe or interpret their high instrument of Government; much less to interfere, by their own power, to arrest its course and operation.

If, sir, the people, in these respects, had done otherwise than they have done, their constitution could neither have been preserved, nor would it have been worth preserving. And, if its plain provisions shall now be disregarded, and these new doctrines interpolated in it, it will become as feeble and helpless a being as its enemies, whether early or more recent, could possibly desire. It will exist, in every State, but as a poor dependent on State permission. It must borrow leave to be; and will be no longer than State pleasure, or State discretion, sees fit to grant the indulgence, and to prolong its poor existence.

But, sir, although there are fears, there are hopes, also. The people have preserved this, their own chosen constitution, for forty years, and have seen their happiness, prosperity, and renown, grow with its growth, and strengthen with its strength. They are now, generally, strongly attached to it. Overthrown by direct assault, it cannot be; evaded, undermined, nullified, it will not be, if we, and those who shall succeed us here, as agents and representatives of the people, shall conscientiously and vigilantly discharge the two great branches of our public trust, faithfully to preserve, and wisely to administer it.

I have thus stated the reasons of my dissent to the doctrines which have been advanced and maintained. I am conscious, sir, of having detained you and the Senate much too long. I was drawn into the debate with no previous deliberation, such as is suited to the discussion of so grave and important a subject. But it is a subject of which my heart is full, and I have not been willing to suppress the utterance of its spontaneous sentiments. I cannot, even now, persuade myself to relinquish it, without ex-

pressing, once more, my deep conviction, that, since it respects nothing less than the union of the States, it is of most vital and essential importance to the public happiness. I profess, sir, in my career, hitherto, to have kept steadily in view the prosperity and honor of the whole country, and the preservation of our Federal Union. It is to that Union we owe our safety at home, and our consideration and dignity abroad. It is to that Union that we are chiefly indebted for whatever makes us most proud of our country. That Union we reached only by the discipline of our virtues in the severe school of adversity. It had its origin in the necessities of disordered finance, prostrate commerce, and ruined credit. Under its benign influence, these great interests immediately awoke, as from the dead, and sprang forth with newness of life. Every year of its duration has teemed with fresh proofs of its utility and its blessings; and, although our territory has stretched out wider and wider, and our population spread farther and farther, they have not outrun its protection or its benefits. It has been to us all a copious fountain of national, social, and personal happiness. I have not allowed myself, sir, to look beyond the Union, to see what might lie hidden in the dark recess behind. I have not coolly weighed the chances of preserving liberty, when the bonds that unite us together shall be broken asunder. I have not accustomed myself to hang over the precipice of disunion, to see whether, with my short sight, I can fathom the depth of the abyss below; nor could I regard him as a safe counsellor, in the affairs of this Government, whose thoughts should be mainly bent on considering, not how the Union should be best preserved, but how tolerable might be the condition of the people when it shall be broken up and destroyed. While the Union lasts, we have high, exciting, gratifying prospects spread out before us, for us and our children. Beyond that, I seek not to penetrate the veil. God grant that, in my day, at least, that curtain may not rise. God grant that, on my vision, never may be opened what lies behind. When my eyes shall be turned to behold, for the last time, the sun in heaven, may I not see him shining on the broken and dishonored fragments of a once glorious Union; on States dis severed, discordant, belligerent; on a land rent with civil feuds, or drenched, it may be, in fraternal blood! Let their last feeble and lingering glance, rather, behold the gorgeous ensign of the republic, now known and honored throughout the earth, still full high advanced, its arms and trophies streaming in their original lustre, not a stripe erased or polluted, nor a single star obscured, bearing for its motto no such miserable interrogatory as, What is all this worth? Nor those other words of delusion and folly, Liberty first, and Union afterwards: but every where, spread all over in characters of living light, blazing on all its ample folds, as they float over the sea and over the land, and in every wind under the whole heavens, that other sentiment, dear to every true American heart—Liberty and Union, now and forever, one and inseparable!

Notes—By Mr. Webster.

NOTES 1.

WEDNESDAY, February 21, 1787.

Congress assembled: Present, as before.

The report of a Grand Committee, consisting of Mr. Dane, Mr. Varnum, Mr. S. M. Mitchell, Mr. Smith, Mr. Cadwallader, Mr. Irvine, Mr. N. Mitchell, Mr. Forrest, Mr. Grayson, Mr. Blount, Mr. Bull, and Mr. Few, to whom was referred a letter of 14th September, 1786, from J. Dickinson, written at the request of commissioners from the States of Virginia, Delaware, Pennsylvania, New Jersey, and New York, assembled at the city of Annapolis, together with a copy of a report of said commissioners to the Legislatures of the States by

whom they were appointed, being an order of the day, was called up, and which is contained in the following resolution, viz:

"Congress having had under consideration the letter of John Dickinson, Esq. chairman of the commissioners who assembled at Annapolis during the last year; also, the proceedings of the said commissioners, and entirely coinciding with them, as to the inefficiency of the Federal Government, and the necessity of devising such further provisions as shall render the same adequate to the exigencies of the Union, do strongly recommend to the different Legislatures to send forward delegates, to meet the proposed convention, on the second Monday in May next, at the city of Philadelphia."

NOTE 2.

*Extracts from Mr. Calhoun's Speech on Mr. Randolph's motion to strike out the minimum valuation on cotton goods, in the House of Representatives, April, 1816.*

"The debate, heretofore, on this subject, has been on the degree of protection which ought to be afforded to our cotton and woollen manufactures; all professing to be friendly to those infant establishments, and to be willing to extend to them adequate encouragement. The present motion assumes a new aspect. It is introduced, professedly, on the ground that manufactures ought not to receive any encouragement; and will, in its operation, leave our cotton establishments exposed to the competition of the cotton goods of the East Indies, which, it is acknowledged on all sides, they are not capable of meeting with success, without the proviso proposed to be stricken out by the motion now under discussion. Till the debate assumed this new form, he determined to be silent; participating, as he largely did, in that general anxiety which is felt, after so long and laborious a session, to return to the bosom of our families. But on a subject of so much vital importance, touching, as it does, the security and permanent prosperity of our country, he hoped that the House would indulge him in a few observations."

"To give perfection to this state of things, it will be necessary to add, as soon as possible, a system of Internal Improvements, and, at least, such an extension of our navy, as will prevent the cutting off our coasting trade. The advantage of each is so striking as not to require illustration, especially after the experience of the late war."

"He firmly believed that the country is prepared, even to maturity, for the introduction of manufactures. We have abundance of resources, and things naturally tend, at this moment, in that direction. A prosperous commerce has poured an immense amount of commercial capital into this country. This capital has, till lately, found occupation in commerce; but that state of the world which transferred it to this country, and gave it active employment, has passed away, never to return. Where shall we now find full employment for our prodigious amount of tonnage? Where markets for the numerous and abundant products of our country? This great body of active capital, which, for the moment, has found sufficient employment in supplying our markets, exhausted by the war, and measures preceding it, must find a new direction; it will not be idle. What channel can it take but that of manufactures? This, if things continue as they are, will be its direction. It will introduce an era in our affairs, in many respects highly advantageous, and ought to be countenanced by the Government. Besides, we have already surmounted the greatest difficulty that has ever been found in undertakings of this kind. The cotton and woollen manufactures are not to be introduced—they are already introduced to a great extent; freeing us entirely from the hazards, and, in a great measure, the sacrifices, experienced in giving the capital of the country a new direction. The restrictive measures, and the war, though not

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intended for that purpose, have, by the necessary operation of things, turned a large amount of capital to this new branch of industry. He had often heard it said, both in and out of Congress, that this effect alone would indemnify the country for all its losses. So high was this tone of feeling, when the want of these establishments was practically felt, that he remembered, during the war, when some question was agitated respecting the introduction of foreign goods, that many then opposed it on the grounds of injuring our manufactures. He then said, that war alone furnished sufficient stimulus, and perhaps too much, as it would make their growth unnaturally rapid; but that, on the return of peace, it would then be time to show our affection for them. He, at that time, did not expect an apathy and aversion to the extent which is now seen. But it will, no doubt, be said, if they are so far established, and if the situation of the country is so favorable to their growth, where is the necessity of affording them protection? It is to put them beyond the reach of contingency."

"It has been further asserted, that manufactures are the fruitful cause of pauperism; and England has been referred to, as furnishing conclusive evidence of its truth. For his part, he could perceive no such tendency in them, but the exact contrary, as they furnished new stimulus and means of subsistence to the laboring classes of the community. We ought not to look at the cotton and woollen establishments of Great Britain for the prodigious numbers of poor with which her population was disgraced; causes much more efficient exist. Her poor laws, and statutes regulating the prices of labor, with taxes, were the real causes. But, if it must be so, if the mere fact that England manufactured more than any other country, explained the cause of her having more beggars, it is just as reasonable to refer her courage, spirit, and all her masculine virtues, in which she excels all other nations, with a single exception—be meant our own—in which we might, without vanity, challenge a pre-eminence. Another objection had been, which he must acknowledge was better founded, that capital employed in manufacturing produced a greater dependence on the part of the employed, than in commerce, navigation, or agriculture. It is certainly an evil, and to be regretted; but he did not think it a decisive objection to the system; especially when it had incidental political advantages which, in his opinion, more than counterpoised it. It produced an interest strictly American, as much so as agriculture, in which it had the decided advantage of commerce or navigation. The country will, from this, derive much advantage. Again: it is calculated to bind together more closely our widely spread republic. It will greatly increase our mutual dependence and intercourse; and will, as a necessary consequence, excite an increased attention to Internal Improvements—a subject every way so intimately connected with the ultimate attainment of national strength, and the perfection of our political institutions."

*Extracts from the Speech of Mr. Calhoun, April, 1816, on the Direct Tax.*

"As regards to the question how far manufactures ought to be fostered, [Mr. C. said] it was the duty of this country, as a means of defence, to encourage the domestic industry of the country, more especially that part of it which provides the necessary materials for clothing and defence. Let us look to the nature of the war most likely to occur. England is in possession of the ocean. No man, however sanguine, can believe that we can deprive her, soon, of her predominance there. That control deprives us of the means of maintaining our army and navy cheaply clad. The question relating to manufactures must not depend on the abstract principle that industry, left to pursue its own course, will find in its own interest all the encouragement that is necessary. I lay the claims of the manufacturers entirely out of view, [said Mr. C.] but, on

general principles, without regard to their interest, a certain encouragement should be extended, at least to our woollen and cotton manufactures."

"This nation [Mr. C. said] was rapidly changing the character of its industry. When a nation is agricultural, depending for supply on foreign markets, its people may be taxed through its imports almost to the amount of its capacity. The nation was, however, rapidly becoming, to a considerable extent, a manufacturing nation."

To the quotations from the speeches and proceedings of the Representatives of South Carolina, in Congress, during Mr. Monroe's administration, may be added the following extract from Mr. Calhoun's report on roads and canals, submitted to Congress on 7th January, 1819, from the Department of War:

"A judicious system of roads and canals, constructed for the convenience of commerce, and the transportation of the mail only, without any reference to military operations, is itself among the most efficient means for 'the more complete defence of the United States.' Without adverting to the fact that the roads and canals which such a system would require, are, with few exceptions, precisely those which would be required for the operations of war; such a system, by consolidating our Union, increasing our wealth and fiscal capacity, would add greatly to our resources in war. It is in a state of war, when a nation is compelled to put all its resources, in men, money, skill, and devotion to country, into requisition, that its Government realizes, in its security, the beneficial effects from a people made prosperous and happy by a wise direction of its resources in peace."

"Should Congress think proper to commence a system of roads and canals for 'the more complete defence of the United States,' the disbursements of the sum appropriated for the purpose might be made by the Department of War, under the direction of the President. Where incorporate companies are already formed, or the road or canal commenced, under the superintendence of a State, it perhaps would be advisable to direct a subscription on the part of the United States, on such terms and conditions as might be thought proper."

## NOTE 3.

The following resolutions of the Legislature of Virginia bear so pertinently and so strongly on this point of the debate, that they are thought worthy of being inserted in a note, especially as other resolutions of the same body are referred to in the discussion. It will be observed that these resolutions were unanimously adopted in each House.

## VIRGINIA LEGISLATURE.

*Extract from the Message of Governor Tyler, of Virginia, December 4, 1809.*

"A proposition from the State of Pennsylvania is herewith submitted, with Governor Snyder's letter accompanying the same, in which is suggested the propriety of amending the constitution of the United States, so as to prevent collisions between the Government of the Union, and the State Governments."

HOUSE OF DELEGATES, FRIDAY, December 15, 1809.

On motion, *Ordered*, That so much of the Governor's communication as relates to the communication from the Governor of Pennsylvania, on the subject of an amendment proposed by the Legislature of that State to the constitution of the United States, be referred to Messrs. Peyton, Otey, Cabell, Walker, Madison, Holt, Newton, Parker, Stevenson, Randolph, (of Amelia) Cocke, Wyatt, and Ritchie.—Page 25 of the Journal.

THURSDAY, January 11, 1810.

Mr. Peyton, from the Committee to whom was referred that part of the Governor's communication which relates to the amendment proposed by the State of Pennsylvania



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to the constitution of the United States, made the following report:

The Committee to whom was referred the communication of the Governor of Pennsylvania, covering certain resolutions of the Legislature of that State proposing an amendment of the constitution of the United States, by the appointment of an impartial tribunal to decide disputes between the State and Federal Judiciary, have had the same under their consideration, and are of opinion that a tribunal is already provided by the constitution of the United States, to wit. the Supreme Court, more eminently qualified, from their habits and duties, from the mode of their selection, and from the tenure of their offices; to decide the disputes aforesaid, in an enlightened and impartial manner, than any other tribunal which could be created. The members of the Supreme Court are selected from those in the U. States who are most celebrated for virtue and legal learning, not at the will of a single individual, but by the concurrent wishes of the President and Senate of the United States: they will, therefore, have no local prejudices and partialities. The duties they have to perform lead them, necessarily, to the most enlarged and accurate acquaintance with the jurisdiction of the Federal and State Courts together, and with the admirable symmetry of our Government. The tenure of their offices enables them to pronounce the sound and correct opinions they may have formed, without fear, favor, or partiality.

The amendment to the constitution, proposed by Pennsylvania, seems to be founded upon the idea that the Federal Judiciary will, from a lust of power, enlarge their jurisdiction, to the total annihilation of the jurisdiction of the State Courts; that they will exercise their will, instead of the law and the constitution.

This argument, if it proves any thing, would operate more strongly against the tribunal proposed to be created, which promised so little, than against the Supreme Court, which, for the reasons given before, have every thing connected with their appointment calculated to ensure confidence. What security have we, were the proposed amendment adopted, that this tribunal would not substitute their will and their pleasure, in place of the law? The Judiciary is the weakest of the three departments of Government, and least dangerous to the political rights of the constitution; they hold neither the purse nor the sword; and, even to enforce their own judgments and decisions, must ultimately depend upon the Executive arm. Should the Federal Judiciary, however, unmindful of their weakness, unmindful of the duty which they owe to themselves and their country, become corrupt, and transcend the limits of their jurisdiction, would the proposed amendment oppose even a probable barrier in such an improbable state of things?

The creation of a tribunal, such as is proposed by Pennsylvania, so far as we are able to form an idea of it from the descriptions given in the resolutions of the Legislature of that State, would, in the opinion of your committee, tend rather to invite, than to prevent, collision between the Federal and State Courts. It might also become, in process of time, a serious and dangerous embarrassment to the operations of the General Government.

*Resolved, therefore,* That the Legislature of this State do disapprove of the amendment to the constitution of the United States proposed by the Legislature of Pennsylvania.

*Resolved, also,* That his Excellency the Governor be, and he is hereby, requested to transmit forthwith, a copy of the foregoing preamble and resolutions to each of the Senators and Representatives of this State in Congress, and to the Executive of the several States in the Union, with a request that the same be laid before the Legislatures thereof.

The said resolutions being read a second time, were, on motion, ordered to be referred to a Committee of the Whole House on the state of the Commonwealth.

TUESDAY, January 23, 1810.

The House, according to the order of the day, resolved itself into a Committee of the Whole House on the State of the Commonwealth, and, after some time spent therein, Mr. Speaker resumed the chair, and Mr. Stanard, of Spottsylvania, reported that the Committee had, according to order, had under consideration the preamble and resolutions of the Select Committee, to whom was referred that part of the Governor's communication which relates to the amendment proposed to the constitution of the United States by the Legislature of Pennsylvania, had gone through with the same, and directed him to report them to the House without amendment; which he handed in at the Clerk's table.

And the question being put on agreeing to the said preamble and resolutions, they were agreed to by the House unanimously.

*Ordered,* That the Clerk carry the said preamble and resolutions to the Senate, and desire their concurrence.

IN SENATE, WEDNESDAY, January 24, 1810.

The preamble and resolutions on the amendment to the constitution of the United States, proposed by the Legislature of Pennsylvania, by the appointment of an impartial tribunal to decide disputes between the State and Federal Judiciary, being also delivered in and twice read, on motion, was ordered to be committed to Messrs. Nelson, Currie, Campbell, Upshur, and Wolfe.

FRIDAY, January 26.

Mr. Nelson reported, from the Committee to whom was committed the preamble and resolutions on the amendment proposed by the Legislature of Pennsylvania, &c. that the Committee had, according to order, taken the said preamble, &c. under their consideration, and directed him to report them without any amendment.

And on the question being put thereupon, the same was agreed to unanimously.

Mr. HAYNE, in reply to Mr. WEBSTER, observed: I do not rise at this late hour\* to go at large into the controverted questions between the Senator from Massachusetts and myself, but merely to correct some very gross errors into which he has fallen, and to afford explanations on some points, which, after what has fallen from that gentleman, may perhaps be considered as requiring explanation. The gentleman has attempted, through the whole course of his argument, to throw upon me the blame of having provoked this discussion. Though standing himself at the very head and source of this angry controversy, which has flowed from him down to me, he insists that I have troubled the waters. In order to give color to this charge, (wholly unfounded, sir, as every gentleman of this body will bear witness) he alludes to my excitement when I first rose to answer the gentleman, after he had made his attack upon the South. He charges me with having then confessed that I had something rankling in my bosom, which I desired to discharge. Sir, I have no recollection of having used that word. If it did escape me, however, in the excitement of the moment, it was indicative, not of any personal hostility towards that Senator—for, in truth, sir, I felt none—but proceeded from a sensibility which could not but be excited by what I had a right to consider as an unprovoked and most unwarrantable attack upon the South through me.

The gentleman boasts that he has escaped unhurt in the conflict. The shaft, it seems, was shot by too feeble an arm to reach its destination. Sir, I am glad to hear this. Judging from the actions of the gentleman, I had feared

\*The lateness of the hour when Mr. W. resumed his seat compelled Mr. H. to curtail his remarks in reply, especially those which related to the constitutional question. In the speech as here reported, the arguments omitted are supplied. The great importance of the question makes it desirable that nothing should be omitted necessary to its elucidation.—*Natchez Mr. H.*

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that the arrow had penetrated even more deeply than I could have wished. From the beating of his breast, and the tone and manner of the gentleman, I should fear he is most sorely wounded. In a better spirit, however, I will say, I hope his wounds may heal kindly, and leave no scars behind; and let me assure the gentleman, that however deeply the arrow may have penetrated, its point was not envenomed. It was shot in fair and manly fight, and with the twang of the bow have fled the feelings which impelled it. The gentleman indignantly repels the charge of having avoided the Senator from Missouri, [Mr. BREXTON] and selected me as his adversary, from any apprehension of being overmatched. Sir, when I found the gentleman passing over in silence the arguments of the Senator from Missouri, which had charged the East with hostility towards the West, and directing his artillery against me, who had made no such charge, I had a right to inquire into the causes of so extraordinary a proceeding. I suggested some as probable, and among them, that to which the gentleman takes such strong exception. Sir, has he now given any sufficient reason for the extraordinary course of which I have complained? At one moment he tells us that "he did not hear the whole of the argument of the gentleman from Missouri," and again, "that, having found a responsible endorser of the bill, he did not think proper to pursue the drawer." Well, sir, if the gentleman answered the arguments which he did not hear, why attribute them to me, whom he did hear, and by whom they were certainly not urged? If he was determined to pursue the parties to the bill, why attempt to throw the responsibility on one who was neither the drawer nor the endorser? Let me once more, sir, put this matter on its true footing. I will not be forced to assume a position in which I have not chosen to place myself. Sir, I disclaim any intention whatever, in my original remarks on the public lands, to impute to the East hostility towards the West. I imputed none. I did not utter one word to that effect. I said nothing that could be tortured into an attack upon the East.

I did not mention the "accursed tariff"—a phrase which the gentleman has put into my mouth. I did not even impute the policy of Mr. Rush to New England. In alluding to that policy I noticed its source, and spoke of it as I thought it deserved. Sir, I am aware that a gentleman who rises, without premeditation, to throw out his ideas on a question before the Senate, may use expressions of the force and extent of which he may, at the time, not be fully aware. I should not, therefore, rely so confidently on my own recollections, but for the circumstance that I have not found one gentleman who heard my remarks, (except the Senator from Massachusetts himself) who supposed that one word had fallen from my lips that called for a reply of the tone and character of that which the gentleman thought proper to pronounce; not one who supposed that I had thrown out any imputations against the East, or justly subjected myself or the South to rebuke, unless, indeed, the principles for which I contended were so monstrous as to demand unmeasured reprobation. Now, sir, what were those principles? I have already shown, that, whether sound or unsound, they are not separated by a "hair's breadth" from those contended for by the gentleman himself, in 1825, and therefore, that he, of all men, had the least right to take exception to them.

Sir, the gentleman charges me with having unnecessarily introduced the slave question; with what justice, let those determine who heard that gentleman pointing out the superiority of Ohio over Kentucky, and attributing it to that happy stroke of New England policy, by which slavery was forever excluded north of the Ohio river. Sir, I was wholly at a loss to conceive why that topic had been introduced here at all, until the gentleman followed it up by an attack upon the principles and the policy of

the South. When that was done, the object was apparent, and it became my duty to take up the gauntlet which the gentleman had thrown down, and to come out, without reserve, in defence of our institutions and our principles. The gentleman charges us with a morbid sensibility on this subject. Sir, it is natural and proper that we should be sensitive on that topic, and we must continue so just as long as those who do not live among us shall be found meddling with a subject with which they have nothing to do, and about which they know nothing. But, sir, we will agree, now, henceforth, and forever, to avoid the subject altogether, never even to mention the word slavery on this floor, if gentlemen on the other side will only consent not to intrude it upon us, by forcing it unnecessarily into debate. When introduced, however, whether by a hint or a sneer, by the imputation of weakness to slave-holding States, or in any other way, we must be governed entirely by our own discretion, as to the manner in which the attack must be met. When the proposition was made here to appropriate the public lands to emancipation, I met it with a protest. I have now met an attack of a different character by an argument.

The gentleman, in alluding to the Hartford Convention, told us he had nothing to do with it, and had nothing to say either for or against it, and yet he undertook, at the same time, to recommend that renowned assembly as a precedent to the South.

Sir, unkind as my allusion to the Hartford Convention has been considered by its supporters, I apprehend that this disclaimer of the gentleman will be regarded as "the unkindest cut of all." When the gentleman spoke of the Carolina conventions of Colleton and Abbeville, let me tell him that he spoke of that which never had existence, except in his own imagination. There have, indeed, been meetings of the people in those districts, composed, sir, of as high-minded and patriotic men as any country can boast; but we have had no "convention" as yet; and when South Carolina shall resort to such a measure for the redress of her grievances, let me tell the gentleman that, of all the assemblies that have ever been convened in this country, the Hartford Convention is the very last we shall consent to take as an example; nor will it find more favor in our eyes, from being recommended to us by the Senator from Massachusetts. Sir, we would scorn to take advantage of difficulties created by a foreign war, to wring from the Federal Government a redress even of our grievances. We are standing up for our constitutional rights, in a time of profound peace; but if the country should, unhappily, be involved in a war to-morrow, we should be found flying to the standard of our country—first driving back the common enemy, and then insisting upon the restoration of our rights.

The gentleman, speaking of the tariff and internal improvements, said, that, in supporting these measures, he had but followed "a Carolina lead." He also quoted, with high encomium, the opinions of the present chairman of the Committee of Ways and Means of the other House, in relation to the latter subject. Now, sir, it is proper that the Senator from Massachusetts should be, once for all, informed, that South Carolina acknowledges no leaders, whom she is willing blindly to follow, in any course of policy. The "Carolina doctrines," in relation to the "American System," have been expounded to us by the resolutions of her Legislature, and the remonstrances of her citizens, now upon your table; and when the gentleman shows us one of her distinguished sons expressing different sentiments, he neither changes her principles, nor subjects the State to a charge of inconsistency. Sir, no man can entertain a higher respect than I do for the distinguished talents, high character, and manly independence of the gentleman alluded to; [Mr. McDUFFIE] but if he now entertains the opinions attributed to him, in relation to internal improvements and the public lands,

there can be no doubt that his sentiments, in these respects, differ widely from those of a large majority of the people of South Carolina; while, in relation to the tariff, and other questions of vital importance, he not only goes heart and hand with us, but is himself a host.

The gentleman considers the tariff of 1816 and the bonus bill as the foundation of the American System, and intimates that the former would not have prevailed, but for South Carolina votes. Now, sir, as to the tariff of 1816, I think a great mistake prevails throughout the country, in regarding it as the commencement of the existing policy. That was not a bill for increasing, but for reducing duties. During the war double duties had been resorted to, for raising the revenue necessary for its prosecution. Manufactures had sprung up under the protection incidentally afforded by the restrictive measures and the war. On the restoration of peace, a scale of duties was to be established, adapted to the situation in which the country was, by that event, placed. All agreed that the duties were to be reduced, and that this reduction must be gradual. We had a debt on our hands of one hundred and forty or one hundred and fifty millions dollars. Admonished by recent experience, a navy was to be built up, and an extensive system of fortifications to be commenced. The operation, too, of a sudden reduction of duties upon the manufactures which had been forced into existence by the war, and which then bore their full proportion of the direct taxes, was also to be taken into consideration; and, under all of these circumstances, it was determined to reduce the duties gradually, until they should reach the lowest amount necessary for revenue in time of peace. Such, sir, was the true character of the tariff law of 1816. By that bill, (reported, sir, by the lamented Lowndes, a steady opponent of the protecting system) the duties on woollen and cotton goods were at once reduced to twenty-five per cent. with a provision that they should, in the course of three years, be further reduced to twenty per cent.; while, by the tariff of 1824, the duties on the same articles were at once increased to thirty per cent., and were to go on increasing to thirty-seven and a half per cent.; and, by the tariff of 1828, have been carried much higher. And yet the tariff of 1816 is now quoted as an authority for the tariffs of 1824 and 1828; by which duties admitted to be already high enough for all the purposes of revenue, are to go on increasing, year after year, for the avowed purpose of promoting domestic manufactures, by preventing importations. Suppose, sir, the New England gentlemen were now to join the South in going back to a tariff for revenue, and were to propose to us gradually to reduce all the existing duties, so that they should come down, in two or three years, to fifteen or twenty per cent.—would the gentleman consider us as sending in our adhesion to the American System by voting for such a reduction? And if not, how can we charge the supporters of the tariff of 1816 with being the fathers of that system? In this view of the subject it is not at all material whether the representatives from South Carolina voted for that measure or not; or whether the passage of the bill depended on their votes. On looking into the journals, however, it will be found that the bill actually passed the House of Representatives, by a vote of 88 to 54; and would have succeeded, if every member from South Carolina had voted against it.

The gentleman next mentions the "bonus bill" as the first step in the system of Internal Improvement. That was a bill, sir, not appropriating, but setting apart, a fixed sum (the bank bonus) for Internal Improvements, to be distributed among the States, on principles of perfect equality, and to be applied "by consent of the States" themselves. Though Mr. Madison put his veto on that bill, it was supposed, at the time, to be in the spirit of his own message; and though I must express my dissent from the measure, no doubt can exist that, if the system of Inter-

nal Improvement had been prosecuted on the principles of that bill, much of the inequality and injustice that have since taken place would have been avoided. But, sir, I am by no means disposed to deny, or to conceal the fact, that a considerable change has taken place in the Southern States, and in South Carolina in particular, in relation to Internal Improvements, since that measure was first broached, at the close of the last war. Sir, when we were restored to a state of peace, the attention of our prominent statesmen was directed to plans for the restoration of the country from the wounds of the war, and the public mind received a strong impulse towards Internal Improvements. The minds of the eminent men of the South had, by the events of that war, received, for the time, a direction rather favorable to the enlargement of the powers of the Government. They had seen the public arm paralyzed by the opposition to that war, and it was quite natural that they should, at that time, rather be disposed to strengthen than to weaken the powers of the Federal Government. Internal Improvements spring up in that heated soil; and I have no doubt that, as a new question, hardly examined, and very little understood, the people of the South, for a short period, took up the belief that, to a certain extent, and under certain guards, the system could be beneficially and constitutionally pursued. But, sir, before time had been allowed for the formation of any fixed and settled opinions, the evils of the system were so fully developed, the injustice, the inequality, the corruption, flowing from it, and the alarming extent of powers claimed for the Federal Government, by its supporters, became so manifest, as thoroughly to satisfy the South that the system of Internal Improvement, on the principles on which it was to be administered, was not only unequal and unjust, but a most alarming innovation on the constitution.

The gentleman has alluded to my own vote on the survey bill of 1824. Sir, I have to return him my thanks for having afforded me, by that allusion, an opportunity of explaining my conduct in relation to the system of Internal Improvements. At the time that I was called to a seat in this House I had been for many years removed from political life, and engaged in the arduous pursuits of a profession, which abstracted me almost entirely from the examination of political questions. The gentleman tells us he had not made up his own mind on this subject as late as 1817. Sir, I had not even fully examined it in 1823. But, even at that time, I entertained doubts, both as to the constitutionality and expediency of the system. I came here with these feelings, and before I was yet warm in my seat, the survey bill of 1824 was brought up. We were then expressly told by its advocates, that its object was, not to establish a system of Internal Improvements, but merely to present to Congress and the country a full view of the whole ground, leaving it hereafter to be decided whether the system should be prosecuted, and if so, on what principles? Sir, I was induced to believe that no great work would be undertaken until the objects of that survey bill should be accomplished; that is to say, until the President should submit the whole scheme in one connected view, so that we should have before us at once all the measures deemed to be of "national importance," to which the attention of Congress might be directed.

Sir, I did suppose that a few great works, in which all the States would have a common interest, and which might therefore be considered as of "national importance," were alone intended to be embraced in that bill, and that, in one or two years, the whole of the surveys would be completed, when Congress would have it in their power to decide whether the system should be carried on at all, and if so, on what principles? Sir, I know that more than one gentleman who voted for the survey bill of 1824 expressly stated at the time, that they did not intend to commit themselves on the general question; and I was one of that number. And it was expressly because

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I did not consider that bill as committing those who supported it, for or against any system of Internal Improvement, that I voted against every amendment calculated to give any expression of opinion, one way or the other. I was unwilling to deprive it of the character which it bore on its face, as a measure intended merely to bring before the public in a single view, the entire scheme, so as to enable us to judge of its practicability and expediency. Sir, in all these views and expectations I was deceived. By the year 1826, it came to be fully understood that these surveys were never to be finished, and that fifty thousand dollars per annum was to be appropriated, merely to give popularity to the system, by feeding the hopes of the people in all parts of the country. In the mean time, too, appropriations were made, and new works commenced, just as if no surveys were going on. Sir, as soon as I discovered the true character of the survey bill, I opposed it openly on this floor, and have since constantly voted against all appropriations for surveys. Sir, as to the system of Internal Improvement, my first impressions against it were fully confirmed very soon after I took my seat here, and (except in cases which I consider as exceptions from the general rule) I have uniformly voted against all appropriations for Internal Improvements, against the Cumberland road, the Chesapeake and Delaware canal, and all other works of a similar character. But, sir, if the South, or the statesmen of the South, had committed themselves ever so deeply on this subject, does the gentleman from Massachusetts suppose it would afford any excuse for their continued support of a system conducted on principles which now manifestly appear to be as unconstitutional as they are unequal and unjust? Surely not.

The gentleman has made his defence for his conduct in relation to the tariff of 1828. He considers the country as being committed by the tariff of 1824 to go on with the system. Sir, we wholly deny that the country is, in any way, committed, or that Congress could commit it on such a subject, much less to the support of a ruinous, unjust, and unconstitutional policy. But how, if such a commitment were possible, could the imposition of a duty of twenty or thirty per cent. commit us to the imposition of duties of fifty or one hundred? The gentleman is mistaken in supposing that I charged him with having, in 1820, denounced the tariff as "utterly unconstitutional;" I stated that he had called its constitutionality in question. I have now before me the proceedings of the Boston meeting, to which I referred, and will read them, that there may be no mistake on the subject. In the resolutions reported by a committee, (of which Mr. W. was a member) it was, among other things,

1. "Resolved, That no objection ought ever to be made to any amount of taxes equally apportioned, and imposed for the purpose of raising revenue necessary for the support of the Government; but that taxes imposed on the people for the benefit of any one class of men [the manufacturers] are equally inconsistent with the principles of the constitution and with sound policy."

2. "Resolved, That, in our opinion, the proposed tariff, and the principles on which it is avowedly founded, would, if adopted, have a tendency, however different may be the motives of those who recommend them, to diminish the industry, impede the prosperity, and corrupt the morals of the people."

Mr. WABSTER said, at that meeting, in support of these anti-tariff resolutions (which were unanimously adopted)

"There is a power in names; and those who had pressed the tariff on Congress and on the country, had represented it as immediately, and almost exclusively connected with domestic industry, and national independence. In his opinion, no measure could prove more injurious to the industry of the country, and nothing was more fanciful than the opinion, that national independence rendered such a measure necessary. He certainly thought it

might be doubted, whether Congress would not be acting somewhat against the spirit and intention of the constitution, in exercising a power to control essentially the pursuits and occupations of individuals, not as incidental to the exercise of any other power, but as a substantial and direct power. If such changes were wrought incidentally only, and were the necessary consequence of such imposts as Congress, for the leading purpose of revenue, should enact, then they could not be complained of. But he doubted whether Congress fairly possessed the power of turning the incident into the principal; and, instead of leaving manufactures to the protection of such laws as should be passed with a primary regard to revenue, of enacting laws with the avowed object of giving a preference to particular manufactures," &c.

Sir, these are good sound "Carolina doctrines," and if the gentleman finds reason to abandon them now, we cannot consent to go with him.

We have been often reproached, sir, with lending our aid to some of the most obnoxious provisions of the tariff of 1828. What was the fact? Not an amendment was put into that bill here which did not go to reduce the duties. That bill came to the Senate in a form in which it was known that it could not pass. Gentlemen who would not vote for it, in that shape, but who wished it to pass, called upon us to aid them in amending it, to suit their own purposes. Sir, if we had lent our aid to such an object we would have deserved any fate that could have befallen us. We proceeded throughout on the open and avowed ground of hostility to the whole system, and acted accordingly.

To disprove my observations, that the New England members generally did not support Internal Improvements in the West, before the memorable era, the winter of 1825, the gentleman quoted two votes, in 1820 and 1821, reducing the price, or extending the time of payment for the public lands. Now, sir, the only objection to his authority is, that it has no manner of relation to the point in dispute. I stated that New England did not support Internal Improvements, as a branch of the American system, before 1825. The gentleman proves that, on two occasions, they voted for certain measures in relation to the public lands—measures which I had always supposed had been forced upon Congress by motives of interest, but which, whatever may have been their character, do not touch the point in dispute in the smallest degree. I think this mode of meeting my argument, however creditable to the gentleman's ingenuity, amounts to an acknowledgment that it is unanswerable.

The gentleman complains of his arguments having been misunderstood in relation to consolidation. He thinks my misapprehension almost miraculous in treating his as an argument in favor of the "consolidation of the Government." Now, sir, what was the point in dispute between us? I had deprecated the consolidation of the Government. I said not one word against the "consolidation of the Union." I went further, and pointed out, and deprecated some of the means, by which this consolidation was to be brought about. The gentleman gets up and attacks my argument at every point, ridicules our fears about "consolidation," and finally reads a passage from a letter of General Washington's, stating that one of the objects of the constitution was "the consolidation of the Union." Surely, sir, under these circumstances, I was not mistaken in saying, that the authority quoted did not apply to the case, as the point in dispute was the "consolidation of the Government," and not of "the Union." But, sir, the gentleman has relieved me from all embarrassment on this point, by going fully into the examination of the Virginia doctrines of '96; and while he denounces them, giving us his own views of the power of the Federal Government; views which, in my humble judgment, stop nothing short of the consolidation of all

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power in the hands of the Federal Government. Sir, when I last touched on this topic, I did little more than quote the high authorities on which our doctrines rest; but, after the elaborate argument which we have just heard from the gentleman from Massachusetts, it cannot be supposed that I can suffer them to go to the world unanswered. I entreat the Senate, therefore, to bear with me, while I go over, as briefly as possible, the most prominent arguments of the gentleman.

The proposition which I laid down, and from which the gentleman dissents, is taken from the Virginia resolutions of '98, and is in these words: "that in case of a deliberate, palpable, and dangerous exercise by the Federal Government of powers not granted by the compact, [the constitution] the States who are parties thereto have a right to interpose, for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties, appertaining to them." The gentleman insists that the States have no right to decide whether the constitution has been violated by acts of Congress or not, but that the Federal Government is the exclusive judge of the extent of its own powers; and that, in case of a violation of the constitution, however "deliberate, palpable, and dangerous," a State has no constitutional redress, except where the matter can be brought before the Supreme Court, whose decision must be final and conclusive on the subject. Having thus distinctly stated the points in dispute between the gentleman and myself, I proceed to examine them. And here it will be necessary to go back to the origin of the Federal Government. It cannot be doubted, and is not denied, that, before the formation of the constitution, each State was an independent sovereignty, possessing all the rights and powers appertaining to independent nations; nor can it be denied that, after the constitution was formed, they remained equally sovereign and independent, as to all powers not expressly delegated to the Federal Government. This would have been the case, even if no positive provision to that effect had been inserted in that instrument. But to remove all doubt, it is expressly declared, by the tenth article of the amendments of the constitution, that "the powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people." The true nature of the Federal constitution, therefore, is, (in the language of Mr. Madison) "a compact to which the States are parties"—a compact by which each State, acting in its sovereign capacity, has entered into an agreement with the other States, by which they have consented that certain designated powers shall be exercised by the United States, in the manner prescribed in the instrument. Nothing can be clearer, than that, under such a system, the Federal Government, exercising strictly delegated powers, can have no right to act beyond the pale of its authority, and that all such acts are void. A State, on the contrary, retaining all powers not expressly given away, may lawfully act in all cases where she has not voluntarily imposed restrictions on herself. Here, then, is a case of a compact between sovereigns; and the question arises, What is the remedy for a clear violation of its express terms by one of the parties? And here the plain obvious dictate of common sense is in strict conformity with the understanding of mankind, and the practice of nations in all analogous cases; "that, where resort can be had to no common superior, the parties to the compact must, themselves, be the rightful judges whether the bargain has been pursued or violated." (Madison's Report, p. 20.) When it is insisted by the gentleman that one of the parties (the Federal Government) "has the power of deciding ultimately and conclusively upon the extent of its own authority," I ask for the grant of such a power. I call upon the gentleman to show it to me in the constitution. It is not to be found there. If it is to be inferred

from the nature of the compact, I aver that not a single argument can be urged in support of such an inference, in favor of the Federal Government, which would not apply, with at least equal force, in favor of a State. All sovereigns are of necessity equal; and any one State, however small in population or territory, has the same rights as the rest, just as the most insignificant nation in Europe is as much sovereign as France, or Russia, or England.

The very idea of a division of power by compact, is destroyed by a right claimed and exercised by either to be the exclusive interpreter of the instrument. Power is not divided, where one of the parties can arbitrarily determine its limits. A compact between two, with a right reserved to one to expound the instrument according to his own pleasure, is no compact at all, but an absolute surrender of the whole subject matter to the arbitrary discretion of the party who is constituted the judge. This is so obvious, that, in the conduct of human affairs between man and man, a common superior is always looked to as the expounder of contracts. But if there be no common superior, it results, from the very nature of things, that the parties must be their own judges. This is admitted to be the case where treaties are formed between independent nations; and, if the same rule does not apply to the federal compact, it must be because the Federal is superior to the State Government, or because the States have surrendered their sovereignty. Neither branch of this proposition can be maintained for a moment. I have already shown that all sovereigns must, as such, be equal. It only remains therefore to inquire whether the States have surrendered their sovereignty, and consented to reduce themselves to mere corporations. The whole form and structure of the Federal Government, the opinions of the framers of the constitution, and the organization of the State Governments, demonstrate that, though the States have surrendered certain specific powers, they have not surrendered their sovereignty. They have each an independent Legislature, Executive, and Judiciary, and exercise jurisdiction over the lives and property of their citizens. They have, it is true, voluntarily restrained themselves from doing certain acts, but, in all other respects, they are as omnipotent as any independent nation whatever. Here, however, we are met by the argument, that the constitution was not formed by the States in their sovereign capacity, but by the people; and it is therefore inferred that, the Federal Government being created by all the people, must be supreme; and though it is not contended that the constitution may be rightfully violated, yet it is insisted that from the decision of the Federal Government there can be no appeal. It is obvious that this argument rests on the idea of State inferiority. Considering the Federal Government as one whole, and the States merely as component parts, it follows, of course, that the former is as much superior to the latter as the whole is to the parts of which it is composed. Instead of deriving power by delegation from the States to the Union, this scheme seems to imply that the individual States derive their power from the United States, just as petty corporations may exercise so much power, and no more, as their superior may permit them to enjoy. This notion is entirely at variance with all our conceptions of State rights, as those rights were understood by Mr. Madison and others, at the time the constitution was framed. I deny that the constitution was framed by the people in the sense in which that word is used on the other side, and insist that it was framed by the States acting in their sovereign capacity. When, in the preamble of the constitution, we find the words, "we the people of the United States," it is clear they can only relate to the people as citizens of the several States, because the Federal Government was not then in existence.

We accordingly find, in every part of that instrument, that the people are always spoken of in that sense. Thus,

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in the second section of the first article it is declared, that "the House of Representatives shall be composed of members chosen every second year, by the people of the several States." To show that, in entering into this compact, the States acted in their sovereign capacity, and not merely as parts of one great community, what can be more conclusive than the historical fact that, when every State had consented to it except one, she was not held to be bound? A majority of the people in any State bound that State, but nine-tenths of all the people of the United States could not bind the people of Rhode Island, until Rhode Island, as a State, had consented to the compact. It cannot be denied that, at the time the constitution was framed, the people of the United States were members of regularly organized Governments, citizens of independent States; and unless these State Governments had been dissolved, it was impossible that the people could have entered into any compact but as citizens of these States. Suppose an assent to the constitution had been given by all the people within a certain district of any State, but that the State, in its sovereign capacity, had refused its assent: Would the people of that district have become citizens of the United States? Surely not. It is clear, then, that in adopting the constitution, the people did not act, and could not have acted, in any other character than as citizens of their respective States. And if, on the adoption of the constitution, they became citizens of the United States, it was only by virtue of that clause in the constitution which declares that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." In choosing members to the convention, the States acted through their Legislatures, by whose authority the constitution, when framed, was submitted for ratification to conventions of the people, the usual and most appropriate organ of the sovereign will. I am not disposed to dwell longer on this point, which does appear to my mind to be too clear to admit of controversy. But I will quote from Mr. Madison's report, which goes the whole length in support of the doctrine for which I have contended:

"The other position involved in this branch of the resolution, namely: 'that the States are parties to the constitution, or compact,' is, in the judgment of the Committee, equally free from objection. It is indeed true, that the term 'States' is sometimes used in a vague sense, and sometimes in different senses, according to the subject to which it is applied. Thus, it sometimes means the separate sections of territory occupied by the political societies within each; sometimes the particular governments established by those societies; sometimes those societies as organized into those particular governments; and, lastly, it means the people composing those political societies, in their highest sovereign capacity. Although it might be wished that the perfection of language admitted of less diversity in the signification of the same words, yet little inconvenience is produced by it where the true sense can be collected with certainty from the different applications. In the present instance, whatever different constructions of the term 'States,' in the resolution, may have been entertained, all will at least concur in that last mentioned; because, in that sense the constitution was submitted to the 'States'; in that sense the 'States' ratified it; and in that sense of the term 'States,' they are consequently parties to the compact, from which the powers of the Federal Government result."

Having now established the position that the constitution was a compact between sovereign and independent States, having no common superior, "it follows, of necessity, (to borrow the language of Mr. Madison) "that there can be no tribunal above their authority to decide, in the last resort, whether the compact made by them be violated, and consequently, that, as the parties to it, they must themselves decide, in the last resort, such questions as

may be of sufficient magnitude to require their interpretation."

But, the gentleman insists that the tribunal provided by the constitution for the decision of controversies between the States and the Federal Government, is the Supreme Court. And here again I call for the authority on which the gentleman rests the assertion, that the Supreme Court has any jurisdiction whatever over questions of sovereignty between the States and the United States. When we look into the constitution we do not find it there. I put entirely out of view any act of Congress on the subject. We are not looking into the laws, but the constitution.

It is clear that questions of sovereignty are not the proper subjects of judicial investigation. They are much too large, and of too delicate a nature, to be brought within the jurisdiction of a court of justice. Courts, whether supreme or subordinate, are the mere creatures of the sovereign power designed to expound and carry into effect its sovereign will. No independent State ever yet submitted to a Judge on the bench, the true construction of the compact between himself and another sovereign. All courts may incidentally take cognizance of treaties, where rights are claimed under them; but who ever heard of a court making an inquiry into the authority of the agents of the high contracting parties to make the treaty—whether its terms had been fulfilled, or whether it had become void, on account of a breach of its conditions on either side? All these are political, and not judicial questions. Some reliance has been placed on those provisions of the constitution which constitute "one Supreme Court," which provide that "the judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties;" and which declare that "this constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties, &c. shall be the supreme law of the land," &c. Now, as to the name of the Supreme Court, it is clear that the term has relation only to its supremacy over the inferior courts provided for by the constitution, and has no reference whatever to any supremacy over the sovereign States. The words are, "The judicial power of the United States shall be vested in one Supreme Court, and such inferior courts as the Congress may, from time to time, ordain and establish," &c. Though jurisdiction is given "in cases arising under the constitution," yet it is expressly limited to "cases in law and equity," showing conclusively that this jurisdiction was incidental merely to the ordinary administration of justice, and not intended to touch high questions of conflicting sovereignty. When it is declared that the constitution, and the laws of the United States made in pursuance thereof, shall be the supreme law of the land, it is manifest that no indication is given either as to the power of the Supreme Court to bind the States by its decisions, nor as to the course to be pursued in the event of laws being passed not in pursuance of the constitution. And I beg leave to call gentlemen's attention to the striking fact, that the powers of the Supreme Court, in relation to questions arising under the laws and the constitution, are co-extensive with those arising under treaties. In all of these cases the power is limited to questions arising "in law and equity," that is to say, to cases where jurisdiction is incidentally acquired in the ordinary administration of justice. But, as with regard to treaties, the Supreme Court has never assumed jurisdiction over questions arising between the sovereigns who are parties to it, so under the constitution they cannot assume jurisdiction over questions arising between the individual States and the United States.

If they should do so, they would be acting entirely out of their sphere. Umpires are indeed sometimes appointed by special agreement, but, in the case before us, there can be no pretence that the Supreme Court have been specially constituted umpires. But, if the judiciary are, from

their character and the peculiar scope of their duties, unfit for the high office of deciding questions of sovereignty, much more strongly is the Supreme Court disqualified from assuming the umpirage between the States and the United States; because it is created by, and is indeed merely one of the departments of, the Federal Government. The United States have a Supreme Court; each State has also its Supreme Court. Both of them, in the ordinary administration of justice, must of necessity decide on the constitutionality of laws; but when it becomes a question of sovereignty between these two independent Governments, the subject matter is equally removed from the jurisdiction of both. If the Supreme Court of the United States can take cognizance of such a question, so can the Supreme Courts of the States. But, sir, can it be supposed for a moment, that, when the States proceeded to enter into the compact, called the constitution of the United States, they could have designed, nay, that they could, under any circumstances, have consented to leave to a court to be created by the Federal Government, the power to decide, finally, on the extent of the powers of the latter, and the limitations on the powers of the former? If it had been designed to do so, it would have been so declared, and assuredly some provision would have been made to secure, as umpires, a tribunal somewhat differently constituted from that whose appropriate duties is the ordinary administration of justice. But to prove, as I think conclusively, that the Judiciary were not designed to act as umpires, it is only necessary to observe that, in a great majority of cases, that court could manifestly not take jurisdiction of the matters in dispute. Whenever it may be designed by the Federal Government to commit a violation of the constitution, it can be done, and always will be done, in such a manner as to deprive the court of all jurisdiction over the subject. Take the case of the tariff and internal improvements; whether constitutional or unconstitutional, it is admitted that the Supreme Court have no jurisdiction. Suppose Congress should, for the acknowledged purpose of making an equal distribution of the property of the country, among States or individuals, proceed to lay taxes to the amount of fifty millions of dollars a year. Could the Supreme Court take cognizance of the act laying the tax, or making the distribution? Certainly not. Take another case, which is very likely to occur. Congress have the unlimited power of taxation. Suppose them also to assume an unlimited power of appropriation. Appropriations of money are made to establish presses, promote education, build and support churches, create an order of nobility, or any other unconstitutional object; it is manifest that, in none of these cases, could the constitutionality of the laws making those grants be tested before the Supreme Court. It would be in vain that a State should come before the judges with an act appropriating money to any of these objects, and ask of the court to decide whether these grants were constitutional. They could not even be heard; the court would say, they had nothing to do with it; and they would say rightly. It is idle, therefore, to talk of the Supreme Court affording any security to the States, in cases where their rights may be violated by the exercise of unconstitutional powers, on the part of the Federal Government. On this subject Mr. Madison, in his report, says: "But it is objected, that the judicial authority is to be regarded as the sole expositor of the constitution in the last resort; and it may be asked, for what reason the declaration by the General Assembly, supposing it to be theoretically true, could be required at the present day, and in so solemn a manner? On this objection it might be observed, first, that there may be instances of usurped power, which the forms of the constitution would never draw within the control of the Judicial Department: Secondly, that, if the decision of the Judiciary be raised above the authority of the sovereign parties to the constitution, the decisions of

the other departments, not carried by the forms of the constitution before the Judiciary, must be equally authoritative and final with the decisions of that department. But the proper answer to the objection is, that the resolution of the General Assembly relates to those great and extraordinary cases in which all the forms of the constitution may prove ineffectual against infractions dangerous to the essential rights of the parties to it. The resolution supposes that dangerous powers, not delegated, may not only be usurped and executed by the other departments, but that the Judicial Department also may exercise or sanction dangerous powers beyond the grant of the constitution, and consequently, that the ultimate right of the parties to the constitution to judge whether the compact has been dangerously violated, must extend to violations by one delegated authority, as well as by another—by the Judiciary as well as by the Executive or Legislative.

"However true, therefore, it may be, that the Judicial Department is, in all questions submitted to it by the forms of the constitution, to decide in the last resort, this resort must necessarily be deemed the last in relation to the authorities of the other departments of the Government; not in relation to the rights of the parties to the constitutional compact, from which the judicial as well as the other departments hold their delegated trusts. On any other hypothesis the delegation of judicial power would annul the authority delegating it; and the concurrence of this department with the others in usurped powers, might subvert forever, and beyond the possible reach of any rightful remedy, the very constitution which all were instituted to preserve."

If, then, the Supreme Court are not, and, from their organization, cannot, be the umpires in questions of conflicting sovereignty, the next point to be considered is, whether Congress themselves possess the right of deciding conclusively on the extent of their own powers. This I know is a popular notion, and it is founded on the idea that, as all the States are represented here, nothing can prevail which is not in conformity with the will of the majority; and it is supposed to be a republican maxim "that the majority must govern." Now, sir, I admit that much care has been taken to secure the States and the people from rash and unadvised legislation. The organization of two houses, the one the Representatives of the States, and the other of the people, manifest an anxiety to secure equality and justice in the operation of the federal system. But all this has done no more than to secure us against any laws but such as should be assented to by a majority of the Representatives in the two Houses of Congress.

Now will any one contend that it is the true spirit of this Government that the will of a majority of Congress should, in all cases, be the supreme law? If no security was intended to be provided for the rights of the States, and the liberty of the citizen, beyond the mere organization of the Federal Government, we should have had no written constitution, but Congress would have been authorized to legislate for us, in all cases whatsoever; and the acts of our State Legislatures, like those of the present legislative councils in the Territories, would have been subjected to the revision and control of Congress. If the will of a majority of Congress is to be the supreme law of the land, it is clear the constitution is a dead letter, and has utterly failed of the very object for which it was designed—the protection of the rights of the minority. But when, by the very terms of the compact, strict limitations are imposed on every branch of the Federal Government, and it is, moreover, expressly declared that all powers, not granted to them, "are reserved to the States or to the people," with what show of reason can it be contended that the Federal Government is to be the exclusive judge of the extent of its own powers? A written constitution was resorted to in this country, as a great experiment, for the purpose of ascertaining how

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far the rights of a minority could be secured against the encroachments of majorities—often acting under party excitement, and not unfrequently under the influence of strong interests. The moment that constitution was formed, the will of the majority ceased to be the law, except in cases that should be acknowledged by the parties to it, to be within the constitution, and to have been thereby submitted to their will. But when Congress (exercising a delegated and strictly limited authority) pass beyond these limits, their acts become null and void, and must be declared to be so by the courts, in cases within their jurisdiction; and may be pronounced to be so by the States themselves, in cases not within the jurisdiction of the courts, or of sufficient importance to justify such an interference. I will put the case strongly. Suppose, in the language of Mr. Jefferson, the Federal Government, in its three ruling branches, should (at some future day) be found “to be in combination to strip their colleagues, the State authorities, of the powers reserved by them, and to exercise themselves all powers, foreign and domestic,” would there be no constitutional remedy against such an usurpation? If so, then Congress is supreme, and your constitution is not worth the parchment on which it is written. What the gentleman calls the right of revolution would exist, and could be exerted as well, without a constitution as with it.

It is in vain to tell us that all the States are represented here. Representation may, or may not, afford security to the people. The only practical security against oppression, in representative Governments, is to be found in this, that those who impose the burthens are compelled to share them. Where there are conflicting interests, however, and a majority are enabled to impose burthens on the minority, for their own advantage, it is obvious that representation, on the part of that minority, can have no other effect than to “furnish an apology for the injustice.” What security would a representation of the American colonies in the British Parliament have afforded to our ancestors? What would be the value of a West India representation there now? Of what value is our representation here, on questions connected with the “American System,” where (to use the strong language of a distinguished statesman) the “imposition is laid, not by the Representatives of those who pay the tax, but by the Representatives of those who are to receive the bounty?” Sir, representation will afford us ample security, if the Federal Government shall be strictly confined within the limits prescribed by the constitution, and if, limiting its action to matters in which all have a common interest, the system shall be made to operate equally over the whole country. But it will afford us none if the will of an interested majority shall be the supreme law, and Congress shall undertake to legislate for us in all cases whatsoever. Before I leave this branch of the subject, I must remark, that, while gentlemen admit, as they do, that the courts may nullify an act of Congress, by declaring it to be unconstitutional, it is impossible for them to contend that Congress are the final judges of the extent of their own powers.

I think I have now shown that the right of a State to judge of infractions of the constitution, on the part of the Federal Government, results from the very nature of the compact; and that, neither by the express provisions of that instrument, nor by any fair implication, is such a power exclusively reserved to the Federal Government, or any of its Departments—executive, legislative, or judicial. But I go farther, and contend that the power in question may be fairly considered as reserved to the States, by that clause of the constitution before referred to, which provides that all powers not delegated to the United States are reserved to the States, respectively, or to the people.

No doubt can exist, that, before the States entered into the compact, they possessed the right, to the fullest ex-

tent, of determining the limits of their own powers—it is incident to all sovereignty. Now, have they given away that right, or agreed to limit or restrict it in any respect? Assuredly not. They have agreed that certain specific powers shall be exercised by the Federal Government; but the moment that government steps beyond the limits of its charter, the right of the States “to interpose for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties, appertaining to them,” is as full and complete as it was before the constitution was formed. It was plenary then, and never having been surrendered, must be plenary now. But what then, asks the gentleman? A State is brought into collision with the United States, in relation to the exercise of unconstitutional powers: who is to decide between them? Sir, it is the common case of difference of opinion between sovereigns as to the true construction of a compact. Does such a difference of opinion necessarily produce war? No. And if not, among rival nations, why should it do so among friendly States? In all such cases, some mode must be devised by mutual agreement, for settling the difficulty; and most happily for us, that mode is clearly indicated in the constitution itself, and results, indeed, from the very form and structure of the Government. The creating power is three-fourths of the States. By their decision, the parties to the compact have agreed to be bound, even to the extent of changing the entire form of the Government itself; and it follows, of necessity, that, in case of a deliberate and settled difference of opinion between the parties to the compact, as to the extent of the powers of either, resort must be had to their common superior—(that power which may give any character to the constitution they may think proper) viz: three-fourths of the States. This is the view of the matter taken by Mr. Jefferson himself, who, in 1821, expressed himself in this emphatic manner: “It is a fatal heresy to suppose that either our State Governments are superior to the Federal, or the Federal to the State; neither is authorized literally to decide what belongs to itself, or its co-partner in government, in difference of opinion between their different sets of public servants; the appeal is to neither, but to their employers, peaceably assembled by their representatives in convention.”

But it has been asked, why not compel a State, objecting to the constitutionality of a law, to appeal to her sister States, by a proposition to amend the constitution? I answer, because such a course would, in the first instance, admit the exercise of an unconstitutional authority, which the States are not bound to submit to, even for a day, and because it would be absurd to suppose that any redress could ever be obtained by such an appeal, even if a State were at liberty to make it. If a majority of both Houses of Congress should, from any motive, be induced, deliberately, to exercise “powers not granted,” what prospect would there be of “arresting the progress of the evil,” by a vote of three-fourths? But the constitution does not permit a minority to submit to the people a proposition for an amendment to the constitution. Such a proposition can only come from “two-thirds of the two Houses of Congress, or the Legislatures of two-thirds of the States.” It will be seen, therefore, at once, that a minority, whose constitutional rights are violated, can have no redress by an amendment of the constitution. When any State is brought into direct collision with the Federal Government, in the case of an attempt, by the latter, to exercise unconstitutional powers, the appeal must be made by Congress, (the party proposing to exert the disputed power) in order to have it expressly conferred, and, until so conferred, the exercise of such authority must be suspended. Even in cases of doubt, such an appeal is due to the peace and harmony of the Government. On this subject our present Chief Magistrate, in his



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opening message to Congress, says: "I regard an appeal to the source of power, in cases of real doubt, and where its exercise is deemed indispensable to the general welfare, as among the most sacred of all our obligations. Upon this country, more than any other, has, in the providence of God, been cast the especial guardianship of the great principle of adherence to written constitutions. If it fail here, all hope in regard to it will be extinguished. That this was intended to be a Government of limited and specific, and not general powers, must be admitted by all; and it is our duty to preserve for it the character intended by its framers. The scheme has worked well. It has exceeded the hopes of those who devised it, and become an object of admiration to the world. Nothing is clearer, in my view, than that we are chiefly indebted for the success of the constitution under which we are now acting, to the watchful and auxiliary operation of the State authorities. This is not the reflection of a day, but belongs to the most deeply rooted convictions of my mind. I cannot, therefore, too strongly or too earnestly, for my own sense of its importance, warn you against all encroachments upon the legitimate sphere of State sovereignty. Sustained by its healthful and invigorating influence, the Federal system can never fail."

But the gentleman apprehends that this will "make the Union a rope of sand." Sir, I have shown that it is a power indispensably necessary to the preservation of the constitutional rights of the States, and of the people. I now proceed to show that it is perfectly safe, and will practically have no effect, but to keep the Federal Government within the limits of the constitution, and prevent those unwarrantable assumptions of power, which cannot fail to impair the rights of the States, and finally destroy the Union itself. This is a Government of checks and balances. All free Governments must be so. The whole organization and regulation of every department of the Federal as well as of the State Governments, establish, beyond a doubt, that it was the first object of the great fathers of our Federal system to interpose effectual checks to prevent that over-action, which is the besetting sin of all Governments, and which has been the great enemy to freedom over all the world. There is an obvious and wide distinction between the power of acting, and of preventing action—a distinction running through the whole of our system. No one can question that, in all really doubtful cases, it would be extremely desirable to leave things as they are. And how happy would it be for mankind, and how greatly would it contribute to the peace and tranquillity of this country, and to that mutual harmony on which the preservation of the Union must depend, that the Federal Government (confining its operations to subjects clearly federal) should only be felt in the blessings which it dispenses. Look, sir, at our system of checks. The House of Representatives checks the Senate, the Senate checks the House, the Executive checks both, the Judiciary checks the whole; and it is in the true spirit of this system, that the States should check the Federal Government, at least so far as to preserve the constitution from "gross, palpable, and deliberate violations," and to compel an appeal to the amending power, in cases of real doubt and difficulty. That the States possess this right seems to be acknowledged by Alexander Hamilton himself. In the 51st number of the *Federalist* he says, "that, in a single republic, all the powers surrendered by the people are submitted to the administration of a single government, and usurpations are guarded against by a division of the government into separate departments. In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each, subdivided into separate departments; hence a double security arises to the rights of the people. The different governments will control each other, at the same time each will be controlled by itself."

I have already shown, that it has been fully recognized by the Virginia resolutions of '98, and by Mr. Madison's report on these resolutions, that it is not only "the right but the duty of the States" to "judge of infractions of the constitution," and "to interpose for maintaining, within their limits, the authorities, rights, and liberties, appertaining to them."

Mr. Jefferson, on various occasions, expressed himself in language equally strong. In the Kentucky resolutions, of '98, prepared by him, it is declared that the Federal Government "was not made the exclusive and final judge of the extent of the powers delegated to itself, since that would have made its discretion, and not the constitution, the measure of its powers; but that, as in all other cases of compact among parties, having no common judge, each party has an equal right to judge for itself, as well of infractions as the mode and measure of redress."

In the Kentucky resolutions of '98, it is even more explicitly declared, "that the several States which formed the constitution, being sovereign and independent, have the unquestionable right to judge of its infractions, and that a nullification by those sovereignties of all unauthorized acts done under color of that instrument is the rightful remedy."

But the gentleman says this right will be dangerous. Sir, I insist, that, of all the checks that have been provided by the constitution, this is by far the safest, and the least liable to abuse. It is admitted by the gentleman, that the Supreme Court may declare a law to be unconstitutional, and check your further progress. Now, the Supreme Court consists of only seven judges; four are a quorum, three of whom are a majority, and may exercise this mighty power. Now, the judges of this court are without any direct responsibility, in matters of opinion, and may certainly be governed by any of the motives which it is supposed will influence a State in opposing the acts of the Federal Government. Sir, it is not my desire to excite prejudice against the Supreme Court. I not only entertain the highest respect for the individuals who compose that tribunal, but I believe they have rendered important service to the country; and that, confined within their appropriate sphere, (the decision of questions "of law and equity") they will constitute a fountain from which will forever flow the streams of pure and undecolored justice, diffusing blessings throughout the land. I object, only, to the assumption of political power, by the Supreme Court—a power which belongs not to them, and which they cannot safely exercise. But, surely, a power which the gentleman is willing to confide to three judges of the Supreme Court, may safely be entrusted to a sovereign State. Sir, there are so many powerful motives to restrain a State from taking such high ground as to interpose her sovereign power to protect her citizens from unconstitutional laws, that the danger is not that this power will be wantonly exercised, but that she will fail to exert it, even on proper occasions.

A State will be restrained by a sincere love of the Union. The people of the United States cherish a devotion to the Union, so pure, so ardent, that nothing short of intolerable oppression can ever tempt them to do any thing that may possibly endanger it. Sir, there exists, moreover, a deep and settled conviction of the benefits which result from a close connexion of all the States for purposes of mutual protection and defence. This will co-operate with the feelings of patriotism to induce a State to avoid any measures calculated to endanger that connexion. A State will always feel the necessity of consulting public opinion, both at home and abroad, before she resorts to any measures of such a character. She will know that, if she acts rashly, she will be abandoned even by her own citizens, and will utterly fail in the object she has in view. If, as is asserted in the Declaration of Independence, all experience has proved that mankind are more disposed to suffer, while evils are sufferable,

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than to resort to measures for redress, why should this case be an exception, where so many additional motives must always be found for forbearance? Look at our own experience on this subject. Virginia and Kentucky, so far back as '98, avowed the principles for which I have been contending—principles which have never since been abandoned; and no instance has yet occurred in which it has been found necessary, practically, to exert the power asserted in those resolutions.

If the alien and sedition laws had not been yielded to the force of public opinion, there can be no doubt that the State of Virginia would have interposed to protect her citizens from its operation. And, if the apprehension of such an interposition by a State should have the effect of restraining the Federal Government from acting, except in cases clearly within the limits of their authority, surely no one can doubt the beneficial operation of such a restraining influence. Mr. Jefferson assures us that the embargo was actually yielded up, rather than force New England into open opposition to it. And it was right to yield it, sir, to the honest convictions of its unconstitutionality entertained by so large a portion of our fellow-citizens. If the knowledge that the States possess the constitutional right to interpose, in the event of "gross, deliberate, and palpable violations of the constitution," should operate to prevent a perseverance in such violations, surely the effect would be greatly to be desired. But there is one point of view in which this matter presents itself to my mind with irresistible force. The Supreme Court, it is admitted, may nullify an act of Congress, by declaring it to be unconstitutional. Can Congress, after such a nullification, proceed to enforce the law, even if they should differ in opinion from the Court? What, then, would be the effect of such a decision? And what would be the remedy in such a case? Congress would be arrested in the exercise of the disputed power, and the only remedy would be an appeal to the creating power, three-fourths of the States, for an amendment of the constitution. And by whom must such an appeal be made? It must be made by the party proposing to exercise the disputed power. Now I will ask whether a sovereign State may not be safely entrusted with the exercise of a power, operating merely as a check, which is admitted to belong to the Supreme Court, and which may be exercised every day, by any three of its members? Sir, no ideas that can be formed of arbitrary power on the one hand, and abject dependence on the other, can be carried further than to suppose that three individuals, mere men, "subject to like passions with ourselves," may be safely entrusted with the power to nullify an act of Congress, because they conceive it to be unconstitutional; but that a sovereign and independent State, even the great State of New York, is bound, implicitly, to submit to its operation, even where it violates, in the grossest manner, her own rights, or the liberties of her citizens. But we do not contend that a common case would justify the interposition.

This is "the extreme medicine of the State," and cannot become our daily bread.

Mr. Madison, in his report, says: "It does not follow, however, that, because the States, as sovereign parties to their constitutional compact, must ultimately decide whether it has been violated; that such a decision ought to be interposed either in a hasty manner, or on doubtful and inferior occasions. Even in the case of ordinary conventions, between different nations, where, by the strict rule of interpretation, a breach of a part may be deemed a breach of the whole; every part being deemed a condition of every other part, and of the whole, it is always laid down, that the breach must be both wilful and material, to justify an application of the rule. But in the case of an intimate and constitutional Union, like that of the United States, it is evident that the interposition of Congress

parties, in their sovereign capacity, can be called for by occasions, only, deeply and essentially affecting the vital principles of their political systems."

"The resolution has, accordingly, guarded against any misapprehension of its object, by expressly requiring, for such an interposition, 'the case of a deliberate, palpable, and dangerous breach of the constitution, by the exercise of powers not granted by it.' It must be a case, not of a light and transient nature, but of a nature dangerous to the great purposes for which the constitution was established. It must be a case, moreover, not obscure or doubtful in its construction, but plain and palpable. Lastly, it must be a case, not resulting from a partial consideration, or hasty determination, but a case stamped with a final consideration and deliberate adherence. It is not necessary, because the resolution does not require that the question should be discussed how far the exercise of any particular power, ungranted by the constitution, would justify the interposition of the parties to it; as cases might easily be stated which none would contend ought to fall within that description, and cases, on the other hand, might, with equal ease, be stated, so flagrant and so fatal, as to unite every opinion in placing them within the description."

"But the resolution has done more than guard against misconstruction, by expressly referring to cases of a deliberate, palpable, and dangerous nature. It specifies the object of the interposition which it contemplates, to be, solely, that of arresting the progress of the evil of usurpation, and of maintaining the authorities, rights, and liberties, appertaining to the States, as parties to the constitution."

No one can read this without perceiving that Mr. Madison goes the whole length in support of the principles for which I have been contending.

The gentleman has called upon us to carry out our scheme practically. Now, sir, if I am correct in my view of this matter, then it follows, of course, that the right of a State being established, the Federal Government is bound to acquiesce in a solemn decision of a State, acting in its sovereign capacity, at least so far as to make an appeal to the people for an amendment to the constitution. This solemn decision of a State (made either through its Legislature, or a convention, as may be supposed to be the proper organ of its sovereign will—a point I do not propose now to discuss) binds the Federal Government, under the highest constitutional obligation, not to resort to any means of coercion against the citizens of the dissenting State. How, then, can any collision ensue between the Federal and State Governments, unless, indeed, the former should determine to enforce the law by unconstitutional means? What could the Federal Government do, in such a case? Resort, says the gentleman, to the courts of justice. Now, can any man believe that, in the face of a solemn decision of a State, that an act of Congress is "a gross, palpable, and deliberate violation of the constitution," and the interposition of its sovereign authority to protect its citizens from the usurpation, that juries could be found ready merely to register the decrees of the Congress, wholly regardless of the unconstitutional character of their acts? Will the gentleman contend that juries are to be coerced to find verdicts at the point of the bayonet? And if not, how are the United States to enforce an act solemnly pronounced to be unconstitutional? But, if the attempt should be made to carry such a law into effect, by force, in what would the case differ from an attempt to carry into effect an act nullified by the courts, or to do any other unlawful and unwarrantable act? Suppose Congress should pass an agrarian law, or a law emancipating our slaves, or should commit any other gross violation of our constitutional rights, will any gentleman contend that the decision of every branch of the Government, in favor of such laws, could prevent, by declaring them null and void, and very. Think...-one fix n their operation?

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Sir, if Congress should ever attempt to enforce any such laws, they would put themselves so clearly in the wrong, that no one could doubt the right of the State to exert its protecting power.

Sir, the gentleman has alluded to that portion of the militia of South Carolina with which I have the honor to be connected, and asked how they would act in the event of the nullification of the tariff law by the State of South Carolina? The tone of the gentleman, on this subject, did not seem to me as respectful as I could have desired. I hope, sir, no imputation was intended.

[Mr. WEBSTER. "Not at all; just the reverse."]

Well, sir, the gentleman asks what their leaders would be able to read to them out of Coke upon Littleton, or any other law book, to justify their enterprise? Sir, let me assure the gentleman that, whenever any attempt shall be made from any quarter, to enforce unconstitutional laws, clearly violating our essential rights, our leaders (whoever they may be) will not be found reading black letter from the musty pages of old law books. They will look to the constitution, and when called upon, by the sovereign authority of the State, to preserve and protect the rights secured to them by the charter of their liberties, they will succeed in defending them, or "perish in the last ditch."

Sir, I will put the case home to the gentleman. Is there any violation of the constitutional rights of the States, and the liberties of the citizen, (sanctioned by Congress and the Supreme Court) which he would believe it to be the right and duty of a State to resist? Does he contend for the doctrine of "passive obedience and non-resistance?" Would he justify an open resistance to an act of Congress sanctioned by the courts, which should abolish the trial by jury, or destroy the freedom of religion, or the freedom of the press? Yes, sir, he would advocate resistance in such cases; and so would I, and so would all of us. But such resistance would, according to his doctrine, be revolution; it would be rebellion. According to my opinion, it would be just, legal, and constitutional resistance. The whole difference between us, then, consists in this. The gentleman would make force the only arbiter in all cases of collision between the States and the Federal Government. I would resort to a peaceful remedy, the interposition of the State to "arrest the progress of the evil," until such time as "a convention (assembled at the call of Congress, or two thirds of the States) shall decide to which they mean to give an authority claimed by two of their organs." Sir, I say with Mr. Jefferson, (whose words I have here borrowed) that "it is the peculiar wisdom and felicity of our constitution to have provided this peaceable appeal, where that of other nations" (and I may add that of the gentleman) "is at once to force."

The gentleman has made an eloquent appeal to our hearts in favor of union. Sir, I cordially respond to that appeal. I will yield to no gentleman here in sincere attachment to the Union; but it is a union founded on the constitution, and not such a union as that gentleman would give us, that is dear to my heart. If this is to become one great "consolidated Government," swallowing up the rights of the States, and the liberties of the citizen, "riding over the plundered ploughmen and beggared yeomanry," the Union will not be worth preserving. Sir, it is because South Carolina loves the Union, and would preserve it forever, that she is opposing now, while there is hope, those usurpations of the Federal Government which, once established, will, sooner or later, tear this Union into fragments. The gentleman is for marching under a banner, studded all over with "bearing the inscription Liberty and Union" and "the gentleman would have ample folds a little the centre

beams the "little stars hide their diminished heads." Our's, sir, is the banner of the constitution: the twenty-four stars are there, in all their undiminished lustre: on it is inscribed, Liberty—the Constitution—Union. We offer up our fervent prayers to the Father of all Mercies that it may continue to wave, for ages yet to come, over a free, a happy, and a united people.

Mr. WEBSTER now took the floor, in conclusion, and said: A few words, Mr. President, on this constitutional argument, which the honorable gentleman has labored to reconstruct.

His argument consists of two propositions, and an inference. His propositions are—

1. That the constitution is a compact between the States.
2. That a compact between two, with authority reserved to one to interpret its terms, would be a surrender to that one, of all power whatever.
3. Therefore, (such is his inference) the General Government does not possess the authority to construe its own powers.

Now, sir, who does not see, without the aid of exposition or detection, the utter confusion of ideas, involved in this, so elaborate and systematic argument?

The constitution, it is said, is a compact between States; the States, then, and the States only, are parties to the compact. How comes the General Government itself a party? Upon the honorable gentleman's hypothesis, the General Government is the result of the compact, the creature of the compact, not one of the parties to it. Yet the argument, as the gentleman has now stated it, makes the Government itself one of its own creators. It makes it a party to that compact to which it owes its own existence.

For the purpose of erecting the constitution on the basis of a compact, the gentleman considers the States as parties to that compact; but as soon as his compact is made, then he chooses to consider the General Government, which is the offspring of that compact, not its offspring, but one of its parties; and so, being a party, has not the power of judging on the terms of compact. Pray, sir, in what school is such reasoning as this taught?

If the whole of the gentleman's main proposition were conceded to him, that is to say—if I admit for the sake of the argument, that the constitution is a compact between States, the inferences which he draws from that proposition are warranted by no just reason. Because, if the constitution be a compact between States, still, that constitution, or that compact, has established a Government, with certain powers; and whether it be one of those powers, that it shall construe and interpret for itself the terms of the compact, in doubtful cases, can only be decided by looking to the compact, and inquiring what provisions it contains on this point. Without any inconsistency with natural reason, the Government, even thus created, might be trusted with this power of construction. The extent of its powers, therefore, must still be sought for in the instrument itself.

If the old confederation had contained a clause, declaring that resolutions of the Congress should be the supreme law of the land, any State law or constitution to the contrary notwithstanding, and that a committee of Congress, or any other body created by it, should possess judicial powers, extending to all cases arising under resolutions of Congress, then the power of ultimate decision would have been vested in Congress, under the confederation, although that confederation was a compact between States; and for this plain reason, that it would have been competent to the States, who alone were parties to the compact, to agree who should decide in cases of dispute arising on the construction of the compact.

For the same reason, sir, if I were now to concede to the gentleman his principal propositions, viz. that the constitution is a compact between States, the question would be, what provision is made, in this compact, to settle

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points of disputed construction, or contested power, that shall come into controversy? And this question would still be answered, and conclusively answered, by the constitution itself. While the gentleman is contending against construction, he himself is setting up the most loose and dangerous construction. The constitution declares that the laws of Congress shall be the supreme law of the land. No construction is necessary here. It declares, also, with equal plainness and precision, that the judicial power of the United States shall extend to every case arising under the laws of Congress. This needs no construction. Here is a law, then, which is declared to be supreme; and here is a power established, which is to interpret that law. Now, sir, how has the gentleman met this? Suppose the constitution to be a compact, yet here are its terms, and how does the gentleman get rid of them? He cannot argue the seal off the bond, nor the words out of the instrument. Here they are—what answer does he give to them? None in the world, sir, except that the effect of this would be to place the States in a condition of inferiority; and because it results, from the very nature of things, there being no superior, that the parties must be their own judges! Thus closely and cogently does the honorable gentleman reason on the words of the constitution. The gentleman says, if there be such a power of final decision in the General Government, he asks for the grant of that power. Well, sir, I show him the grant—I turn him to the very words—I show him that the laws of Congress are made supreme; and that the judicial power extends, by express words, to the interpretation of these laws. Instead of answering this, he retreats into the general reflection, that it must result, from the nature of things, that the States, being parties, must judge for themselves.

I have admitted, that, if the constitution were to be considered as the creature of the State Governments, it might be modified, interpreted, or construed, according to their pleasure. But, even in that case, it would be necessary that they should agree. One, alone, could not interpret it conclusively; one, alone, could not construe it; one, alone, could not modify it. Yet the gentleman's doctrine is, that Carolina, alone, may construe and interpret that compact which equally binds all, and gives equal rights to all.

So then, sir, even supposing the constitution to be a compact between the States, the gentleman's doctrine, nevertheless, is not maintainable; because, first, the General Government is not a party to that compact, but a Government established by it, and vested by it with the powers of trying and deciding doubtful questions; and, secondly, because, if the constitution be regarded as a compact, not one State only, but all the States, are parties to that compact, and one can have no right to fix upon it her own peculiar construction.

So much, sir, for the argument, even if the premises of the gentleman were granted, or could be proved. But, sir, the gentleman has failed to maintain his leading proposition. He has not shown, it cannot be shown, that the constitution is a compact between State Governments. The constitution itself, in its very front, refutes that proposition: it declares that it is ordained and established by the people of the United States. So far from saying that it is established by the Governments of the several States, it does not even say that it is established by the people of the several States; but it pronounces that it is established by the people of the United States in the aggregate. The gentleman says, it must mean no more than that the people of the several States, taken collectively, constitute the people of the United States; be it so, but it is in this, their collective capacity; it is as all the people of the United States that they establish the constitution. So they declare; and words cannot be plainer than the words used.

When the gentleman says the constitution is a compact between the States, he uses language exactly applicable to the old confederation. He speaks as if he were in Congress

before 1789. He describes fully that old state of things then existing. The confederation was, in strictness, a compact; the States, as States, were parties to it. We had no other General Government. But that was found insufficient, and inadequate to the public exigencies. The people were not satisfied with it, and undertook to establish a better. They undertook to form a General Government, which should stand on a new basis—*not a confederacy, not a league, not a compact between States, but a constitution; a popular Government, founded in popular election, directly responsible to the people themselves, and divided into branches, with prescribed limits of power, and prescribed duties.* They ordained such a Government; they gave it the name of a constitution, and therein they established a distribution of powers between this, their General Government, and their several State Governments. When they shall become dissatisfied with this distribution, they can alter it. Their own power over their own instrument remains. But, until they shall alter it, it must stand as their will, and is equally binding on the General Government and on the States.

The gentleman, sir, finds analogy, where I see none. He likens it to the case of a treaty, in which, there being no common superior, each party must interpret for itself, under its own obligation of good faith. But this is not a treaty, but a constitution of Government, with powers to execute itself, and fulfil its duties.

I admit, sir, that this Government is a Government of checks and balances; that is, the House of Representatives is a check on the Senate, and the Senate is a check on the House, and the President is a check on both. But I cannot comprehend him, or, if I do, I totally differ from him, when he applies the notion of checks and balances to the interference of different Governments. He argues that, if we transgress, each State, as a State, has a right to check us. Does he admit the converse of the proposition, that we have a right to check the States? The gentleman's doctrines would give us a strange jumble of authorities and powers, instead of Governments of separate and defined powers. It is the part of wisdom, I think, to avoid this; and to keep the General Government and the State Governments, each in its proper sphere, avoiding, as carefully as possible, every kind of interference.

Finally, sir, the honorable gentleman says, that the States will only interfere, by their power, to preserve the constitution. They will not destroy it, they will not impair it—they will only save, they will only preserve, they will only strengthen it! Ah, sir, this is but the old story. All regulated Governments, all free Governments, have been broken up by similar disinterested and well disposed interference! It is the common pretence. But I take leave of the subject.

[Here the debate closed for this day.]

THURSDAY, JANUARY 28, 1830.

The Senate resumed the consideration of the resolution moved by Mr. FOOT—Mr. BENTON being entitled to the floor.

POLITICAL HISTORY—MR. BAYARD.

Mr. CLAYTON said that he desired the permission of the Senator from Missouri [Mr. BENTON] to call the attention of two of the honorable members of this body, Mr. SMITH, of Maryland, and Mr. LIVINGSTON, of Louisiana, to a passage in a book which had been cited in this debate by the Senator from South Carolina, [Mr. HAYNE] as authority on another subject. He did not rise for the purpose of discussing the resolution itself. In the wide range of the debate here, the Northeastern and Southern sections of the country had been arrayed against each other. He listened to the discussion without any intention of participating in it, while the State which he had the honor, in part, to represent, had escaped unscathed by the controversy. Though favorable to the resolution, as a mere pro-

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position to inquire, he felt but little interest in such contentions between the North and South; and his only desire in relation to that subject was, that the warmth of the discussion might have no tendency to alienate one portion of our country from the other. But his attention had been called, by a number of members of the Senate, to a passage in the same book; another part of which had been referred to by the Senator from South Carolina. That passage charged an illustrious statesman, who formerly occupied the seat of a Senator here, and whose memory and fame were dear to himself and to the people he represented, with atrocious corruption, of which he was convinced that great and good man could never have been guilty; and as the witnesses referred to in the book itself were present, and ready to give testimony to set the charge at rest, he hoped he should be pardoned for referring to the objectionable passage in their presence.

He then read, from the fourth volume of Jefferson's *Memoirs*, page 515, (the same volume which had been brought into the Senate by General HAYNE) the following passage:

"FEBRUARY THE 12TH, 1801.—Edward Livingston tells me that Bayard applied to-day, or last night, to General Samuel Smith, and represented to him the expediency of his coming over to the States who vote for Burr; that there was nothing in the way of appointment which he might not command, and particularly mentioned the Secretaryship of the Navy. Smith asked him if he was authorized to make the offer. He said he was authorized. Smith told this to Livingston, and to W. C. Nicholas, who confirms it to me," &c.

Mr. CLAYTON then called upon the Senators from Maryland and Louisiana, referred to in this passage, to disprove the statement here made.

Mr. SMITH, of Maryland, rose and said, that he had read the paragraph before he came here to-day, and was, therefore, aware of its import. He had not the most distant recollection that Mr. Bayard had ever made such a proposition to him. Mr. Bayard [said he] and myself, though politically opposed, were intimate personal friends, and he was an honorable man. Of all men Mr. Bayard would have been the last to make such a proposition to any man; and I am confident that he had too much respect for me to have made it, under any circumstances. I never received from any man, any such proposition.

Mr. LIVINGSTON, of Louisiana, said, that, as to the precise question which had been put to him by the Senator from Delaware, he must say, that, having taxed his recollection as far as it could go, on so remote a transaction, he had no remembrance of it.

Mr. CLAYTON said his purpose had been achieved. He thought it his duty to vindicate the honor and fame of his predecessors against unjustifiable imputations, no matter to what party they may have belonged. The character of the illustrious Bayard would, he trusted, stand forever untarnished by the charge of corruption. He should have thought himself recreant in duty to the people of the State he, in part, represented, to the memory of one who once filled the same place which he now occupied, if he had not seized the first opportunity in his power, after the public appearance of this volume on the floor of the Senate, to disprove the charges to which he had this day called their attention. He thought there were other charges in that volume against other distinguished men of this country, equally unfounded. [Subsequently, upon some remarks from Mr. BENTON, he said, he wished it to be distinctly understood, that it was no part of his purpose to tarnish the fame of Mr. Jefferson. His object was not accusative, but entirely exculpatory.]

Mr. BENTON entered his protest against this mode of introducing extraneous questions here, and regretted that he had given way to Mr. CLAYTON, for a purpose to which, he said, he would not have been instrumental,

could he have anticipated it. Mr. B. then proceeded in his speech commenced on the 20th of January, but, before he concluded, he was induced to give way for a motion for adjournment.

FRIDAY, JANUARY 29, 1830.

The Senate, after discussing a resolution authorizing a subscription on the part of the Senate to a proposed compilation of Public Documents by Gales and Seaton, adjourned over to Monday.

MONDAY, FEB. 1, 1830.

#### POLITICAL HISTORY—MR. BAYARD.

Mr. BENTON was entitled to the floor, but

Mr. HAYNE rose and said, before the Senator from Missouri proceeded further in the debate, he considered it his duty to notice an occurrence which had taken place here, when this subject was last under consideration. An honorable Senator from Delaware, [Mr. CLAYTON] rose in his place, and, taking up a volume of Jefferson's *Memoirs*, which I had introduced into this chamber, read a passage implicating the late Mr. Bayard in an attempt to bring over General Samuel Smith, of Maryland, to the support of Colonel Burr, in the celebrated political contest of 1801. The gentleman then appealed to the Senators from Maryland and Louisiana, [Mr. SMITH and Mr. LIVINGSTON] to say whether they had any recollection of the occurrence to which Mr. Jefferson alludes, and those gentlemen having replied in the negative, the Senator from Delaware then stated, that he now considered the vindication of Mr. Bayard to be complete, and went on to make some remarks, which I did not distinctly hear, but which have been supposed, contrary, I must presume, to that gentleman's intention, to cast imputation on the reputation, and even on the veracity of Mr. Jefferson. I find too, sir, that an impression has gone abroad, that I had myself referred to, and relied on, the very passage in which Mr. Bayard is supposed to be implicated. It is my present object [said Mr. B.] to correct these errors; and to prevent any possible misconception either as to my own course, or that of the gentleman from Delaware. I referred to the *Memoirs* of Mr. Jefferson for the purpose of availing myself of his political principles, and declared opinions, in relation to the tariff, and internal improvements, and the great question of State rights, then in controversy between the Senator from Massachusetts [Mr. WEBSTER] and myself. I relied on the authority of Mr. Jefferson but for a single fact, incidentally introduced into the debate, which was, that Mr. Adams had informed him of certain designs on the part of the New England Federalists, for a dissolution of the Union, during the embargo. That such a communication was actually made to Mr. Jefferson, has been publicly acknowledged by Mr. Adams himself. For the memory of Mr. Bayard, I have always entertained too much respect to have permitted me to mention his name otherwise than with becoming respect. I had early learned to respect that gentleman, from his high character and public services; and I was taught to revere his memory by my friend from Delaware, [Mr. McLane] who sat so long by my side in this chamber, and who is now doing honor to himself and his country in one of our highest diplomatic trusts abroad. But, sir, without proposing to enter into the examination of the question, I will merely remark, that I think the memorandum made by Mr. Jefferson, 12th February, 1801, is susceptible of an easy explanation, without the impeachment of any of the parties. For my own part, I can have no doubt, when Mr. Jefferson made the entry in his note book, on the very day on which the transaction took place, that he actually received the impression which he states from the conversation of one at least of the gentlemen named; and yet, sir, what can be more natural than to suppose

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that a loose and careless conversation, reaching Mr. Jefferson through circuitous channels, may have been entirely misunderstood? A familiar, a pleasant conversation, between Mr. Bayard and his friend General Smith, on the political prospects of the latter gentleman, (then as bright as those of any man in the country) repeated by him carelessly, or probably in jest, may have for a short time made an impression on the minds of Mr. Livingston and Wilson Cary Nicholas, which these gentlemen, or one of them, assuredly conveyed to Mr. Jefferson. Sir, a very few days probably cleared up the mystery, and put all matters right, and therefore it was immediately forgotten by the parties concerned. This explanation is to my mind entirely satisfactory. I do not make these remarks because I suppose any vindication of the reputation of Mr. Jefferson to be necessary. That rests on a foundation that cannot be shaken. The time was, sir, when a large portion of the people were taught to believe that Mr. Jefferson was destitute of every principle, political, moral, and religious: while, by his political friends, no man was ever so much admired, respected, and beloved, he was feared, and hated, slandered, and reviled, by his enemies. In one respect, however, he was certainly the most fortunate of men. Not having out-lived the gratitude and affection of his friends, he lived down the hostility of his enemies. Time and opportunity convinced all parties, that, in that great and good man were found, in happy combination, all those extraordinary endowments, and rare virtues, which made him an honor to the age in which he lived. Sir, be descended to the tomb, not only "full of years and full of honors," but occupying, at the moment when he closed his mortal career, the very first place in the hearts of millions of free-men.

Mr. CLAYTON said that he had already announced his intention in regard to this matter to have been entirely exculpatory; but he was willing to avail himself of another opportunity of making the same declaration, to prevent any misapprehension. On Thursday, while this resolution was under consideration, and before the Senator from Missouri [Mr. BENTON] had commenced his reply to the Senator from Massachusetts, he desired permission to put a question to the gentlemen from Maryland and Louisiana, for the purpose of correcting an error in a volume cited in the debate, which, on account of the extraordinary imputation it cast upon the memory of one now in his grave, who held a distinguished rank among the statesmen of this country, had become the subject of general conversation here, and to which his attention had been repeatedly called by other gentlemen. He at that time saw the gentlemen from Maryland and Louisiana in their seats; and as so favorable an opportunity then offered of removing the effects of an error, which, without their evidence, could never be so satisfactorily corrected, he chose to avail himself of it. My object [said Mr. C.] was fully obtained. The Senator from South Carolina [Mr. H.] did not understand me as saying aught against Mr. Jefferson; but the Senator from Missouri chose to work himself up into a most patriotic excitement, denouncing the proceeding as an attack upon Mr. Jefferson. It is true, as he has stated, that I did not consult him in regard to the proceeding. I chose to follow my own course: I would pursue the same course again, and it is now to me a matter of no very great importance whether he approves it or not. As to the charge of an attack upon Mr. Jefferson, as the Senator sat at some distance from me, he may have misapprehended my observation; and whether he did or not, it is not my purpose now to inquire, but protest against all his inferences on the subject, if drawn from my remarks, as unfounded and gratuitous. Every honorable man will appreciate my motives. I think that the gentleman might have put a charitable construction upon the error into which Mr. Jefferson had fallen. I entertain as high an opinion of the reputation of that great statesman as others who make much greater

professions, and would not pluck a flower from the chaplet of his fame. But at every hazard—let the consequences fall where they may—I will repel every imputation, like that contained in the memoir, upon the memory of Mr. Bayard, who, at the very period referred to, held the vote of my native State in his hand, and whose honor in that transaction cannot be touched without a reflection upon the State herself. Her maxim will ever be, whether she speaks here by me as her Representative, or by any other—

"To thine own self be true;  
"And it must follow, as the night the day,  
"Thou canst not then be false to any man."

And now, having repudiated the inference drawn from this occurrence by the Senator from Missouri, let this subject henceforth and forever sleep with the illustrious dead who have formed the topic of this desultory discussion.

## THE RESOLUTION OF Mr. FOOT.

Mr. BENTON then rose, and proceeded to address the Senate about an hour, in continuation of his remarks on Mr. FOOT'S resolution.

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Mr. BENTON again rose, and spoke more than two hours, in conclusion of his speech, commenced on a former day.

Mr. SPRAGUE next rose to address the Senate on the subject, and had proceeded near half an hour, when he gave way for a motion to adjourn.

[The following speech of Mr. BENTON was commenced January 20th, and continued for some time, when Mr. WEBSTER having come in, Mr. BENTON gave way to Mr. HAYNE, by whom and Mr. W. the floor was occupied four days. It was not till the discussion between them was over, that Mr. BENTON proceeded with his speech, in doing which he replied to many things said by Mr. W. in his debate with Mr. HAYNE. In reporting Mr. B.'s speech, it was deemed best to keep it united, and it is here given entire, as it was delivered from day to day.]

Mr. BENTON said he could not permit the Senate to adjourn, and the assembled audience of yesterday to separate, without seeing an issue joined on the unexpected declaration then made by the Senator from Massachusetts [Mr. WEBSTER]—the declaration that the Northeast section of the Union had, at all times, and under all circumstances, been the uniform friend of the West, the South inimical to it, and that there were no grounds for asserting the contrary. Taken by surprise, as I was, [said Mr. BENTON] by a declaration so little expected, and so much in conflict with what I had considered established history, I felt it to be due to all concerned to meet the declaration upon the instant—to enter my earnest dissent to it, and to support my denial by a rapid review of some great historical epochs. This I did upon the instant, without a moment's preparation, or previous thought; but I checked myself in an effusion,\* in which feeling was at least as predominant as judgment, with the reflection that issues of fact, between Senators, were not to be decided by bandying contradictions across this floor; that it was due to the dignity of the occasion to proceed more temperately, and with proof in hand for every thing that I should urge. I then sat down with the view of recommencing coolly and regularly as soon as I could refresh my memory with dates and references. The warmth of the moment prevented me from observing what was most obvious—namely, that the resolution under discussion was itself the most pregnant illustration of my side of the issue. It is a resolution of direct import to the new States in the West, involving in its fourfold aspect, the stoppage of emigration to that region, the limitation of its settlement, the suspension of

\* The substance of this effusion being incorporated with the speech began the next day, it has not been published.

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surveys, the abolition of the Surveyor's office, and the surrender of large portions of Western territory to the use and dominion of wild beasts; and, in addition to all this, connecting itself, in time and spirit, with another resolution, in the other end of the capitol, for delivering up the public land in the new States to the avarice of the old ones, to be coined into gold and silver for their benefit. This resolution, thus hostile in itself, and aggravated by an odious connexion, came upon us from the Northeast, and was resisted by the South. Its origin, and its progress, was a complete exemplification of the relative affections which the two Atlantic sections of the Union bear to the West. Its termination was to put the seal upon the question of that affection. The Senator from Massachusetts, [Mr. WINTER] to whom I am now replying, was not present at the offering of that resolution. He arrived when the debate upon it was far advanced, and the temper of the South and West fully displayed. He saw the condition of his friends, and the consequences of the movement which they had made. Their condition was that of a certain army, which had been conducted, by two consuls, into the Caudine Forks; the consequences might be prejudicial to the Northeast—more accurately speaking, to a political party in the Northeast! His part was that of a prudent commander—to extricate his friends from a perilous position; his mode of doing it ingenious, that of starting a new subject, and moving the indefinite postponement of the impending one. His attack upon the South was a cannonade, to divert the attention of the assailants; his concluding motion for indefinite postponement, a signal of retreat and dispersion to his entangled friends. They may obey the signal. They may turn head upon their speeches, and vote for the postponement, and avoid a direct vote upon the resolution, and give up the pursuit after that information which was so indispensable to do justice and to avoid suspicion; but in doing so, they take my ground against the resolution; for indefinite postponement is rejection: and whether rejected or not, the indelible character of the resolution must remain. It was hostile to the West! It came from the Northeast! and was resisted by the South!

Before I proceed to the main object of this reply, I must be permitted [said Mr. B.] to tear away some ornamental work, and to remove some rubbish, which the Senator from Massachusetts [Mr. W.] has placed in the way, either to decorate his own march, or to embarrass mine. He has brought before us a certain Nathan Dane, of Beverly, Massachusetts, and loaded him with such an exuberance of blushing honors, as no modern name has been known to merit, or to claim. Solon, Lycurgus, and Numa Pompilius, are the renowned legislators of antiquity to whom he is compared, and, only compared for the purpose of being placed at their head. So much glory was earned by a single act, and that act, the supposed authorship of the ordinance of 1787, for the Government of the Northwestern Territory, and especially of the clause in it which prohibits slavery and involuntary servitude. Mr. Dane was assumed to be the author of this ordinance, and especially of this clause, and upon that assumption was founded, not only the great superstructure of Mr. Dane's glory, but a claim also upon the gratitude of Ohio, and all the Northwest, to the unrivalled legislator, who was the author of their happiness, and to the quarter of the Union which was the producer of the legislator. So much encomium, and such grateful consequences, it seems a pity to spoil—but spoil they must be: for Mr. Dane was no more the author of that ordinance, sir, than you, or I, who, about that time were "mewling and puling in our nurse's arms." That ordinance, and especially the non-slavery clause, was not the work of Nathan Dane, of Massachusetts, but of Thomas Jefferson, of Virginia. It was reported by a Committee of three, Messrs. Jefferson, of Virginia, Chase, of Maryland, and Howard, of Rhode Island—a majority

from slave States, in April, 1784, nearly two years before Mr. Dane became a member of Congress. The clause was not adopted at that time, there being but six States in favor of it, and the articles of confederation, in question of that character, requiring seven. The next year, '85, the clause, with some modification, was moved by Mr. King, of New York, as a proposition to be sent to a committee, and was sent to the Committee accordingly; but still did not ripen into a law. A year afterwards, this clause, and the whole ordinance, was passed, upon the report of a Committee of six members, of whom, the name of Mr. Dane stands No. 5, in the order of arrangement on the Journal. There were but eight States present at the passing of this ordinance, namely, Massachusetts, New York, New Jersey, Delaware, Virginia, North Carolina, South Carolina, and Georgia; and every one voted for it. [Here Mr. B. read the parts of the Journal which verified these statements, and continued:] So passes away the glory of this world. But yesterday, the name of Nathan Dane, of Beverly, Massachusetts, hung in equipage against half the names of the sages of Greece and Rome. Poetry and eloquence were at work to blazen his fame; marble, and brass, and history, and song, were waiting to perform their office. The celestial honors of the apotheosis seemed to be only deferred for the melancholy event of the sepulchre. To-day, all this superstructure of honors, human and divine, disappears from the earth. The foundation of the edifice is sapped; and the superhuman glories of him, who, twenty-four hours ago, was taking his station among the demi-gods of antiquity, have dispersed and dissipated into thin air—vanishing like the baseless fabric of a vision, which leaves not a wreck behind. So much for the ornamental work; now for the rubbish.

The Senator from Massachusetts [Mr. W.] has dwelt with much indignation upon certain supposed revilings of the New England character. He did not indicate the nature of the revilings, nor the name of the reviler. I, for one, disclaim a knowledge of the thing, and the doing of the thing itself. I deal in no general imputations upon communities. Such reflections are generally unjust, and always unwise. I am no defamer of New England. The man must be badly informed upon the history of these States who does not know the great points of the New England character. He must poorly appreciate national renown in arms and letters—national greatness, resting on the solid foundations of religion, morality, and learning, who does not respect the people among whom these things are found in rich abundance. Yet, I must say—the speech of yesterday forces me to say it—that, in a political point of view, the population of New England does not stand undivided before me. A line of division is drawn through the mass, whether "horizontally," leaving the rich and well born above, the poor and ill-born below; or vertically, so as to present a section of each layer, is not for me to affirm. The division exists. On one side of it we see friends who have adhered to us in every diversity of fortune, who have been with us in six troubles, and will not desert us in the seventh; men who were with us in '98, and in the late war; whose grief and joy rose and sunk with ours in the struggle with England; who wept with us over the calamities of the Northwest, and rejoiced in the splendid glories of the Southwest! On the other side, we see those who were against us in all these trials; who thought it unbecoming a moral and religious people to celebrate the triumphs of their own country over its enemy, but quite becoming the same people, to be pleased at the victories of the enemy, over their country; who gave a dinner to him that surrendered Detroit. The line of division exists. On one side of it stands the democracy of New England, to whom we give the right hand of fellowship at home and abroad; on the other side, all that stands opposed to that democracy, for whose personal welfare we have the best wishes; but with whom we must decline,

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as publicly as it was proffered, the honor of that alliance which was yesterday vouchsafed to the West, if not in direct terms, at least by an implication which no one misunderstood. When, then, the people of New England shall read of these revilings, in that well-delivered speech of yesterday, let them remember that an issue of fact is joined upon the assertion, and that it is contained in the same speech which supposes Nathan Dane, of Beverly, Massachusetts, to have been the author of a certain production, in the year 1786, which the Journals of Congress show to have been the work of Thomas Jefferson, of Monticello, Virginia, in the year 1784! The same speech which claims, for New England, the gratitude of the Northwestern States for passing that ordinance, when the Journals prove that it had the votes of four States from the South of the Potomac, and only one from New England! When it could have passed without the New England vote, but not without three of the Southern ones!

But I did say something which might be understood as a reproach upon some of the leading characters of New England; it was upon the subject of emigration to the West, and their opposition to it. I quoted high authority at the time—the authority of gentlemen who had served in Congress, and made their statements in the Virginia Convention, under the highest moral responsibilities. Their statement is denied. I will, therefore, produce authority from a different quarter, and of a more recent application—the letter of a son of New England, to another son of the same quarter of the Union.

*The Letter—from the Boston Centinel of April 18th, 1827.*

*An extract from a letter written by the Hon. John Quincy Adams, while Minister at the Court of Russia, to Dr. Benjamin Waterhouse, in Cambridge, dated*

“ST PETERSBURGH, 24th Oct. 1813.

[The Doctor had mentioned the vast emigration from New England to the Western Territories, about, and previously to, the time of his writing, to which portion of his letter, Mr. Adams replied as follows:]

“I am not displeased to hear that Ohio, Kentucky, Indiana, Louisiana, are rapidly peopling with Yankees. I consider them as an excellent race of people, and, as far as I am able to judge, I believe that their moral and political character, far from degenerating, improves by emigration. I have always felt, on that account, a sort of predilection for those rising Western States; and have seen with no small astonishment, the prejudices harbored against them. There is not upon this globe of earth, a spectacle exhibited by man, so interesting to my mind, or so consolatory to my heart, as this metamorphosis of howling deserts into cultivated fields and populous villages, which is yearly, daily, hourly, going on, by the hands chiefly of New England men, in our Western States and Territories.

“If New England loses her influence in the councils of the Union, it will not be owing to any diminution of her population, occasioned by these emigrations: it will be from the partial, sectarian, or, as Hamilton called it, clanish spirit, which makes so many of her political leaders jealous and envious of the West and South. This spirit is, in its nature, narrow and contracted; and it always works by means like itself. Its natural tendency is to excite and provoke a counteracting spirit of the same character; and it has actually produced that effect in our country. It has combined the Southern and Western parts of the United States, not in a league, but in a concert of political views adverse to those of New England. The fame of all the great legislators of antiquity is founded upon their contrivances to strengthen and multiply the principles of attraction in civil society. Our legislators seem to delight in multiplying and fomenting the principles of repulsion.”

Having read this letter of Mr. Adams, Mr. B. continued. I will make no comment on the language here used. It is sufficiently significant without that trouble. “Partial—

sectarian—clannish—jealous—envious—narrow—contracted—excite—provoke—multiplying, fomenting, principles of repulsion”—are phrases which need no aid from the dictionary to uncover their pregnant meaning. I will only ask for three or four concessions:

1. That the authority of the writer of the letter is canonical, and binding on the church.

2. That it goes the full length of charging the New England leaders of 1813 with opposition to Western emigration.

3. That nothing which I have said of the motives, or conduct, of those who oppose this emigration, can compare in severity of expression with the language of Mr. Adams.

4. That the political leaders of whom he spoke as opposing emigration to the West, upon such motives, and by such means, are the same who are now denying it on this floor, and wooing the West into an alliance with them.

I gave yesterday [said Mr. B.] the brief history of the great attempt, in '86, 7, 8, to surrender the navigation of the Mississippi; to surrender it in violation of the articles of confederation, by a majority of seven States, when the requisite majority of nine could not be obtained; the protracted resistance of these attempts by the Southern States; their final defeat by a movement from North Carolina; and the secrecy in which the whole was enveloped. The history of these things were given then; the proofs will be produced now; the epoch and the subject are entitled to the first degree of consideration in this inquiry into the relative affection of two great sections of the Union to a third; for, on this question of a surrender of the navigation of the Mississippi to the King of Spain, commenced that line of separation between the conduct of the Northeast, and of the South, towards the West, which has continued to this day.

The first movement upon this subject was in the winter of 1779–80. It came through the French ambassador, the Chevalier de la Luzerne, the United States having no diplomatic relations, at that time, with the King of Spain. The Chevalier, in a secret communication to Congress, informed them, by the command of the King of France, that the King of Spain would join the United States against England, upon four conditions, namely:

1. That the settlements and boundary of the United States should not extend further West than to the heads of the rivers that flowed into the Atlantic Ocean.

2. That the exclusive navigation of the Mississippi should belong to Spain.

3. That the Floridas should belong to her.

4. That the Southern States should be restrained from making settlements to the west of the Alleghanies, and that all the country beyond these mountains should be considered as British possessions, and proper objects for the arms and permanent conquest of Spain. [Secret Journals, vol 2, p. 310.]

The proffered alliance of Spain, upon these conditions, was rejected by Congress. But her alliance was an object of the first importance, and, to obtain it, if possible, without the worst of these conditions, Mr. Jay was despatched to Madrid. On the subject of the Mississippi, Mr. Jay was directed to make a *sine qua non* of the free navigation of that river, and the use of a port near its mouth. On the subject of the West—for I limit myself to these points—he was directed to say that the West being settled by citizens of the United States, friendly to the Revolution, Congress would not assign them over to any foreign Power. These instructions were unanimously given. This was in the commencement of the year '80. One year afterwards, to wit, the 15th of February, '81, one month before the battle of Guilford Court House, the delegates of Virginia, in pursuance of instructions from their constituents, moved to recede from so much of the previous instruction of Mr. Jay as made the free navigation of the Mississippi, a



*sine qua non*: Provided, that Spain should "unalterably" insist upon it, and not otherwise come into the alliance against England; and that the minister be "ordered to exert every possible effort" to obtain the alliance, without the surrender of the navigation of the river. On the question to agree to this modification of the instructions, the vote stood: Yeas, Pennsylvania, Virginia, South Carolina, Georgia, New Hampshire, Rhode Island, Delaware, Maryland, (the four latter having but one member each present.) Nays, Massachusetts, Connecticut, and North Carolina. New York divided, and not counted.

This, [said Mr. B.] is the case mentioned by Mr. Madison, in the Virginia convention; the instance of willingness, on the part of the Southern States, to give up the navigation of the Mississippi, and its resistance by the Northern States, to which he alluded. The journals show the facts of the case. They control the recollections of Mr. Madison, and leave me not a word to say. But, the question of this navigation, and these instructions, did not stop here. On the 10th of August following, it was proposed to vest the minister at Madrid with discretionary power over the navigation of the Mississippi, and unanimously rejected. The proposition stands thus, p. 468, of the fourth volume of the Journal:

"That the minister be empowered to make such further cession of the right of these United States to the navigation of the Mississippi, as he may think proper; and on such terms and conditions as he may think most for the honor and interest of these United States."

Upon the question of adopting this proposition, the votes were unanimously against it, not of States only, but of members; every member of every State present voting in the negative. This was a proud instance of unanimity. The result of it was, the acquisition of the alliance of Spain without a surrender of the great right of navigation in the King of Floods.

The question of the navigation of this river then slept for four years, until the summer of 1785, when Don Gardoqui, the Spanish *encargado de negocios*, arrived in the United States, with powers to negotiate a treaty. Mr. Jay, the Secretary of State for Foreign Affairs, was appointed to treat with him. The instructions to Mr. Jay limited his negotiation to two points, namely, boundaries and navigation; and, on this latter point, the last clause of his instructions made the free navigation of the Mississippi, and the use of a port near its mouth, an indispensable condition to the conclusion of a treaty. These instructions seem to have been given with entire unanimity. No division of sentiment appears on the Journal, and nearly a whole year elapsed before any thing appears upon the subject of this negotiation, thus committed to Mr. Jay and Don Gardoqui. At the end of that time, it was brought before Congress by a letter from Mr. Jay, in secret session, and gave rise to proceedings which I beg leave to read, not choosing to trust any thing to my memory, or to risk the possible substitution of my own language for that of the record, in a case of so much delicacy and moment.

*The letter of Mr. Jay to the President of Congress.*

"Office of Foreign Affairs, May 29, 1786.

"Sir: In my negotiations with Mr. Gardoqui, I experience certain difficulties, which, in my opinion, should be so managed, as that even the existence of them should remain a secret for the present. I take the liberty, therefore, of submitting to the consideration of Congress, whether it might not be advisable to appoint a committee, with power to instruct and direct me on every point and subject relative to the proposed treaty with Spain. In case Congress should think proper to appoint such a committee, I really think it would be prudent to keep the appointment of it secret, and to forbear having any conversation on subjects connected with it, except in Congress, and in meetings on the business of it.

JOHN JAY."

This letter was referred to a committee of three, namely: Mr. King, of New York, Mr. Pettit, of Pennsylvania, and Mr. Monroe, of Virginia. They reported that the letter should be taken under consideration in Committee of the whole House. This committee resolved to hear the Secretary in person, fixed a day for his attendance, and ordered him to state the difficulties of which his letter had given intimation.

He did so, in a written statement, which, including letters from Don Gardoqui, occupies some thirty pages of the Journal. The points of it, so far as they are material to the question now before the Senate, were, that the pending negotiations for boundaries and navigation should also include commerce; that the United States should abandon to the King of Spain the exclusive navigation of the Mississippi, for twenty-five or thirty years, and that Spain should purchase many articles from the United States, of which pickled salmon, train oil, and cod fish, were particularly dwelt upon.—[Vol. 4, pages 45 to 63.] From this instant, the division between the North and South, on the subject of the West, sprang into existence. A series of motions and votes ensued, and a struggle, which continued two years, in which Maryland, and all South, voted one way, and New Jersey, and all North, voted the other. The most important of these motions were, 1. A motion by Mr. King, of New York, to repeal the clause in the instructions to Mr. Jay which made the navigation of the Mississippi a *sine qua non*, which was carried by the seven Northern States against the others. 2. A motion by Mr. Pinckney, of S. Carolina, to revoke the whole instruction, and stop the negotiation; lost by the same vote. 3. A motion by Mr. Pinckney, seconded by Mr. Monroe, to declare it a violation of the articles of the Confederation, for seven States to alter the instructions for negotiating a treaty, those articles requiring the consent of nine States on questions of that kind; lost by the same vote. 4. A motion by the delegates from Virginia to make it a *sine qua non*, that the citizens of the United States should have the privilege of taking their produce to New Orleans; the United States to have a consul, and the citizens factors there; that the vessels be allowed to return empty, and the produce to be exported on paying a small export duty; lost by the same array of votes. 5. A motion made by Mr. St. Clair, seconded by Mr. King, to make the same proposition, to be obtained, if possible, but not a *sine qua non*; carried by the ayes of New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, seven; against the noes of Maryland, Virginia, North Carolina, South Carolina, Georgia, five; Delaware not present.

I pause a moment, in the narrative of these occurrences, to remark that the motion of the Virginia delegation, above stated, has been misunderstood; that it has been supposed that that delegation and the South, which voted with them, were then in favor of paying tribute to Spain, and abandoning forever the upward or ascending navigation of the Mississippi, and that the seven Northern States prevented that calamity to the West. Nothing can be more erroneous than this conception. The attempt of Virginia was to save, at all events to make sure, by a *sine qua non*, this poor privilege of exporting, paying an export duty of two and a half per cent. and returning empty; and this, after seeing that the whole right to the navigation, descending as well as ascending, was to be surrendered for twenty-five or thirty years. The vote of the seven Northern States against the Virginia proposition was to have an opportunity of doing not better, but worse, for the West; to make this same proposition not an indispensable condition to the conclusion of a treaty, but a mere proposal, to be obtained if it could, and if not, the whole right of navigation to be abandoned for twenty-five or thirty years. This is what they showed to be their disposition in adopting Mr. King's mo-

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tion immediately after rejecting that of the Virginia delegation, Mr. King's being a substantial copy of the other, except in the essential particulars of the *sine qua non*, and for this the seven Northern States voted; the six others opposed it. I now resume my narrative.

The next motion and vote stands thus upon the Journal of the 28th Sept. '86.

"Moved by Mr. Pinckney, seconded by Mr. Carrington, that the injunction of secrecy be taken off, so far as to allow the delegates in Congress to communicate to the Legislatures and Executives of their several States, the acts which have passed, and the questions which have been taken in Congress respecting the negotiations between the United States and his Catholic Majesty.

The motion was lost by the following vote:

Massachusetts.—Mr. Gorham, no, Mr. King, no, Mr. Dane, no.

Rhode Island.—Mr. Manning, no, Mr. Miller, no.

Connecticut.—Mr. Johnson, no, Mr. Sturges, no.

New York.—Mr. Haring, no, Mr. Smith, no.

New Jersey.—Mr. Cadwallader, no, Mr. Symmes, ay, Mr. Hornblower, no.

Pennsylvania.—Mr. Pettit, no, Mr. St. Clair, no.

Maryland.—Mr. Ramsay, ay, (not counted.)

Virginia.—Mr. Monroe, ay, Mr. Carrington, ay, Mr. Lee, ay.

North Carolina.—Mr. Bloodworth, ay, Mr. White, ay.

South Carolina.—Mr. Pinckney, ay, Mr. Parker, ay.

Georgia.—Mr. Houston, no, Mr. Few, ay. (Divided.)"

In April, 1787, Mr. Madison having become a member of Congress, moved two resolutions, one to transfer the negotiation with Spain from the United States to Madrid; the other to charge Mr. Jefferson, then in France, with the conduct of it. [Secret Journals, vol. 4, page 339.] The object of these resolutions could not be mistaken. They were referred by Congress to Mr. Jay, Secretary for Foreign Affairs, and still engaged in the negotiation with Don Gardoqui. He reported at large against the expediency of the transfer, treating it as a project to gain time, and complaining that the secret of the Spanish negotiations had leaked out of Congress. This report, and the motion of Mr. Madison, seemed to have been undisposed of, when an incident in real life, and the firm stand of one of the States, brought the majority of Congress to a pause, and extricated the Mississippi from its imminent danger. This was the arrest of a citizen of North Carolina, and the confiscation of his vessel and cargo, by the Spanish Governor, Grandpré, at Natchez, and the decisive character of the appeal made by the Legislature, the Governor, and the Delegates in Congress from that State, for the redress of that outrage. Mr. Madison availed himself of the feeling produced by these incidents to make another attempt to get rid of the subject; and, in September, 1788, offered a resolution that no further progress be made in the negotiation with Spain, and that the whole subject be referred to the new Federal Government, which was to go into operation the ensuing year. This resolution was agreed to, and the Mississippi saved. Thus ended an arduous and eventful struggle. The termination was fortunate and happy, but the spirit which produced it has never gone to sleep. The idea that the Western rivers are a fund for the purchase of Atlantic advantages, in treaties with foreign Powers, has been acted upon often since: The Mississippi, the Arkansas, the Red river, the Sabine, and the Columbia, can bear witness of this. The idea that the growth of the West was incompatible with the supremacy of the Northeast, has since crept into the legislation of the Federal Government, as will be fully developed in the course of this debate.

I have already given the proof of the fact, that the South is entitled to the honor of originating the clause against slavery in the Northwest Territory: the state of the

votes upon its adoption also shows that she is entitled to the honor of passing it; there being but eight States present, four from each side of the Potomac, only one from New England, and all voting for it. This shows the great mistake which is committed in claiming the merit of that ordinance for the Northeast, and founding upon that claim a title to the gratitude of the Northwestern States. The ordinance of the same epoch, for the sale of the Western lands, has also been celebrated, and deservedly, for the beauty and science of its system of surveys. The honor of this ordinance is also assumed for the Northeast. Let it be so. I know nothing to the contrary, and what I do know favors that idea. The ordinance came from a committee of twelve, of whom eight were from the north, four from the south side of the Potomac. But, as it came from that committee, it would have left the whole Northwestern region a haunt for wild beasts and savages. The clause which required that every previous township should be sold out complete, before a subsequent one was offered for sale, would have produced this result, and was intended to produce it. Virginia, the South, and some Northern States, expunged that clause; Massachusetts and some others contended for it to the last. The Northwest is therefore indebted to the South for the sale of its lands: it is also indebted to it for an unsuccessful attempt to promote the settlement of the country by reducing the size of the tracts to be sold. The ordinance, as reported, fixed six hundred and forty acres as the smallest division that might be offered for sale. Mr. Grayson, of Virginia, seconded by Mr. Monroe, moved to reduce the quantity to three hundred and twenty acres, but failed in the attempt. The Virginia delegation voted for it unanimously; South Carolina and Georgia both voted for it, but, having but one member present, the vote did not count. Maryland voted for it; all the rest of the States against it. Another attempt to benefit the settler, and promote the sale of the country, deserves a notice, though unsuccessful: it was the motion to reduce the price fixed in the ordinance from one dollar per acre to sixty-six and two-thirds cents. This motion was made by Mr. Beatty, of New Jersey, seconded by Mr. McHenry, of Maryland, and was supported by the votes of four States, to wit: New York, New Jersey, Maryland, and South Carolina; Pennsylvania divided, and counted nothing; the rest of the States, Virginia inclusive, voted against it. The motion failed, though respectably supported; the price remained at one dollar, which is twenty-five cents less than the present minimum price of the same lands after forty-five years' picking; and it is worthy of remark, that one-third of the States were then, when the lands were all fresh and unpicked, in favor of establishing a minimum price at sixty-six and two-thirds cents per acre; a fraction only over one-half of the present minimum!

I now approach the subject of most engrossing interest to the young West—its sufferings under Indian wars, and its vain appeals, for so many years, to the Federal Government, for succor and relief. The history of twelve years' sufferings in Tennessee, from 1780 to 1792, when the inhabitants succeeded in conquering peace without the aid of federal troops; and of sixteen years' carnage in Kentucky, from 1774 to 1790, when the first effectual relief began to be extended, would require volumes of detail, for which we have no time, and powers of description, for which I have no talent. Then was witnessed the scenes of woe and death, of carnage and destruction, which no words of mine can ever paint: instances of heroism in men, of fortitude and devotedness in women, of instinctive courage in little children, which the annals of the most celebrated nations can never surpass. Then was seen the Indian warfare in all its horrors—that warfare which spares neither decrepit age, nor blooming youth, nor manly strength, nor infant weakness; in which the sleeping family awoke from their beds in the midst of flames and

slaughter, when virgins were led off captive by savage monsters; when mothers were loaded with their children, and compelled to march; and when, unable to keep up, were relieved of their burthen by seeing the brains of infants beat out on a tree; when the slow consuming fire of the stake devoured its victim in the presence of pitying friends and in the midst of exulting demons; when the corn was planted, the fields were ploughed, the crops were gathered, the cows were milked, water was brought from the spring, and God was worshipped, under the guard and protection of armed men; when the night was the season for travelling, the impervious forest the high-way, and the place of safety, most remote from the habitation of man; when every house was a fort, and every fort subject to siege and assault. Such was the warfare in the infant settlements of Kentucky and Tennessee, and which the aged men, actors in the dreadful scenes, have related to me so many times.

Appeals to the Federal Government were incessant and vain, during the long progress of these disastrous wars; but as the revolutionary struggle was going on during a part of the time, and engrossed the resources of the Union, I will draw no example from that period. I will take a period posterior to the Revolution—three years after the peace with Great Britain—when the settlements in the West had taken a permanent form, when the Indian hostilities were most inveterate, when the Federal Government had a military peace establishment of seven hundred men, and when the acceptance of the cessions of the public lands in the West made the duty of protection no less an object of interest to the Union, than of justice and humanity to the inhabitants. I will take the year 1786. What was the relative conduct of the North and South to the infant, suffering, bleeding, imploring West, in this season of calamity to her, and ability in them to give her relief? What was then the conduct of each? It was that of unrelenting severity on the part of the North—of generous and sympathizing friendship on the part of the South! The evidence which cannot err will prove this, and will cover with confusion the bold declarations which have imposed upon me the duty of this reply. I speak of the Journals of the old Congress, quotations from which I now proceed to read:

*From the Journals of Congress, vol. 4, p. 654.*

“WEDNESDAY, JUNE 21, 1786.

“The Secretary of War, to whom was referred a motion of Mr. Grayson, of Virginia, reported the following resolution:

“That the Secretary of War direct the commanding officer of the troops to detach two companies to the Rapids of the Ohio, to protect the inhabitants from the depredations and incursions of the Indians.”

Mark well! the terms of this resolution to detach two companies then in service—not to raise them; for the purpose of protecting the inhabitants, not to attack the Indians. No expense in this; a mere change of position of a part of the military force then on foot. Observe the course of treatment the resolution received.

The first movement against it came from the North, in a motion to refer the resolution to a peace committee on Indian Affairs. The yeas and nays on that motion were—

Massachusetts—Ay.

New York—Ay.

Maryland—No.

Virginia—No.

North Carolina—No.

Pennsylvania—Divided.

New Jersey—Divided.

New Hampshire, Rhode Island, and Georgia—But one member—not counted.

Delaware and South Carolina—Absent.

The motion to refer was thus lost for want of seven yeas.

The second movement was from the South, Mr. Lee, of Virginia, seconded by Mr. Grayson, having moved to substitute four for two, so as to double the intended protection.

The vote upon this motion was—

Massachusetts—No.

New York—No.

New Jersey—No.

Pennsylvania—No.

Maryland—No.

North Carolina—No.

New Hampshire—No.

Virginia—Ay.

Georgia—Ay.

Delaware and South Carolina—Absent.

The third trial was on the adoption of the resolution, and exhibited the following vote:

New Hampshire—Mr. Long,\* ay.

Massachusetts—Mr. Gorham, no, Mr. King, no, Mr. Sedgwick, no, Mr. Dane, no.

Rhode Island—Mr. Manning,\* ay.

New York—Mr. Haring, ay, Mr. Smith, ay.

New Jersey—Mr. Symmes, ay, Mr. Hornblower, ay.

Pennsylvania—Mr. Pettit, ay, Mr. Wilson, ay.

Maryland—Mr. Henry, ay, Mr. Hindman, ay, Mr. Harrison, ay.

Virginia—Mr. Grayson, ay, Mr. Monroe, ay, Mr. Lee, ay.

North Carolina—Mr. Bloodworth, ay, Mr. White, ay.

Georgia—Mr. Few,\* ay.

Those marked with an asterisk, having but one member, were not counted. Six States only of those fully represented voted in favor of the resolution; it was consequently lost! Lost for want of the vote of one State, and that State was Massachusetts! The next day that vote was supplied, but not by Massachusetts. Mr. Pinckney and Mr. Huger arrived from South Carolina. Mr. Pinckney, seconded by Mr. Carrington, of Virginia, immediately moved the rejected resolution over again, and South Carolina voting with the ayes, made seven affirmative States, and carried the resolution.

This is the history of the first relief ever extended by the Federal Government to the inhabitants of Kentucky. Your State, sir, now painted as the enemy of the West, turned the scale in favor of that small but acceptable succor. It hung upon one vote; Massachusetts denied that vote! South Carolina came and gave it!

The instant this much was obtained, the generous delegates of the great and magnanimous Virginia commenced operations, to procure the real and effectual protection which the case required, namely, an expedition into the Indian territory north of the Ohio river. The Governor of Virginia, on the 16th of May, '86, in a letter to Congress, had recommended this course, and offered the militia of his State to execute it. The letter was referred to a committee of three, Messrs. Grayson and Monroe, of Virginia, and Mr. Dane, of Massachusetts. On the 29th of June, just seven days after the vote had passed for detaching two companies to the Falls of the Ohio, Mr. Grayson reported upon the recommendation of the Governor of Virginia. It was such a report as might be expected from a committee of which Virginia delegates constituted the majority. It recommended the expedition, and gave the most solid and convincing reasons for agreeing to it. The whole report is spread upon the Journal of that day, [vol. 4, p. 657.] Justice to the patriots who drew it, and justice, also, to those who supported and opposed it, would require it to be read, but time forbids. I can only repeat, in a condensed recital, its leading contents. It showed that the hostile Indians were bent on war; that they had treated with contempt the application which the United States had made to them, to meet commissioners at the mouth of the Great Miami, and conclude a peace; that, issuing from their vast forests beyond the Ohio, and

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returning to them for refuge, the war was to them a gratification of their savage thirst for blood and plunder, without danger of chastisement; that, while confined to defence on our side, and offence on their side, they had every motive which their savage policy required, to carry on the war, and no motive to stop it; that a march into their country was the only means of compelling them to accept peace; and it concluded with a resolution that the two companies ordered to the Falls of Ohio, and one thousand Virginia militia, drawn from the district of Kentucky, under the command of a superior officer, be ordered to march into the hostile Indian territory, armed with the double authority of Commissioner and General, to treat, as well as to fight.

We will now see the reception which this report and resolution met with. The first movement upon it was in the way of a side blow, one of those operations in legislation which have the two-fold advantage of doing most mischief, and doing it without appearing to be absolutely hostile to the measure. It was a motion to postpone the consideration of the resolution, for the purpose of considering a proposition, which was the reverse of Mr. Grayson's report in all its material facts and conclusions. This new proposition recited, that Congress had received information that small parties of Indians had crossed the Ohio, and committed depredations on the district of Kentucky; but had not sufficient evidence of the aggression, or hostile disposition of any tribes of Indians to justify the United States in carrying the war into the Indian country; and proposed a resolve, that Congress would proceed in the organization of the Indian Department; and adopt such measures as would secure peace to the Indians, and safety to the inhabitants of the frontiers.

Let it be remembered that this proposition was offered on the 29th of June, 1786, when the Indian war in Kentucky had raged for twelve years, when thousands of men, women, and children, had perished; that it was four years after the great battle of the Blue Licks—that disastrous battle, in which the flower of Western chivalry was cut down, and the whole land filled with grief and covered with mourning; that it was the very same year in which an offer to treat for peace, at the mouth of the Great Miami, had been contemptuously rejected; and, after recollecting these things, then judge of its statements and conclusions! To me it seems to class itself with the motions afterwards witnessed in the French National Convention, to proceed to the order of the day when petitions were presented to save the lives of multitudes upon the point of assassination. The motion to postpone was made; the yeas and nays were called for by Mr. Grayson; the delegations of several States voted for it, and let the Journal of the day announce their names.

New Hampshire.—Mr. Livermore, no, Mr. Long, ay. Massachusetts.—Mr. Gorham, ay, Mr. King, ay, Mr. Sedgwick, ay, Mr. Dane, no.

Rhode Island.—Mr. Manning, no.

New York.—Mr. Haring, ay, Mr. Smith, ay.

New Jersey.—Mr. Symmes, no, Mr. Hornblower, ay.

Pennsylvania.—Mr. Pettit, ay, Mr. Bayard, ay.

Maryland.—Mr. Henry, ay, Mr. Hindman, no, Mr. Harrison, no, Mr. Ramsay, no.

Virginia.—Mr. Grayson, no, Mr. Monroe, no, Mr. Carrington, no, Mr. Lee, no.

North Carolina.—Mr. Bloodworth, no, Mr. White, no.

South Carolina.—Mr. Pinckney, no, Mr. Hugor, no.

Georgia.—Mr. Few, no.

The motion to postpone was lost, only three States voting for it. Some amendments were agreed to, the resolution put on its passage, and rejected! New Hampshire, Massachusetts, New York, New Jersey, Pennsylvania, and Maryland, voting no. Virginia, North Carolina, and South Carolina, ay. Delaware absent. Rhode Island, but one member present. The vote of Georgia lost, by

the refusal of a member to vote, [Mr. Houston] who seemed, upon all trial questions between the different sections of the Union, to occupy a false position.

Defeated, but not subdued—repulsed, but not vanquished—invincible in the work of justice and humanity, the Virginia delegation immediately commenced new operations, and devised new plans for the relief of the West. On the very next day, June 30th, a motion was made by Mr. Lee, seconded by Mr. Monroe, to have one thousand men, of the Virginia militia, be'd in readiness, and called out, in case of necessity, for the protection of the West. Even this was resisted! A motion was made by Mr. King, of Massachusetts, seconded by Mr. Long, of New Hampshire, to strike out the number "one thousand." It was struck out accordingly, there being but five States, to wit: Maryland, Virginia, North Carolina, South Carolina, and Georgia, in favor of retaining it. The resolution, eviscerated of this essential part, was allowed to pass; and thus, on the 30th day of June, in the year 1786, the Governor of Virginia obtained the privilege, from the Continental Congress, to order some militia in Kentucky to hold themselves in readiness to protect the country, in case of necessity! Thus, at the end of twelve years from the commencement of the Indian wars, Kentucky obtained the assent of Congress to the defence of herself! Tennessee never obtained that much! She fought out the war from 1780 to 1792 upon her own bottom, without the assent, and against the commands, of Congress. Expresses were often despatched to recall her expeditions going in pursuit of Indians who had invaded her settlements. The decisive expedition to the Cherokee town of Nickajac, which was framed upon the plan of Mr. Grayson, was, in legal acceptance, a lawless invasion of a friendly tribe. The brave and patriotic men who swam the Tennessee river, three quarters of a mile wide, in the dead of the night, shoving their arms before them on rafts, and stormed the town, and drove the Indians from the gap in the mountain—the Thermopylae of the country—and gave peace to the Cumberland settlements, did it with federal halters round their necks: for the expedition was contrary to law. And now, in the face of history, which proclaims, and journals, which record these facts; in contempt of all memory that retains, and tradition that recounts them, Massachusetts and the Northeast, which abandoned the infant West to the rifle, the hatchet, the knife, and the burning stake of the Indians, are to be put forth as the friends of the West! Virginia, and the South, which labored for them with a zeal and perseverance which eventually obtained the kind protection recommended in the report of Mr. Grayson—the expedition of Harmar, St. Clair, and Wayne—are to be set down as their enemies! And upon this settlement of the account the West is now to be wooed into an alliance with the trainbands of New England federalism—the elite of the Hartford Convention—for the oppression of Virginia and the South, and the subjugation of New England democracy! History and the Journals are to be faced down with the assertion that the protecting arm of the Government was forever stretched over the infant settlements of the West, the North taking the lead of the South in its defence and protection!

Two more brief references to incidents of different characters, but highly pertinent and instructive, will complete my selection of examples from the history of the old Congress. One was a refusal, on the 25th of July, 1787, to treat for a cession of Indian lands either on the north or the south side of the Ohio; the other was a refusal, on the second of August of the same year, to let Virginia "be credited" with the expenses of an expedition which she had carried on in the winter of '86-'87, against the Indians on both sides of the Ohio river, because that expedition was "not authorized" by the United States. The Journals of the day will show the particulars, and

exhibit the delegation of Massachusetts—that Nathan Dane included, who is now to be set up as the founder, legislator, and benefactor of the Northwest—as heading the opposition on both occasions. And here I submit, that, thus far, the assertion of the Senator from South Carolina [Mr. HAYNE] that the West had received hard treatment from the Federal Government, is fully sustained. His remark was chiefly directed to the hard terms on which they get lands; but it holds good on the important point of long neglect, the effect of Northern jealousy in giving protection against the Indians.

### Second Day's Remarks.

I resume my speech [said Mr. B.] at the point at which it was suspended when I gave way to the natural and laudable impatience of the Senator from South Carolina, who sits on my right, [Mr. HAYNE] to vindicate himself, his State, and the South, from what appeared to me to be a most gratuitous aggression. Well and nobly has he done it. Much as he had done before, to establish his reputation as an orator, a statesman, a patriot, and a gallant son of the South, the efforts of these days eclipse and surpass the whole. They will be an era in his Senatorial career which his friends and his country will mark and remember, and look back upon with pride and exultation.

Before I go on with new matter, [said Mr. B.] I must be permitted to reach back, and bring up, in the way of recapitulation, and for the purpose of joining together the broken ends of my speech, the heads and substance of the great facts which I quoted and established at the commencement of this reply. They are:

1. The attempt of the seven Northern States, in 1786, '87, '88, to surrender the navigation of the Mississippi to the King of Spain.
  2. The attempt to effect that surrender, in violation of the articles of confederation, by the votes of seven States, when nine could not be had.
  3. The design of this surrender, to check the growth of the West.
  4. The clause in the first ordinance for the sale of the public lands, in the Northwestern territory, which required the previous townships to be sold out complete before the subsequent ones could be offered for sale.
  5. The refusal to sell a less quantity than six hundred and forty acres together.
  6. The refusal to reduce the minimum price from one dollar to sixty-six and two-thirds cents per acre.
  7. The opposition, in 1786, to the motion to detach two companies to the falls of the Ohio, for the protection of Kentucky against the incursions and depredations of the Indians.
  8. The opposition to Mr. Grayson's unanswerable report, in the same year, in favor of sending an expedition into the hostile Indian country.
  9. The refusal, at the same time, to permit Virginia to hold one thousand of her own militia in readiness to protect Kentucky.
  10. The refusal, in 1787, to treat for a cession of Indian lands, on either side of the Ohio.
  11. The refusal, in the same year, to let Virginia "be credited" with the expenses of an expedition, carried on in the winter of 1786, '87, by her troops, on both sides of the Ohio river, for the defence of the West.
  12. The refusal, for twelve years, from 1774 to 1786, to send any aid to Kentucky.
  13. The refusal, throughout the entire war, to send any aid to the Cumberland settlements, in Tennessee.
  14. The opposition to Western emigration, as proved by Mr. Adams's letter.
- In all these instances, and I have omitted a thousand others, having confined myself to a single and brief period, by way of example, and that period the one when the termination of the revolutionary war, peace with all the

world, and a standing force of seven hundred men, made it easy to give protection to the West; and when the cession of the Western lands to the Federal Government, for the payment of the revolutionary debt, and the establishment of new States in the Northwest, devolved the business of Western protection upon the Federal Government, no less as an object of interest to themselves, than of duty to the settlers. In all these instances, I have exhibited the States of Massachusetts and Virginia as antagonist powers—the one opposing, the other supporting, the measures favorable to the West, and each supported by more or less of its neighboring States.

The Senator from Massachusetts [Mr. WARREN] has since occupied the floor two days, and has taken no notice of facts so highly authenticated, drawn from sources so wholly unimpeachable, and so pointedly conflicting with the denials and assertions which he has made on this floor. It is not for me to account for this neglect, or forbearance. Rhetoricians lay down two cases in which silence upon the adversaries' arguments is the better part of eloquence; first, where they are too insignificant to merit any notice, secondly, where they are too well fortified to be overthrown. In such cases, it is recommended, as the safest course, to pass them by without notice, and as if they had not been heard. I do not intimate which, or if either of these rules governed the conduct of the Senator from Massachusetts. I can very well conceive of a third, and very different reason for this inattention; a reason which was seen in the fullness of the occupation which the Senator from South Carolina [Mr. HAYNE] had given him. True, the Senator from Massachusetts tells us that he felt nothing of all that; that the arrows did not pierce; and makes a question whether the arm of the Senator from South Carolina was strong enough to spring the bow. This he repeated so many times, and with looks so well adjusted to the declaration, that we all must have been reminded of what we have read in ancient books, of the brave gladiator, who, receiving the fatal thrust which starts the cry of "*hoc habet*" from the whole amphitheatre, instead of displaying his wound and heeving pity, collects himself over his centre of gravity, assumes a graceful attitude, dresses his face in smiles, bows to the ladies, and acts the unhurt hero in the agonies of death.

But admitting that the arrows did not pierce; what then? Is it proof of the weakness of the arm that sprung the bow, or of the impenetrability of the substance that resisted the shaft? We read, in many books, of the polished brass that resists, not only arrows, but the iron headed javelins, thrown by gigantic heroes. But, pierced or not pierced, we have all witnessed one thing: we have seen the Senator from Massachusetts occupy one whole day in picking these arrows out of his body; and to judge from the length and seriousness of this occupation, he might be supposed to have been stuck as full of them as the poor fellow whose transfixed effigy, on the first leaf of our annual almanacs, attracts the commiseration of so many children.

I pass by these inquiries, [said Mr. B.] and come to the things which concern me most; the renewed and repeated declarations of the Senator from Massachusetts, [Mr. W.] that, from first to last, from the beginning to the ending of the chapter of this Government, all the measures favorable to the West have been carried by Northern votes, in opposition to Southern votes; that this has always been the case; that there are no grounds for asserting the contrary; and that the West is ungrateful to desert their ancient friends in the North for a new alliance in the South. These, sir, are the things for me to attend to. They concern me somewhat, because I have asserted the contrary: they concern the Union much more, because, upon the propagation and belief of these assertions, depends a most unallotted combination for the government of this confederacy; commencing in the oppression of one half of it, and ending in the ruin of the whole. These considerations

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impel me forward, and impose upon me the high obligation to make out my case; to show the South to be the ever generous friend of the West; the democracy of the North the same; and the political adversaries of both to have been the unrelenting enemies of the West, until new views, and recent events, have substituted the soft and sweet game of amorous seduction for the ancient and iron system of contempt and hostility. In discharging this duty I shall confine myself to an elevated selection of historical facts; to the great epochs, and great questions, which are cardinal in their nature, notorious in their existence, eventful in their consequences, and pertinent to the trial of the issue joined. On this plan, skipping over many minor measures, I come to the great epoch of the Louisiana purchase, and the resulting measures connected with that event.

The first point of view under which we must look at that great measure, [said Mr. B.] is its incredible value, and the absolute necessity, then created by extraordinary events, for making the acquisition. The West at that period (1803) was filling up with people, and covering over with wealth and population. It was no more the feeble settlement which the Congress of the Confederation had seen, and whose rights, few as they were to the free navigation of the Mississippi, had given birth to the most arduous struggle ever beheld in that Congress. States had superseded these infant settlements. Ohio, Kentucky, and Tennessee, had been admitted into the Union; the territories of Indiana, Illinois, and Mississippi, were making their way to the same station. The Western settlements of Pennsylvania and Virginia lined the left bank of the Ohio, for half the length of its course. All was animated with life, gay with hope, independent in the cultivation of a grateful soil, and rich in the prospect of sending their accumulated productions to all the markets of the world, through the great channel which conducted the King of Rivers to the bosom of the ocean. The treaty with Spain in the year 1795 had guaranteed this right of passage; had stipulated, moreover, for a right of deposit in New Orleans, with the further stipulation, that, if this place of deposit should ever be denied, another should immediately be assigned, equally convenient for storing produce and merchandise, and for the exchange of cargoes between the river and the sea vessels. This right of deposit, thus indispensable, and thus secured, was violated in the fall of 1802. New Orleans, at that time, was suddenly shut up, and locked against us, and no other place was assigned at which Western produce could be landed, left, or sold. The news of this event stunned the West. I well recollect the effect upon the country, for I saw it, and felt it in my own person. I was a lad then, the eldest of a widow's sons—was living in Tennessee, and had come into Nashville to sell the summer's crop, and lay in the winter's supplies. We raised cotton, then, in that Southern part of Tennessee, and the price of fifteen cents a pound which had been paid for it, and three or four hundred pounds to the acre, and so many acres to the hand, had filled us all with golden hopes. I came into Nashville to sell the summer's crop. I offered it to the merchant, a worthy man, with whom we dealt. His answer, and the reason, came together, and gave the first intelligence of my own loss and the calamity of the country. Not a cent could he give for the cotton, for he was not a griper to take it for a nominal price. Not an article could be advanced upon the faith of it; not even the indispensable item of one barrel of salt. The salt and the articles were indeed furnished, and upon indulgent terms, but not upon the faith of the cotton; that was recommended to be laid away, and to wait the course of events.

This was the state of one and of all—of the entire country—Tennessee, Kentucky, Ohio, the western counties of Pennsylvania and Virginia; the territories of Indiana, Illinois and Mississippi. Every where, at every

farm, the labor of the year was annihilated; the produce of the fields seemed to be changed into dust—struck by the wand of an enchanter, which transformed cotton, tobacco, and hemp, into the useless leaves of the forests. The shock was incredible; the sensation universal; the resentment overwhelming; the cry for redress loud and incessant. Congress met. That great man was then President, whose memory it has been my grief and shame to see struck at, this day, on this floor. The energy of the people, and the blessing of God, had just made Thomas Jefferson President of these United States. It was a blessed election, and a providential one for the people of the West! Upon that event depended the acquisition of Louisiana! Congress met. The outrage at New Orleans was the main topic in the President's message. His public message to the House of Representatives, replete with the spirit which filled the West, is known to the Union. His confidential message to the Senate is not known. It has been locked up until lately, in the sealed book of our secret proceedings. That seal is now broken, and I will read the part of this confidential message which developed the means of recovering, enlarging, and securing, our violated rights, and asked the aid of the Senate in doing so. It is the message which nominated the ministers to France who made the purchase of Louisiana.

*The Message—Extract.*

“While my confidence in our minister plenipotentiary at Paris is entire and undiminished, I still think that these objects might be promoted by joining with him a person sent from hence directly, carrying with him the feelings and sentiments of the nation excited on the late occurrence, impressed by full communications of all the views we entertain on this interesting subject, and thus prepared to meet, and improve to an useful result, the counter propositions of the other contracting party, whatsoever form their interest may give to them, and to secure to us the ultimate accomplishment of our object: I, therefore, nominate R. R. Livingston to be minister plenipotentiary, and James Monroe to be minister extraordinary and plenipotentiary, with full powers to both, jointly, or to either, on the death of the other, to enter into a treaty or convention with the First Consul of France, for the purpose of enlarging and more effectually securing, our rights and interests in the river Mississippi, and in the territories eastward thereof.”

The reason for sending an additional minister is here stated, and stated with force and clearness. Mr. Livingston was in Paris, and, however faithful and able he might be, he was a stranger to the feelings excited by the occasion. The addition of Mr. Monroe would only make an embassy of two persons. Embassies of three, as in the mission to the French republic in '98, and of five, as at Ghent, in 1815, have been seen in our country. An embassy of two, in such a case as the violation of our right of deposit at New Orleans, and only one of them fresh from the United States, could not be considered extraordinary or extravagant. The selection of Mr. Monroe was, of all others, the most fit and acceptable. He was a citizen of Virginia—that great State, which had been the most early, steadfast, and powerful friend of the West; he was the champion of the Mississippi in that struggle of two years, under lock and key, when seven States undertook to surrender the navigation of that river; he was the ambassador called for, by the public voice of the South and West, and Mr. Randolph was the organ of that voice on the floor of the House of Representatives, when he declared that Mr. Jefferson could nominate no other person than Mr. Monroe. He was nominated. I have shown the message that did it, and the reasons that influenced the President. Let us now continue our reading of the Journal, and see how that nomination was received by the Senators from the North and from the South.

*The Journal.*

“WEDNESDAY, 12th January, 1830.

“The Senate took into consideration the message of the President of the United States, of January 11th, nominating Robert R. Livingston to be minister plenipotentiary, and James Monroe to be minister extraordinary and plenipotentiary, to enter into a treaty or convention with the First Consul of France, for the enlarging and more effectually securing our rights and interests on the river Mississippi; and

“Resolved, That they consent and advise to the appointment of R. R. Livingston, agreeably to the nomination.

“On the question, will the Senate consent and advise to the nomination of James Monroe? The yeas were, Messrs. Anderson, Baldwin, Bradley, Breckenridge, Clinton, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, Nicholas, Stone, Sumpter, and Wright—15. The nays, Messrs. Dayton, Dwight, Foster, Hillhouse, Howard, J. Mason, Morris, Ogden, Olcott, Plumer, Tracy, Wells, and White—12.”

Fifteen for, twelve against, the nomination of Mr. Monroe. A majority of three votes in his favor; which is a difference of two voters; so that the nomination of Mr. Monroe lacked but two of being rejected. Whence came these twelve? Every one from the north of the Potomac, nearly all from New England, and the whole from the ranks of that political party; whose strivings, and residuary legates, are now in hot pursuit of the alliance of the West! If any evidence is wanting to shew that the vote against Mr. Monroe was a vote against the object of his mission, it will be found, ten days afterwards, in the same Journal, upon the passage of a bill appropriating two millions of dollars to accomplish the purposes of the mission. On this bill the vote stood:

YEAS.—“Messrs. Anderson, Baldwin, Bradley, Breckenridge, Clinton, Cocke, Ellery, T. Foster, Jackson, Logan, S. T. Mason, Nicholas, Sumpter, and Wright—14.”

NAYS.—“Messrs. Dayton, Dwight, Foster, Hillhouse, Howard, J. Mason, Morris, Olcott, Plumer, Ross, Stone, Wells, and White—12.”

Mr. Monroe went. Fortune was at work for the West, while nearly one half of the American Senate, and a large proportion of the House of Representatives, were at work against her. War between France and England was impending; the loss of Louisiana in that war was among the most certain of its events; to get rid of the province before the declaration of hostilities, was the policy of the First Consul; and the cession to the United States was determined on before our minister could arrive. This was the work of Providence, or fortune, which no one here could foresee; which few are lawyerlike enough to lay hold of to justify the previous opposition to Mr. Monroe, and the vote against the two millions. The treaty of cession was signed by the First Consul; was brought home, made known to the nation, and received in the South and West with one universal acclaim of joy. Throughout the South and West it was hailed as a national benefaction, prepared by fortune, seized by Jefferson, and entitled to the devout thanksgiving of the American people. Not so in the Northeast. There a violent opposition broke out against it, upon the express ground that it would increase the power of the West; and when the treaty came up for ratification in the Senate, it received seven votes against it, being so many of the same party which had voted against the nomination of Mr. Monroe and the appropriation of two millions. In the House of Representatives the money bill for carrying the treaty into effect was voted against by twenty-five members, nearly the whole from the geographical quarter, and from the political party, that had opposed the treaty in the Senate.

The crisis was over; the great event was consummated; Louisiana was acquired; the navigation of the Mississippi secured; the prosperity of the West established forever.

The glory of Jefferson was complete. He had found the Mississippi the boundary, and he made it the centre of the republic. He re-united the two halves of the Great Valley, and laid the foundation for the largest empire of freedom that time or earth ever beheld. He planted the seed of imperishable gratitude in the hearts of myriads of generations who shall people the banks of the Father of Floods, and raise the votive altar, and erect the monumental statue, to the memory of him who was the instrument of God in the accomplishment of so great a work. And great is my grief and shame to have lived to see his name attacked in the American Senate! To have been myself the unconscious instrument of clearing the way for an impeachment of his word! and that upon the recollections of memories from whose tablets the stream of time may have washed away this small part of their accumulated treasures.

Let us pause, and reflect for a moment, upon the consequences to the West, and to the Union, if President Jefferson had not seized the opportunity of purchasing Louisiana; or, having purchased it, the Senate, or the House of Representatives, should have rejected the acquisition. In the first place, it is to be remembered that France, emerging from the vortex of her Revolution, overflowing with warriors, and governed by the Conqueror who was catching at the sceptre of the world, was then the owner of Louisiana. The First Consul had extorted it from the King of Spain in the year 1800; and the violation of the right of deposit at New Orleans was his first act of ownership over the new possession, and the first significant intimation to us, of the new kind of neighbor that we had acquired. Contemporaneously with this act of outrage upon us, was the concentration of twenty-five thousand men, under the general of division, afterwards Marshal Victor, in the ports of Holland, for the military occupation of Louisiana. So far advanced were the preparations for this expedition, that the troops were ready to sail; and commissaries to provide for their reception were engaged in New Orleans and St. Louis, when the transfer of the province was announced. Now, sir, put it on either foot: Louisiana remains a French, or becomes a British, possession. In the first contingency, we must have become the ally, or the enemy, of France. The system of Bonaparte admitted of no neutrals; and our alternatives would have been, between falling into the train of his continental system, or maintaining a war against him upon our own soil. We can readily decide that the latter would have been most honorable; but it is hard to say which would have been most fatal to our prosperity, and most disastrous to our republican institutions. In the second contingency, and the almost certain one, we should have had England established on our western as well as on our northern frontier; and I may add, our southern frontier also: for Florida, as the property of the ally of France, would have been a fair subject of British conquest in the war with France and Spain, and a desirable one, after the acquisition of Louisiana, and as easily taken as wished for; the vessel that brought home the news of the victory at Trafalgar being sufficient to summon and reduce the places of Mobile, Pensacola, St. Marks, and St. Augustine. This nation, thus established upon three sides of our territory, the most powerful of maritime Powers, jealous of our commerce, panting for the dominion of the seas, unscrupulous in the use of savage allies, and nine years afterwards to be engaged in a war with us! The results of such a position would have been, the loss, for ages and centuries, of the navigation of the Mississippi; the permanent occupation of the Gulf of Mexico by the British fleet; the consequent control of the West Indies; and the ravage of our frontiers by savages in British pay. These would have been the permanent consequences, to say nothing of the fate of the late war, commenced with our enemy encompassing us on three sides with her land forces, and covering the ocean in front with her proud navy, vic-

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torious over the combined fleets of France and Spain, and swelled with the ships of all nations. From these calamitous results, the acquisition of Louisiana delivered us; and that heart must be but little turned to gratitude and devotion which does not adore the Providence that made the great man President, who seized this gift of fortune, and overthrew the political party that would have rejected it.

The treaty was ratified, and not much to spare; one-third of the Senate would have defeated it, and the votes stood seven to twenty-four. But the ratification was only one half the business; many legislative enactments were necessary to make the acquisition available and useful, and the whole of these measures received more or less of determined opposition from the same geographical quarter and political party which had opposed the purchase. I will specify a few of the leading measures to which this opposition extended.

1. The bill to enable the Senate to take possession of Louisiana: Nays in the Senate—Messrs. Adams, Hillhouse, Olcott, Pickering, Plumer, and Tracy.

2. The bill to create a fund in stock for the Louisiana debt: Nays—Messrs. Hillhouse, Pickering, Tracy, Wells, and White.

3. The bill for extending certain laws of the United States to Louisiana: Nays—Messrs. Adams, Plumer, and Wells.

Among the laws to be thus extended, were all those for the regulation of the custom house, navigation, and commerce. If it had been rejected, New Orleans could not have been used as an American port.

4. The bill to establish a separate territory in Upper Louisiana: Nays—Messrs. Adams, Olcott, Hillhouse, Plumer, and Stone.

5. The bill to extend the powers of the Surveyors General to Louisiana: Nays—Messrs. Adair, Adams, Bayard, Bradley, Gilman, Hillhouse, Pickering, Plumer, Smith, of Maryland, Smith, of Vermont, and Wright; all north of the Potomac except one.

This vote [said Mr. B.] is the connecting link between the non-settlement clause, or the sell-out-complete clause, in the ordinance of 1786, and the non-survey, and non-emigration resolution now under debate. The three acts stand at twenty years apart—a wide distance in point of time—but they lie close together in spirit and intention, and announce a never sleeping watchfulness over the prevention of Western settlement and Western improvement.

6. Various bills for the confirmation of private claims, generally opposed by the like number of votes and voters.

7. The bill for the admission of the State of Louisiana into the Union: Nays—Messrs. Bayard, Champlin, Dana, German, Gilman, Goodrich, Horsey, Lloyd, Pickering, and Reed.

8. The bill to authorize the State of Louisiana to accept an enlargement of its territory: Nays—Messrs. Bradley, Franklin, Gorman, Gilman, Lambert, Lloyd, and Reed.

This bill was passed after West Florida was reduced to the possession of the United States. Its object was to permit the State of Louisiana, if she thought proper, to include within her limits all the territory east of the lakes Pontchartrain and Maurepas, the river Iberville, and east of the Mississippi, (above that river) to the line of the Mississippi Territory, and out to Pearl river. The importance of it will be seen by knowing that the State of Louisiana, at that time, included no territory east of the Mississippi, but the Isle of Orleans.

9. The resolutions of the Legislature of Massachusetts, in June, 1813, asserting the unconstitutionality of the act of Congress which admitted the State of Louisiana into the Union, and extended the laws of the United States thereto, and instructing the Massachusetts delegation in Congress to do their best to obtain its repeal. I will read them:

## THE MASSACHUSETTS RESOLUTIONS.

*Reported by a committee composed of Messrs. Josiah Quincy, Ashmun, and Fuller, on the part of the Senate; and Messrs. Thatcher, Lloyd, Hall, and Bates, on the part of the House, and recorded in the Boston Centinel, June 26th, 1813, appended to a long report, viz:*

"Resolved, As the sense of this Legislature, that the admission into the Union, of States created in countries not comprehended within the original limits of the United States, is not authorized by the letter or the spirit of the Federal constitution.

"Resolved, That it is the interest and duty of the people of Massachusetts to oppose the admission of such States into the Union, as a measure tending to the dissolution of the confederacy.

"Resolved, That the act passed the eighth day of April, 1812, entitled An act for the admission of Louisiana into the Union, and to extend the laws of the United States to the said State, is a violation of the constitution of the United States; and that the Senators of this State in Congress be instructed, and the Representatives be requested, to use the utmost of their endeavors to obtain a repeal of the same."

This was the solemn act of Massachusetts, governed by that political party which now seeks the command of the West, under the name of an alliance! The Senator from Louisiana, who sits on my left, [Mr. JENKINS] adheres with a generous devotion—I call it generous, for it survives the downfall of its object—to that party which passed these resolutions, and would have kept his State out of the Union, and by consequence, himself out of this chamber. I do not reproach such generosity, but I contend for its limitation. The heart of that Senator belongs to his country, and I trust that his country will again possess him. He and I were once together. Our separation was from a point, and by slight degrees, though now so wide, like the travellers in the desert, parting from each other on two diverging lines; for a long time within hail, a long time in view—at last completely separated, but never way-layers nor destroyers of each other. I shall hope to see him return to the right line, and join his old companions. Nothing has happened to make him or them blush, at finding themselves again together. [Mr. B. here said something to Mr. J. (who sat near him) in an under tone, and in a playful mood—*en badinant*—the purport of which was, that he would wish to see him laid on the shelf for a while, notwithstanding.]

The admission of the State of Mississippi into the Union furnishes me with the next example in support of my side of the issue joined. It was no part of the territory of Louisiana, but a part of the original territory of the United States. Constitutional objections could not reach it, yet it met with the usual quantum of opposition. It was a Western measure, and, what was worse, a Southwestern measure, and the Journals of the Senate exhibit eleven nays to its admission. They were Messrs. Ashmun, Dagget, Goldsborough, Hunter, King, Macon, Mason, of N. H. Smith, Thompson, Tichenor, and Varnum. The name of the venerable Macon, which appears in this list, may be seized upon to cover the motives of all the others; but to do that it should first be shown that he and they voted upon the same motive. We know that votes may sometimes be alike, and the motives be different. That the vote of Mr. Macon was unfriendly to the Southwest, is a supposition contradicted by the acts of half a century; that the vote of the others was unfriendly, may be decided by the same test, the tenor of all previous conduct. After all, the instance would go but a short distance towards proving "that every measure favorable to the West had been carried by New England votes, in opposition to Southern votes."

I come now to the admission of Missouri, but do not mean to dwell upon it. The event is too recent, the facts connected with it too notorious, to require proof, or even to



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admit of recital here. The struggle upon that question divided itself into two parts; the first, to prevent the existence of slavery in Missouri; the second, to secure the entrance of free blacks and mulattoes into it. Each part of the struggle divided the Union into two parts, the Potomac and the Ohio the dividing line, with slight exceptions; the South in favor of the rights of Missouri, the North against them. In the ranks of the latter were seen all the survivors of the ancient advocates for the surrender of the Mississippi—all the survivors of those who in the Congress of the confederation opposed the protection of the West; all the opponents to the acquisition of Louisiana; all the power of the federal party; and all the gentlemen of the Northeast who are now paying their addresses to the West. The contest, upon its face, was a question of slavery, and the rights of free negroes and mulattoes; in its heart, it was a question of political power, and so declared upon this floor by Mr. King, of New York. It was a terrible agitation, and convulsed the country, and, in a certain quarter of the country, swept all before it. The gentleman who has moved this resolution—the resolution now under discussion—was the victim of that storm, [Mr. Foot, of Conn.] He was then a member of the House of Representatives. He would not join in this crusade against Missouri, and he fell under the displeasure of his constituents. But he fell on the side of honor and patriotism, with his conscience and his integrity in his arms; and the consequence of such a fall is to rise again, and to ascend higher than ever. The gentleman will appreciate the spirit in which I speak. My encomiums, poor as they may be, here or elsewhere, are neither profuse nor indiscriminate. I do justice to the motive which has made him the mover of the resolution to which I am so earnestly opposed. He believes it to be right, and that belief, erroneous as I hold it to be, is the effect of that unhappy part of our political system which makes the Representatives of remote States judges of the local measures of another State, with the proprieties of which they have no means of personal information. I oppose his resolution to the uttermost, but I respect his motive; I thank him for his vote in favor of Missouri in the crisis of her struggle, and for his motion some days ago in favor of donations to actual settlers. We may contend upon points of policy; but here, and elsewhere, and above all, in Missouri, if found there, I and mine will do honor to him and his.

Yes, sir, the Missouri struggle is too recent to admit of recitals, or to require proofs. It was but the other day that it all occurred—but the other day that the Representatives and the Senators of that State, myself one of them, were repulsed from the doors of Congress, and *deported*, for one entire session, of their legitimate seats among you. And, what is now incredibly strange; what surpasses imagination; and staggers credulity, is to see myself called upon to deny that scene; called upon to treat the whole as an optical illusion; to reverse it, in fact, and submit to the belief that those whose blows we felt kicking and shoving us out, were the ones that drew us in! and those whose helping hands we felt drawing and hauling us in, are the identical ones who kicked and shoved us out!

The State of Missouri, [said Mr. B.] was kept out of the Union one whole year, for the clause which prohibited the future entry and settlement of free people of color. And what have we seen since? The actual expulsion of a great body of free colored people from the State of Ohio, and not one word of objection, not one note of grief, from those who did all in their power to tear up the constitution and break the Union to pieces, because, at some future day, it might happen that some free blacks would wish to emigrate to Missouri, and could not do it for this clause in her constitution! The papers state the compulsory expatriation from Cincinnati at two thousand souls; the whole number that may be compelled to expatriate

from the State of Ohio at ten thousand! This is a remarkable event, paralleled only by the expulsion of the Moors from Spain, and the Huguenots from France. Let me not be misunderstood: I am not complaining of Ohio; I admit her right to do what she did. We are informed that this severe measure was the consequence of enforcing an old law, made for the benefit of the slave-holding States, and now found to be as necessary to Ohio as to them, and by which she has relieved herself, in thirty days, of the accumulated evil of thirty years. I complain not of this. My present business is with those who kept me out of my seat, kept my State out of the Union, and did all in their power to break up this confederacy because free people of color were prohibited from coming to live in Missouri!

My occupation for the present, is with these characters—"Les Amis des Noirs"—the friends of the blacks—then so plenty, now so scarce! Where are they? Where gone? How shrunk up! Not even one friend, one voice here! Where are the crowds that then thronged the public meetings? Where the tongues which were then so fluent? The sighs then so piercing? The eyes then so wet with tears? All gone; all silent; all hushed! The thronged crowd has disappeared; the fluent tongue has cleaved to the roof of the mouth, the piercing sigh has died away, and the streaming eye, exhausted of its fluid contents, has dried up to the innermost sources of the lachrymal duct, and hangs over the pitiable scene, with the arid composure of a rainless cloud in the midst of the sandy desert. The Senator from Massachusetts, [Mr. W.] so copious and encomiastic upon the subject of Ohio, so full and affecting upon the topic of freedom, and the rights of freemen in that State, was incomprehensibly silent, and fastidiously mute, upon the question of this wonderful expatriation—an expatriation which sent a generation of free people from a republican State to a monarchical province, to seek, in a strange land, and beyond the icy lakes, the hospitality and protection of a foreign king! For them he had nothing to say. Their condition attracted no part of his regards. They are gone! unwept and unsung; they have gone to experience the fate, and to renew the history, of the abducted slaves of the Revolution, who were taken from their homes and their masters, collected into a settlement in the British province of Nova Scotia, became a pestilence there, and were exiled to Sierra Leone, to perish under the climate and the savages. For these people, and the pitiable fate that awaits them, the eloquent declaimer upon the blessings of liberty in Ohio had nothing to say. I thought, indeed, at one time, he was taking their track: it was when he was engaged in that lively personification of the soil of Ohio, which would not bear the tread of a slave's foot upon it; which rebelled and revolted against the servile impression, until it threw off and discharged the base, incongruous load; something like a kicking up horse when a monkey is put upon his back. I thought, at that time, that the metaphorical orator, pushing his tropes and figures to that "bourne" from which some flights of eloquence have never returned, was going to put the climax upon the regurgitative faculties of this miraculous soil, and show us, in this great emigration of free blacks, that it would not bear the tread of a foot that ever had been in slavery! But, suddenly, and to me unexpectedly, his ideas took another turn. Instead of crossing the lakes to pity the blacks, he crossed the river to pity the whites. He faced about to the South, crossed over into Kentucky, made a domiciliary visiting into the country, and fell, inconsequently, to slinging the ground, and blacking the inhabitants, until they all looked like chamois, and were mired, thirty layers deep, in conflicting land tides. When I saw that, I smote my breast, and heaved a sigh, at the sad vicissitudes of human affections. I felt, if I did not cry out, for Kentucky! Poor Kentucky! but yesterday the loved and cherished object of all affection! the engrossing theme

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of every praise! now scanned and criticised! her faults all told, and counted! her value cast up! the sum found less! and the late adored object thrown "as a worthless weed away!"

### Third Day's Remarks.

I was on the subject of slavery, as connected with the Missouri question, when last on the floor. The Senator from South Carolina [Mr. HAYNE] could see nothing in the question before the Senate, nor in any previous part of the debate, to justify the introduction of that topic. Neither could I. He thought he saw the ghost of the Missouri question brought in among us. So did I. He was astonished at the apparition. I was not: for a close observance of the signs in the West had prepared me for this development from the East. I was well prepared for that invective against slavery, and for that amplification of the blessings of exemption from slavery, exemplified in the condition of Ohio, which the Senator from Massachusetts indulged in, and which the object in view required to be derived from the Northeast. I cut the root of that derivation by reading a passage from the Journals of the old Congress; but this will not prevent the invective and encomium from going forth to do their office; nor obliterate the line which was drawn between the free State of Ohio and the slave State of Kentucky. If the only results of this invective and encomium were to exalt still higher the oratorical fame of the speaker, I should spend not a moment in remarking upon them. But it is not to be forgotten that the terrible Missouri agitation took its rise from the "substance of two speeches" delivered on this floor; and since that time, anti-slavery speeches, coming from the same political and geographical quarter, are not to be disregarded here. What was said upon that topic was certainly intended for the north side of the Potomac and Ohio; to the people, then, of that division of the Union, I wish to address myself, and to disabuse them of some erroneous impressions. To them I can truly say, that slavery, in the abstract, has but few advocates or defenders in the slave-holding States, and that slavery as it is, an hereditary institution, descended upon us from our ancestors, would have fewer advocates among us than it has, if those who have nothing to do with the subject would only let us alone. The sentiment in favor of slavery was much weaker before those intermeddlers began their operations than it is at present. The views of leading men in the North and the South were indisputably the same in the earlier periods of our Government. Of this our legislative history contains the highest proof. The foreign slave trade was prohibited in Virginia, as soon as the Revolution began. It was one of her first acts of sovereignty. In the convention of that State which adopted the Federal constitution, it was an objection to that instrument that it tolerated the African slave trade for twenty years. Nothing that has appeared since has surpassed the indignant denunciations of this traffic by Patrick Henry, George Mason, and others, in that convention. The clause in the ordinance of '86 against slavery in the Northwest, as I have before shown, originated in a committee of three members, of whom two were from slave-holding States. That clause, and the whole ordinance, received the vote of every slave State present, at its final passage. There were but eight States present, four from the south of the Potomac, and only one from New England. It required seven States to pass the ordinance; it could have been passed without the New England States, but not without three, at least, of the Southern ones. It had all four: Virginia, the two Carolinas, and Georgia. Compare this with the vote on the Missouri restriction, when intermeddlers and designing politicians had undertaken to regulate the South upon the subject of slavery! The report in the House of Representatives, some twenty years ago, against the application from Indiana for a limited admission of slaves, was drawn by Mr. Randolph; the same Mr. Randolph whose declaration in

the House of Representatives, only three years ago, that he would hang any man who would bring an Afr can into Virginia, was falsified, for the basest purposes, by substituting "Irishman" for African! Yes, sir, slavery, as it is, and as it exists among us, would have fewer advocates, if those who have nothing to do with it would let it alone. But they will not let it alone. A geographical party, and chiefly a political caste, are incessantly at work upon this subject. Their operations pervade the States, intrude into this chamber, display themselves in innumerable forms, and the thickening of the signs announces the forthcoming of some extraordinary movement. Sir, I regard with admiration, that is to say, with wonder, the sublime morality of those who cannot bear the abstract contemplation of slavery, at the distance of five hundred or a thousand miles off. It is entirely above, that is to say, it affects a vast superiority over the morality of the primitive Christians, the apostles of Christ, and Christ himself. Christ and the apostles appeared in a province of the Roman empire, when that empire was called the Roman world, and that world was filled with slaves. Forty millions was the estimated number, being one fourth of the whole population. Single individuals held twenty thousand slaves. A freed man, one who had himself been a slave, died the possessor of four thousand—such were the numbers. The rights of the owners over this multitude of human beings was that of life and death, without protection from law or mitigation from public sentiment. The scourge, the cross, the fish-pond, the den of the wild beast, and the arena of the gladiator, was the lot of the slave, upon the slightest expression of the master's will. A law of incredible atrocity made all slaves responsible with their own lives for the life of their master; it was the law that condemned the whole household of slaves to death, in case of the assassination of the master—a law under which as many as four hundred have been executed at a time. And these slaves were the white people of Europe and of Asia Minor, the Greeks and other nations, from whom the present inhabitants of the world derive the most valuable productions of the human mind. Christ saw all this—the number of the slaves—their hapless condition—and their white color, which was the same with his own; yet he said nothing against slavery; he preached no doctrines which led to insurrection and massacre; none which, in their application to the state of things in our country, would authorize an inferior race of blacks to exterminate that superior race of whites, in whose ranks he himself appeared upon earth. He preached no such doctrines, but those of a contrary tenor, which inculcated the duty of fidelity and obedience on the part of the slave—humanity and kindness on the part of the master. His apostles did the same. St. Paul sent back a runaway slave, Onesimus, to his owner, with a letter of apology and supplication. He was not the man to harbor a runaway, much less to entice him from his master; and, least of all, to excite an insurrection.

Slavery, which once filled the Roman world, has disappeared from most of the countries which composed that great dominion. It has disappeared from nearly all Europe, and from half the States of this Union. There and here it has ceased upon the same principle: upon the principle of economy, and a calculation of interest—a calculation which, in a certain density of population and difficulty of subsistence, makes it cheaper to hire a man than to own him; cheaper to pay for the work he does, and bear no more of him, than to be burthened with his support from the cradle to the grave. Slavery never ceased any where on a principle of religion; the religion of all nations consecrates it. Its abolition cannot be enforced among Christians on that ground, without reproaching the founder of their religion. Many who think themselves Christians are now engaged in preaching against slavery; but they had better ascertain whether they have fulfilled the

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precepts of Christ, before they assume a moral superiority over him, and undertake to do what he did not. To the politicians who are engaged in the same occupation, it is needless to give the like admonition. They have their views, and the success of these would be poorly promoted by following the precepts of the Gospel. Their kingdom is of this world; and to reach it, they will do the things they ought not, and leave undone the things which they ought to do. Slavery will cease, in the course of some generations, in several of the States where it now exists, and cease upon the same principle on which it has disappeared elsewhere. In some parts it is not sustainable now, upon a calculation of interest. Habit and affection is the main bond. A great amelioration in the condition of the slave has taken place. In most of the States they are as members of the family, and in all the essential particulars of labor, food, and raiment, they fare as the rest of the laboring community. Some masters are cruel; but the laws condemn such cruelty; and, what is more effectual than the law, is the abhorrence of public sentiment. But cruelty is not confined to the black slave; it extends to the white apprentice, to the orphans that are bound out, and to the children of the poor that are hired to the rich. Many of these can, and often do, tell pitiable tales of stinted food and excessive work, of merciless beatings, brutal indignities, and precocious debaucheries. The advance of the public mind has been great upon the subject of slavery. Let any one look back to the conferences at Utrecht, in 1712, when England was ready to continue the greatest of her wars for the sake of the *asiento*—the contract for supplying Spanish America with slaves—and see the conduct of the Virginia Assembly, in 1776, and England herself, in 1780, denouncing and punishing that traffic as a crime against God and man. It has not advanced of late, but retrograded—I speak of these United States. Witness the two epochs of the ordinance of '86, and the admission of Missouri, in 1820. Intrusive and political intermeddling produced this reverse. Such meddling can do no good to the objects of its real or affected commiseration. It does harm to them. It prevents the enactment of some kind laws, and occasions the passage of some severe ones. It totally checks emancipation, and deprives the slave of instruction, as the most merciful way of saving him from the penalties of murder and insurrection, which the reading of incendiary pamphlets might lead him to incur.

I have been full, I am afraid tedious, on the subject of slavery. My apology must be found in the extraordinary introduction of this topic by the Senator from Massachusetts [Mr. WASTON.] I foresee that this subject is to act a great part in the future politics of this country; that it is to be made one of the instruments of a momentous movement—not for dividing the Union—something more practicable and more damnable than that. The prevention of a world of woe may depend upon the democracy of the non-slaveholding States. The preservation of their own republican liberties may depend upon it. Never was their steadfast adhesion to the principles they profess, and to their natural allies, more necessary than at present. To them I have been speaking; to them I continue to address myself. I beseech and implore them to suffer their feelings against slavery to have no effect upon their political conduct; to join in no combinations against the South for that cause; to leave this whole business to ourselves. I think they can well let it alone, upon every principle of morals or policy. Are they Christians? Then they can tolerate what Christ and his apostles could bear. Are they patriots? Then they can endure what the constitution permits. Are they philosophers? Then they can bear the abstract contemplation of the ills which afflict others, not them. Are they friends and sympathisers? Then they must know that the wearer of the shoe knows best where it pinches, and is most concerned to get it off. Are they republicans? Then they must see the downfall of them-

selves, and the elevation of their adversaries, in the success of a crusade, under federal banners, against their natural allies, in the South and West.

Let the democracy of the North remember, that it is the tendency of all confederacies to degenerate into a sub-confederacy among the powerful, for the government and oppression of the weaker members. Let them recollect that ambition is the root of these sub-confederacies; religion, avarice, and geographical antipathies, the instruments of their domination; oppression, civil wars, pillage, and tyranny, their end. So says the history of all confederacies. Look at them. The Amphictyonic league—a confederacy of thirty members—received the law and the lash from Sparta, Thebes, and Athens. The Germanic confederation, of three hundred States and free cities, was governed by the nine great electorates, which ruled and pillaged as they pleased: the Imperial Diet being to them something like what the Supreme Court is proposed to be here—a tribunal before which the States and free cities could be called, placed under the ban of the empire, and delivered up to military execution. The seven United Provinces; the strong province of Holland alone deciding upon all questions of peace and war, loans and taxes, and dragging the inferior provinces into acquiescence and compliance. The thirteen Swiss cantons, in which the strong aristocratic cantons pillaged and ravaged the weak ones, on account of their religion and democracy, often calling in the Dukes of Savoy to assist in the chastisement. Let the democracy of the North remember these things, and then eschew, as they would fly the incantations of the serpent, the syren songs of ancient foes, who would enlist their feelings in a concert of a ction which is to end in arraying one-half of the States of this Union against the other. Have we no ambition in this confederacy? no means of enabling it to work as in Greece, Germany, Holland, and the Swiss cantons? Look at the fallen leaders, panting for the recovery of lost power. Look at the ten millions of surplus in the treasury, after the extinction of the public debt; at the three hundred millions of acres of public lands in the new States and Territories; at the forty millions of exports of the South; and see if there be not, in the modes of dividing these, among certain strong States, for internal improvement, education, and protection of domestic industry, ample means for acting on the feelings of avarice. Look at the excitements getting up about Indians, slaves, masonry, Sunday mails, &c. and see if there are no materials for working upon religion or fanaticism.

The Senator from Massachusetts, [Mr. W.] had a vision, in the after part of his second day's speaking. He saw an army with banners, commanded by the new Major General of South Carolina, the Senator who sits on my right, [General HAYNE] marching forward upon the custom house in Charleston, sometimes expounding law as a civilian, sometimes fighting as a general. It was a pleasant vision, sir, but no more than a vision. Now, I can have a vision also, and of a banner with inscriptions upon it, floating over the head of the Senator from Massachusetts, [Mr. W.] while he was speaking: the words "Missouri Question, Colonization Society, Anti-Slavery, Georgia Indians, Western Lands, More Tariff, Internal Improvement, Anti-Sunday Mails, Anti Masonry." A cavalcade under the banner—a motley group—a most miscellaneous concourse, the speckled progeny of many conjunctions—veteran Federalists—benevolent females—politicians who have lost their caste—National Republicans—all marching on to the next Presidential election, and chanting the words on the banner, and repeating, "under these signs we conquer." Did you see it, Mr. President? Your look says, No. But I cannot be looked out of my vision. I did see something, the shade at least of a substance—the apparition of a real event—making its way from the womb of time, and casting its shadow before. I

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shall see it again—at Philippi—and that before the Greek kalends, about the ides of November, 1832.

I mean no disrespect, sir, to the benevolent females for whom I have found a place in this procession. Far from it. They have earned the place by the part they are acting in the public meetings for the instruction of Congress on the subject of these Georgia Indians. For the rest, I had rather take my chance, in such a cavalcade, among these benevolent females, than among the unbenevolent males; had rather appear in the feminine than in the masculine gender; had rather march in bonnet, cloak, and petticoats, than in hat, coat, and pantaloons. With the aid of the famous corset-maker, Madame Cantalo, to draw me up a little, I had rather trip it along as a Miss, in frock and pantalets, than figure as a war chief of the Georgia Cherokees, bedecked and bedizened in all the finery of paint and feathers. I had rather be on foot among the damsels, than on horse among the leaders, white, black, and red. I apprehend these leaders will be on foot on the return march, dismounted and discomfited, unhorsed and unharnessed, better prepared for the flight than the fight, and leading the ladies out of danger after having led them into it. In that retreat, I would recommend it to the benevolent females to place no reliance upon the performances of their delicate little feet. Their unequal steps would vainly strive to keep up with the "double quick time" of their swift conductors. No helping hand then to be stretched back for the "little Iulus." It would be a race that Virgil has described, a long interval between the great heroes ahead and the little ones behind. I would recommend it to these ladies, not to douse their bonnets, and tuck up their coats, for such a race, but to sit down on the way side, and wait the coming of the conquerors. The new Major General of South Carolina will then be in the field in reality; his banner will then be seen, not advancing upon a custom house, but pursuing the flying hosts of the National Republicans; and from him the "benevolent females" will have nothing to fear.

I come now to a momentous period in this Union—one well calculated to test other questions, besides that of relative friendship to the West—I speak of the late war with Great Britain. We began it for wrongs on the ocean; but the West quickly became its principal theatre, and in the beginning encountered defeats and disasters, which called for the aid and sympathy of other parts of the Union. I say nothing about the declaration of war; that was a question of opinion, and might have two sides to it; but, after the bloody conflict was begun, there was but one side for Americans. The Senator from Massachusetts has laid down the law of duty to a citizen, (when the Government has adopted a line of policy) in accounting for his support of the tariff of 1828, after opposing that of 1824. The Government had adopted the tariff policy, he says, and thereupon it became his duty to support that policy. I will not stop to inquire how far future opposition was included in such a case. It is sufficient, for my present purpose, to show that the Senator from Massachusetts has laid down this acquiescence in, and support of, the policy of the Government, in a case of common and ordinary legislation; after that, it cannot be denied, in the highest of all cases to which it can apply, that of a foreign war, and that war calamitous to his own country. New England, more accurately speaking the then dominant party in New England, opposed the declaration of war, and that after a leader of that party had declared, upon the floor of the House of Representatives, that the administration could not be kicked into war. She opposed the declaration; but I leave that out of the question. The war is declared, it is commenced, it is disastrous, and the heaviest disasters fall upon the West. Her armies are beaten; her frontier posts taken; her territory invaded. Her soil is red with the blood, and white with the bones of her sons. Her daughters are in mourning; the land is filled with grief;

and cries for succor pervade the Union. Where was then relief for the West? What was then the conduct of the Northeast? What the conduct of the South? \* \* \* The Senator from South Carolina [General HAYNE] has shown you what was the conduct of the Northeast. He has read the acts which history, and his eloquence, will deliver down to posterity, showing that the then dominant party in New England was as well disposed to aid the enemy as to aid the West. He showed that it was a main object of the Hartford Convention to exclude the West from the Union. The Senator from Massachusetts made light of these readings; he called them uncanonical collects. In one respect, a part of them were like a collect; they came from the pulpit, but, instead of being prayers, unless the prayers of the devil and his black angels be understood, they were curses, execrations, and damnation to the West. The Senator from Massachusetts denied their authority, and washed his hands of them. I will, therefore, read him something else; the authority of which will not be so readily denied, nor the hands so easily washed of. I speak of a speech delivered on the floor of the House of Representatives, about the middle of the late war, when things were at their worst, and of certain votes upon the army bill, the militia bill, the loan bill, the tax bill, and the treasury note bill. And first, of the speech. It purports to have been delivered by the Senator to whom I am now replying, in the session of 1813-14, on the discussion of the bill to fill the ranks of the regular army.

*The Speech—Extracts.*

"It is certain that the real object of this proposition to increase the military force to an extraordinary degree, by extraordinary means, is to act over again the scenes of the two last campaigns. To that object I cannot lend my support. I am already satisfied with the exhibition.

"Give me leave to say, sir, that the tone on the subject of the conquest of Canada seems to be not a little changed. Before the war, that conquest was represented to be quite an easy affair. The valiant spirits who meditated it, were only fearful lest it should be too easy to be glorious. They had no apprehension, except that resistance would be so powerful as to render the victory splendid.

How happens it, sir, that this country, so easy of acquisition, and over which, according to the prophecies, we were to have been, by this time, legislating, dividing it into States and Territories, is not yet ours? Nay, sir, how happens it that we are not even free of invasion ourselves; that gentlemen here call on us, by all the motives of patriotism, to assist in the defence of our own soil, and portray before us the state of the frontiers, by frequent and animated allusion to all those topics which the modes of Indian warfare usually suggest?

"This, sir, is not what we were promised. This is not the entertainment to which we were invited. This is no fulfilment of those predictions which it was deemed obstinacy itself not to believe. This is not the harvest of greatness and glory, the seeds of which were supposed to be sown with the declaration of war.

"When we ask, sir, for the causes of these disappointments, we are told that they are owing to the opposition which the war encounters, in this House and among the people. All the evils which afflict the country are imputed to the opposition. This is the fashionable doctrine, both here and elsewhere. It is said to be owing to opposition that the war became necessary; and owing to opposition, also, that it has been prosecuted with no better success.

"This, sir, is no new strain. It has been sung a thousand times. It is the constant tune of every weak or wicked administration. What minister ever yet acknowledged that the evils which fell on his country were the necessary consequences of his own incapacity, his own folly, or his own corruption? What possessor of political power ever

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yet failed to charge the mischief resulting from his own measures upon those who had uniformly opposed those measures."

"You are, you say, at war for maritime rights and free trade. But they see you lock up your commerce, and abandon the ocean. They see you invade an interior province of the enemy. They see you involve yourselves in a bloody war with the native savages; and they ask you if you have, in truth, a maritime controversy with the Western Indians; and are really contending for sailors' rights with the triles of the Prophet."

This speech requires no comment, and will admit of none. Its own words go beyond any that could be substituted. "Valiant spirits—too easy to be glorious—tone changed—prophecies unfulfilled—frontiers invaded—assistance called for—entertainment—animated allusions to the modes of Indian warfare—bloody war with the savages—contending with tribes of the prophet for sailors' rights—weak and wicked—folly and corruption—lend no support—satisfied with the exhibition."

These phrases of cutting sarcasm, of cool contempt, of bitter reproach, and stern denial of succor, deserve to be placed in a parallel column with what we have just heard of love to the West, and of the protecting arm extended over her. I will not dwell upon them; but there are two phrases which extort a brief remark: "Satisfied with the exhibition"—"lend no support." What was the exhibition of these two campaigns, the first and second of the war, to which this expression of satisfaction, and denial of support, extends? It was this: In the southwest, the massacre at Fort Mims; the Creek nation in arms; British incendiaries in Pensacola and St. Marks, exciting savages to war, and slaves to rebellion; the present President of the United States at the Ten Islands of the Coosa river, in a stockade of twenty yards square, with forty young men of Nashville, holding the Creek nation in check, and calling for support. In the Northwest, all the forts which covered the frontiers captured and garrisoned by the enemy; Michigan Territory reduced to the condition of a British province; Ohio invaded; the enemy encamped and entrenched upon her soil; the British flag flying over it—over that soil of Ohio, which, according to what we have just heard, could not bear the tread of a slave, now trod in triumph by the cruel Proctor and his ferocious myrmidons. This is the exhibition which the first and second campaigns presented in the West; for I limit myself to that quarter of the Union, the present question being one of relative friendship to the West. This is the exhibition which the West presented—these the scenes which called for succor, and to relieve which the extract that I have read declares that none would be lent. The author of that speech was satisfied with this exhibition; he would do nothing to change it. The political and geographical party with which he acted were equally well satisfied, and equally determined to let things remain as they were. They voted accordingly against every measure for the relief of the bleeding and invaded West; against the bill to fill the ranks of the regular army; against the bill to call out the militia; against the bill to borrow money; against the bill to lay taxes; against the bill to issue treasury notes! The Journals of Congress will show the recorded votes of those who now set up for the exclusive friends of the West, in opposition to all these bills. The reading of the yeas and nays on the whole of these measures would be tedious and unnecessary; a single act will show how they stood in every instance. I select, for my example, the vote in the House of Representatives on the passage of the bill the discussion of which called forth the speech from which an extract has been made.

*The Vote.—Yeas, 97; Nays, 58.*

NEW HAMPSHIRE.

YEAS.—Messrs. Cilley, Hale, Vose, Webster, and Wilcox.

MASSACHUSETTS.

YEAS.—Messrs. Hubbard and Parker.

NAYS.—Messrs. Baylies, Bigelow, Bradbury, Brigham, Davis, Dewey, Ely, King, Pickering, John Reed, William Reed, Ruggles, Ward, Wheaton, and Wilson.

CONNECTICUT.

NAYS.—Messrs. Champion, Davenport, Law, Mosley, Pitkin, Sturges, and Taggart.

NEW YORK.

YEAS.—Messrs. Avery, Fisk, Lefferts, Sage, and Taylor. NAYS.—Messrs. Geddes, Grosvenor, Kent, Lovett, Miller, Moffit, Oakley, Post, Shepperd, Smith, and Winter.

VERMONT.

YEAS.—Messrs. Bradley, Fisk, and Skinner.

RHODE ISLAND.

NAYS.—Messrs. Jackson and Potter.

NEW JERSEY.

YEAS.—Messrs. Hasbrouck and Ward.

NAYS.—Messrs. Boyd, Cox, Hufty, Schureman, and Stockton.

PENNSYLVANIA.

YEAS.—Messrs. Anderson, Bard, Brown, Conard, Crawford, Crouch, Findlay, Glasgow, Griffith, Ingersoll, Ingham, Lyle, Piper, Rea, Roberts, Scybert, Smith, Tammhill, Udree, Whitehill, and Wilson.

NAY.—Mr. Markell.

DELAWARE.

NAYS.—Messrs. Cooper and Ridgely.

MARYLAND.

YEAS.—Messrs. Archer, Kent, McKim, Moore, Nelson, Ringgold, and Wright.

VIRGINIA.

YEAS.—Messrs. Burwell, Clopton, Dawson, Eppes, Ghoulson, Hawes, Hungerford, Jackson, Johnson, Kerr, McCoy, Newton, Pleasants, Rich, Roane, Smith.

NAYS.—Messrs. Bayly, Csperton, Lewis, and Sheffield.

NORTH CAROLINA.

YEAS.—Messrs. Alston, Forney, Franklin, Kennedy, Macon, Murfree, and Yancey.

NAYS.—Messrs. Culpeper, Gaston, Pierson, Stanford, Sherwood, and Thompson.

SOUTH CAROLINA.

YEAS.—Messrs. Calhoun, Chappell, Cheves, Earle, Evans, Gordon, Kershaw, and Lowndes.

GEORGIA.

YEAS.—Messrs. Barnett, Forsyth, Hall, Telfair, and Troup.

KENTUCKY.

YEAS.—Messrs. Clark, Desha, Duval, McKee, Montgomery, Ormsby, and Sharp.

TENNESSEE.

YEAS.—Messrs. Bowen, Grundy, Harris, Humphreys, Rhea, and Sevier.

OHIO.

YEAS.—Messrs. Alexander, Beale, Caldwell, Creighton, Kilbourn, and McLean.

LOUISIANA.

YEA.—Mr. Robertson.

Such were the votes of the North and South on the passage of this bill. Such were the votes of the then dominant party of the Northeast, in that dark hour of calamity and trial to the West. Such was their answer in reply to our calls for help—even the calls of that Ohio, which is now the cherished object of all affection, the chosen theme of highest eulogy, the worshipped star in that new constellation of superior planets, which are to shed, not their "selectest influences," but "disastrous twilight on half the States." It is not for me to trace a parallel between these votes and the words and acts of the same po-

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litical party in the States from which the voters came. It is not for me to measure the difference between the conduct which gives aid to the enemy and that which denies aid to your own country. The question is a close one, and may exercise the ingenuity of those who can detect the difference between the "west side and the northwest side of a hair." It is not for me to confound these votes and the extract of the speech with the words and acts of those who received the successes of their own country with grief, and its defeats with joy; who held "soft intercourse" with the enemy, when he had established himself upon the soil, and upon the calamities of this Union; who saw, with savage exultation, the cruel massacre and dreadful burning of the wounded prisoners at the river Raisin, and gave vent to their hellish joy, from the holy pulpit, in the impious declaration that "God had given them blood to drink." It is not for me to confound these things; it may be for others to unmix them. I turn to a more grateful task: to the contemplation of the conduct of the South, in the same season of woe and calamity. What was then their conduct? What their speeches and their votes in Congress? Their efforts at home? Their prayers in the temple of God? Time and ability would fail in any attempt to perform this task; to enumerate the names and acts of those generous friends, in the South, who then stood forth our defenders and protectors, and gave us men and money, and beat the domestic foe in the capitol, while we beat the foreign one in the field. Time and my ability would fail to do them justice; but there is one State in the South, the name and praise of which the events of this debate would drag from the stones of the West, if they could rise up in this place and speak. It is the name of that State upon which the vials, filled with the accumulated wrath of years, have been suddenly and unexpectedly emptied before us, on a motion to postpone a land debate. That State, whose microscopic offence, in the obscure parish of Colleton, is to be hung in equipose with the organized treason, and deep damnation, of the Hartford Convention; that State, whose present dislike to a tariff which is tearing out her vitals, is to be made the means of exciting the West against the whole South; that State, whose dislike to the tariff laws is to be made the pretext for setting up a despotic authority in the Supreme Court; that State which, in the old Congress, in 1785, voted for the reduction of the price of public lands to about one-half of the present minimum; which, in 1786, redeemed, after it was lost, and carried, by its single vote, the first measure that ever was adopted for the protection of Kentucky, that of the two companies sent to the Falls of Ohio: that State which, in the period of the late war, sent us a Lowndes, a Cheves, and a Calhoun, to fight the battles of the West in the capitol, and to slay the Goliaths of the North: that State which, at this day, has sent to this chamber, the Senator [MR. HAYES] whose liberal and enlightened speech, on the subject of the public lands, has been seized upon and made the pretext for that premeditated aggression upon South Carolina, and the whole South, which we have seen met with a promptitude, energy, gallantry, and effect, that has forced the assailant to cry out an hundred times that he was still alive, though we all could see that he was most cruelly pounded.

Memory is the lowest faculty of the human mind; the irrational animals possess it in common with man; the poor beasts of the field have memory. They can recollect the hand that feeds, and the foot that kicks them; and the instinct of self preservation tells them to follow one, and to avoid the other. Without any knowledge of Greek or Latin, these mute, irrational creatures "fear the Greek offering presents;" they shun the food, offered by the hand that has been lifted to take their life. This is their instinct; and shall man, the possessor of so many noble faculties, with all the benefits of learning and experience,

have less memory, less gratitude, less sensibility to danger, than these poor beasts? And shall he stand less upon his guard, when the hand that smote is stretched out to entice? shall man, bearing the image of his Creator, sink thus low? shall the generous son of the West fall below his own dumb and reasonless cattle, in all the attributes of memory, gratitude, and sense of danger? shall his "*Times Danos*" have been taught to him in vain? shall he forget the things which he saw, and part of which he was—the events of the late war—the memorable scenes of fifteen years ago? The events of former times, of forty years ago, may be unknown to those who are born since. The attempt to surrender the navigation of the Mississippi; to prevent the settlement of the West; the refusal to protect the early settlers of Kentucky and Tennessee; or to procure for them a cession of Indian lands; all these trials, in which the South was the savior of the West, may be unknown to the young generation, that has come forward since; and with respect to these events, being uninformed, they may be unmindful and ungrateful. They did not see them; and, like the second generation of the Israelites, in the Land of Promise, who knew not the wonders which God had done for their forefathers in Egypt, they may plead ignorance, and go astray after strange gods; after the Baals and the Astaroths of the heathen; but not so of the events of the last war. These they saw! the aid of the South they felt! the deeds of a party in the Northeast they felt, also. Memory will do its office for both; and base and recreant is the son of the West that can ever turn his back upon the friends that saved, to go into the arms of the enemy that mocked and scorned him in that season of dire calamity.

I proceed to a different theme. Among the novelties of this debate, is that part of the speech of the Senator from Massachusetts which dwells with such elaboration of argument and ornament, upon the love and blessings of Union—the hatred and horror of disunion. It was a part of the Senator's speech which brought into full play the favorite Ciceroian figure of amplification. It was up to the rule in that particular. But, it seemed to me, that there was another rule, and a higher, and a precedent one, which it violated. It was the rule of propriety; that rule which requires the fitness of things to be considered; which requires the time, the place, the subject, and the audience, to be considered; and condemns the delivery of the argument, and all its flowers, if it fails in congruence to these particulars. I thought the essay upon union and disunion had so failed. It came to us when we were not prepared for it; when there was nothing in the Senate, nor in the country, to grace its introduction; nothing to give, or to receive, effect to, or from, the impassioned scene that we witnessed. It may be, it was the prophetic cry of the distracted daughter of Priam, breaking into the council, and alarming its tranquil members with vaticinations of the fall of Troy: But to me, it all sounded like the sudden proclamation for an earthquake, when the sun, the earth, the air, announced no such prodigy; when all the elements of nature were at rest, and sweet repose pervading the world. There was a time, and you, and I, and all of us, did see it, sir, when such a speech would have found, in its delivery, every attribute of a just and rigorous propriety! It was at a time, when the five-striped banner was waving over the land of the North! when the Hartford Convention was in session! when the language in the capitol was, "Peaceably, if we can; forcibly, if we must!" when the cry, out of doors, was, "the Potomac the boundary; the negro States by themselves! The Alleghanies the boundary; the Western savages by themselves! The Mississippi the boundary, let Missouri be governed by a prefect, or given up as a haunt for wild beasts!" That time was the fit occasion for this speech; and if it had been delivered then, either in the hall of the House of Representatives, or in the den of

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the convention, or in the high way, among the bearers and followers of the five-striped banner, what effects must it not have produced! What terror and consternation among the plotters of disunion! But, here, in this loyal and quiet assemblage, in this season of general tranquillity and universal allegiance, the whole performance has lost its effect for want of affinity, connexion, or relation, to any subject depending, or sentiment expressed, in the Senate; for want of any application, or reference, to any event impending in the country.

I now take leave of this part of my subject, with one expression of unmixed satisfaction, at a part, a very small part, of the speech of the Senator from Massachusetts; it is the part in which he disclaimed, in reply to an inquiry from you, sir, the imputation of a change of policy on the Tariff and Internal Improvement questions. Before that disclaimer was heard, a thousand voices would have sworn to the imputation; since, no one will swear it. And the reason given for not referring to you, for not speaking at you, was decent and becoming. You have no right of reply, and manhood disdains to attack you. This I comprehend to have been the answer, and the reason so promptly given by the Senator from Massachusetts in reply to your inquiry. I am pleased at it. It gives me an opportunity of saying there was something in that speech which commands my commendation, and, at the same time, relieves me from the duty of stating to the Senate a reason why the presiding officer, being Vice President of the United States, should not be struck at from this floor. He cannot reply, and that disability is his shield in the eyes of all honorable men.

#### *Fourth Day's Remarks.*

I touched it incidentally, towards the conclusion of my speech of yesterday, on the large—I think I may say despotic—power, claimed by the Senator from Massachusetts [Mr. WEBSTER] for the Federal Supreme Court, over the independent States, whose voluntary union has established this confederacy. I touched incidentally upon it, and now recur to it for the purpose of making a single remark, and presenting a single illustration of the consequences of that doctrine. That court is called supreme; but this character of supremacy, which the Federal constitution bestows upon it, has reference to inferior courts—the District and Circuit Courts—and not to the States of this Union. A power to decide on the Federal constitutionality of State laws, and to bind the States by the decision, in all cases whatsoever, is a power to govern the States. It is a power over the sovereignty of the States; and that power includes, in its practical effects, authority over every minor act and proceeding of the States. The range of Federal authority was large, under the words of the constitution; it is becoming unlimited under the assumption of implied powers. The room for conflict between Federal and State laws was sufficiently ample, in cultivating the clear and open field of the expressed powers; when the exploration of the wilderness of implications is to be added to it, the recurrence of these conflicts becomes incessant and universal, covering all time, and meeting at every point of Federal or State policy. The annihilation of the States, under a doctrine which would draw all these conflicts to the Federal Judiciary, and make its decisions binding upon the States, and subjected to the penalties of treason all who resisted the execution of these decrees, would produce that consequence. It would annihilate the States! It would reduce them to the abject condition of provinces of the Federal Empire! It would enable the dominant party in Congress, at any moment, to execute the most frightful designs. Let us suppose a case—one by no means improbable—on the contrary almost absolutely certain, in the event of the success of certain measures now on foot: The late Mr. King, of New York, when a member of the American Senate, declared, upon this floor, that slavery in these United

States, in point of law and right, did not exist, and could not exist, under the nature of our free form of Government; and that the Supreme Court of the United States would so declare it. This declaration was made about ten years ago, in the crisis and highest paroxysm of the Missouri agitation. Since then, we have seen this declaration repeated and enforced, in every variety of form and shape, by an organized party in all the non-slaveholding States. Since then, we have seen the principles of the same declaration developed in legislative proceedings, in the shape of committee reports and public debate, in the halls of Congress. Since then, we have had the D'Au-terive case, and seen a petition presented from the Chair of the House of Representatives, Mr. JOHN W. TAYLOR being Speaker, in which the total destruction of all the States that would not abandon slavery was expressly represented as a sublime act. With these facts before us, and myriads of others, which I cannot repeat, but which are seen by all, the probability of a federal legislative act against slavery rises in the scale, and assumes the character of moral certainty, in the event of the success of certain designs now on foot. So much for what may happen in Congress. Now for the Judiciary. I have just referred to the declaration of an ex-Senator, [Mr. KING of New York] of all others the best acquainted with the *arcana* of his party; who was to that party, for a full quarter of a century, the law and the prophets; for a bold assertion of what the Supreme Court would do in a question of existence, or non-existence, of slavery in the United States. He openly asserted that the Supreme Court would declare that no such thing could exist! It is not to be presumed that that aged, experienced, informed and responsible Senator would have hazarded an assertion of such dire and dreadful import; an assertion so delicately affecting the judges then on the bench of that court; a majority of them his personal and political friends; and looking to such disastrous consequences to the Union, without probable, if not certain, ground for the basis of his assertion. That he had such grounds, so far at least as one of the judges was concerned, seems to be incontestable. A charge delivered to a grand jury by Mr. Justice STORY, at Portsmouth, New Hampshire, in the month of May, 1820—for the date is material—it tallies, in point of time, with the assertion in the Senate, and was classed for review, as an article of politics, in the North American Review, with the substance of Mr. King's two speeches on the floor of the Senate, which were the signal for the Missouri strife—a signal as well understood, and as implicitly obeyed, as the signal for battle in the Roman camp, when the Red Mantle of the Consul was hung on the outside of the tent. This charge, to a grand jury, establishes the fact of authority for the assertion of Mr. King, so far at least as one of the judges is concerned. But as every man should be judged by his own words, and not upon the recital of another, let the charge itself be read; let the Judge announce his own sentiments, in his own language.

#### *The Charge—Extract.*

"The existence of slavery under any shape is so repugnant to the natural rights of man and the dictates of justice, that it seems difficult to find for it any adequate justification. It undoubtedly had its origin in times of barbarism, and was the ordinary lot of those who were conquered in war. It was supposed that the conqueror had a right to take the life of his captive, and by consequence might well bind him to perpetual servitude. But the position itself on which this supposed right is founded is not true. No man has a right to kill his enemy, except in cases of absolute necessity; and this absolute necessity ceases to exist, even in the estimation of the conqueror himself, when he has spared the life of his prisoner. And even if, in such cases, it were possible to contend for the right of slavery, as to the prisoner himself, it is impos-

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sible that it can justly extend to his innocent offspring through the whole line of descent. I forbear, however, to touch on this delicate topic, not because it is not worthy of the most deliberate attention of all of us, but it does not properly fall in my province on the present occasion."

"And, gentlemen, how can we justify ourselves, or apologize for an indifference to this subject? Our constitutions of government have declared that all men are born free and equal, and have certain unalienable rights, among which are the right of enjoying their lives, liberty, and property, and seeking and obtaining their own safety and happiness. May not the miserable African ask, 'Am I not a man and a brother?' We boast of our noble strength against the encroachments of tyranny, but do we forget that it assumed the mildest form in which authority ever assailed the rights; and yet there are men amongst us who think it no wrong to condemn the slivering negro to perpetual slavery."

"We believe in the Christian religion. It commands us to have good will to all men; to love our neighbors as ourselves, and to do unto all men as we would they should do unto us. It declares our accountability to the Supreme God for all our actions, and holds out to us a state of future rewards and punishments, as the sanction by which our conduct is to be regarded. And yet there are men, calling themselves Christians, who degrade the negro by ignorance to a level with the brutes, and deprive him of all the consolations of religion. He alone, of all the rational creation, they seem to think, is to be at once accountable for his actions, and yet his actions are not to be at his own disposal; but his mind, his body, and his feelings, are to be sold to perpetual bondage."

We will take the case of slavery then as the probable, and in the event of the success of certain designs now on foot, as the certain one, on which the new doctrine of judicial supremacy over the States may be tried. The case of the Georgia Cherokees is a more proximate, and may be a precedent one; but, as no intimation of the possible decision of the court in that case has been given, I shall pretermit it, and limit myself to the slavery case, in which the declaration of Mr. King, and the charge of one of the judges, leaves me at liberty to enter, without guilt of intrusion, into that *sacredum sanctorum* of the judiciary—the privy chamber of the judges—the door of which has been flung wide open. Let us suppose then that a law of Congress passes, declaring that slavery does not exist in the United States—that the States South of the Potomac and Ohio, with Missouri from the West of the Mississippi, deny the constitutionality of the law—that the Supreme Court takes cognizance of the denial—commands the refractory States to appear at its bar—decides in favor of the law of Congress, and puts forth the decree which, according to the new doctrine, it is treason to resist! What next? Either acquiescence or resistance, on the part of the slave States. Acquiescence involves, on the part of the States towards this court, a practical exemplification of the old slavish doctrines of passive obedience and non-resistance which the Sacheverells of Queen Anne's time preached and promulgated in favor of the King against the subject; with all the mischief, superadded, of turning loose two millions of slaves here, as the French National Convention and their agents, Santhonnax and La Croix, had turned loose the slaves of the West India Islands. Resistance incurs all the guilt of treason and rebellion; draws down upon the devoted States the troops and fanatics of the Federal Government, arms all the negroes according to the principle declared in D'Auteville's case, and calls in, by way of attending to the women and children, the knife and the hatchet of those Georgia Cherokees which it is now the organized policy of a political party to retain, and maintain, in the bosom of the South.

We have read and heard much, [said Mr. B.] of late years, of the madness and violence of the people—the tyranny and oppression of military leaders: but we have heard nothing of judicial tyranny, judicial oppression, and judicial subservency to the will and ambition of the King or President of a country. Nothing has been said on this branch of the subject, and nothing that I have ever seen, or read of, has sunk so deep upon my mind as the history of judicial tyranny, exemplified in the submission of the judges to the will of those who made them. My very early reading led me to the contemplation of the most impressive scenes of this character, which the history of any country affords—speak of the British State Trials, which I read at seven or eight years old, under the direction of a mother, then a very young, now an aged widow. It was her wish to form her children to a love of liberty, and a hatred of tyranny, and I had wept over the fate of Raleigh, and Russell, and Sydney, and I will add, the Lady Alice Lyle, before I could realize the conception that they belonged to a different country, and a different age, from my own. I drank deep at that fountain! I drew up repeated, copious, and overflowing draughts of grief and sorrow for suffering victims—of resentment, fear, and terror, for their cruel oppressors. Nothing which I have read in history since, not even the massacres of Marius and Sylla, nor the slaughters of the French Revolution, have sunk so deep upon my mind as the scenes which the British State Trials disclosed to me; the view of the illustrious of the land seized, upon the hint of the King, carried to the dungeon, from the dungeon to the court, from the court to the scaffold; there, the body half-hung, cut down half alive, the belly ripped open, and the bowels torn out, the limbs divided and stuck over gates, the property confiscated to the King, the blood of the family attainted, and widows and orphans turned out to scorn and want. Nothing which I have ever read equals the deep impression of these scenes; partly because they came upon my infant mind, more because it was a cold-blooded business, a heartless tyranny, in which the judges acted for the King, without passions of their own, and are stript of all the extenuations which contending parties claim for their excesses when either gets the upper hand in the crisis of great struggles. True, these scenes of judicial tyranny and oppression existed long since; but where is the modern instance of judicial opposition to the will of a King or President of the country for the time being? Are there five instances in five centuries? Are there four? three? two? one? No, not one! The nearest approach to such opposition, in the history of the British Judiciary, is the famous case of the ship money, when four judges, out of twelve, ventured an opinion against the Crown. In our own country no opposition from the bench has gone that length. The odious and notorious sedition law was enforced throughout the land by federal judges. Not one declared against it; and if a civil war, in that disastrous period between the Presidents Washington and Jefferson, had depended upon the judicial enforcement of that act, we should have had civil war. We have heard much of the independence of the judges, but since about eight hundred years ago, when the old King Alfred hung four and forty of them in one year, for false judgments, there have been but few manifestations of judicial independence in reference to the power from which they derive their appointment. Since that time, the judges and the appointing power have usually thought alike in all the cardinal questions which affect that power. This may be accounted for without drawing an inference to the dishonor of the judge, and as it will answer my purpose just as well to place the account upon that foot, I will cheerfully do it. I will say, then, that Kings and Presidents, having the nomination of judges, forever have chosen, and upon all the principles of human action with which I am acquainted, forever will choose, these high judicial officers from the class of men whose



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political creed corresponds with their own. This is enough for me; it is enough for the illustration of the subject which we have in hand. Supposing a certain design, now on foot, to succeed; supposing, some four or eight years hence, a new creation of judges to come forth, either under a new law for the extension of the judiciary, or to fill up vacancies; supposing the doctrine to be established which is now announced by the Senator from Massachusetts, [Mr. WEBSTER] and that court has to pass upon a slavery law, or an Indian law, which the States hold to be void, and decree it to be binding, where is then the legitimate conclusion of the gentleman's doctrine? Passive obedience and non-resistance to the Supreme Court, and the President that made it, or civil war with Indians and negroes for the allies of the Federal Government. Sir, I do not argue this point of the debate; I have a task before me—the rectification of the assertions of the Senator from Massachusetts—which I mean to execute. I have turned aside from that task to make a remark upon the doctrine, and to illustrate it by an example which would make the Supreme Federal Court despot over the States. I return to my task, with repeating the words of him [Mr. RANDOLPH] whose words will be the rallying cry of liberty and patriotism in ages yet to come; I repeat them, then, but without the magical effect of that celestial infusion which God vouchsafed to him, divine eloquence, the words which, three months ago, electrified the Virginia Convention: "The chapter of Kings, in the Holy Bible, follows next after the chapter of Judges."

I will now take up the instances, I believe there are but few of them, and that I can make short work of them, quoted by the Senator from Massachusetts [Mr. W.] in support of his assertion, that all the measures favorable to the West have been carried by northern votes in opposition to southern ones. He asserted this to be the case from the beginning to the ending, from the first to the last, of the chapter of this Government; but he did not go back to the beginning of the chapter, nor even to the middle of it, nor, in fact, further than some ten leaves of it. He got back to the year 1820, just to the edge of the Missouri question, but not a word of that, and began with the reduction of the price of public land from two dollars to one dollar and twenty-five cents per acre. That he proclaims as a western measure, and dwells upon it, that New England gave thirty-three votes in favor of that reduction, and the four Southern States but thirty-two! Verily, this is carrying the measure in opposition to the votes of the South, in a new and unprecedented sense of the word. But was it a Western measure? The history of the day tells us no; that the Western members were generally against it, because it combined a change of terms from the credit to the ready money system, with the reduction. This made it unacceptable to the Western members, and they voted against it almost in a body. The leading men of the West opposed it. Mr. Clay in a speech, with great earnestness. Mr. Trimble and Mr. Metcalfe, of Kentucky, voted against it; both the Kentucky Senators did the same; both the present Senators from Indiana; the Representative from Illinois, and many others. The opposition, though not universal, was general from the West; and no member lost the favor of his constituents on that account. The Senator's first instance, then, of New England favor to the West, happens to be badly selected. It fails at both points of the argument; at the alleged victory over the South, in behalf of the West, and at the essential feature of favor to the West itself. This is a pity. It knocks one leg off of the stool which had but two legs to it from the beginning. The Senator had but two instances of New England favor to the West, prior to the coining and billing of the Presidential election in the House of Representatives in 1825. One of these is gone; now for the next. This next one, sole survivor of a stunted race, is the extension of credit to the land debtors in the year 1821. This I admit

to be a measure of cherished importance to the West. Let us see how the rival parties divided upon it. The Senator from Massachusetts stated the division loosely, and without precision as to the numbers. He said that New England, with forty members in the House of Representatives, gave more affirmative votes than the four Southern States with their fifty-two members. How many more he did not say; and that want of precision induced me to cause the matter to be looked into; and the result appears to be that in the list of yeas, New England, on that occasion, beat the South two votes, and in the list of nays, she beat three votes; that is to say, she gave two votes more than the South did for the passage of the bill, and three votes more than the South against the passage of it! This leaves a majority of one in favor of the South, and so off goes the other leg of the two legged stool; and the Senator from Massachusetts, according to my arithmetic, is flat upon the ground.

I think, sir, it was in the triumph of his soul at having two instances, and those the ones I have dissected, in which New England gave favorable votes to the West, prior to the honey moon of the Presidential election of 1825, that the Senator from Massachusetts broke out into his "time when," "manner how," and "cause why," which seemed to have been received as attic wit "by some quantity of barren spectators" that chanced to be then present. I think it was in reference to these two instances that the Senator from Massachusetts made his address to the Senator from South Carolina, [General HARRIS] and still ringing the changes upon the when, the how, and the why, said to the Senator from South Carolina that, if this did not satisfy him of the disinterested affection of the Northeast to the West, prior to the scenes of soft dalliance which accompanied the Presidential election of 1825, that he did not know how he ever would be satisfied. Good, sir, let us close a bargain—pardon the phrase—on that word. The Senator from Massachusetts knows of nothing to prove affection in the Northeast to the West prior to the sweet conjunction and full consummation of 1825, except these two instances. They seemed to be but a poor dependence—a small plaster for a large sore—when he brought them forward. What are they now? Reduced to nothing—literally nothing—worse than nothing; an admitted acknowledgment that the case wanted proof, and that none can possibly be found.

But the tariff! the tariff! That is a blessing, at least, which the West must admit it received from the Northeast! Not the tariff of 1824: for against that, it is avowed by the Senator from Massachusetts that the New England delegation voted in solid column. It is the tariff of 1828 to which he alludes, and for the blessings of which to the West he now claims its gratitude to the Northeast. Upon this claim I have two answers to make: First, that this instance of affection to the West is posterior to the election of 1825, and falls under the qualification of the entire system of changes which followed, consequently, upon the approximation and conjunction of the planets which produced that event. Secondly, that almost the only item in that tariff of any real value to the West—the increased duty on hemp, was struck at from the Northeast, and defended from the South. The Senator from Massachusetts, to whom I am now replying, himself moved to expunge the clause which proposed to grant us that increase of duty. True, he proposed to substitute a nominal and illusory bounty on the insignificant quantity of hemp used on the ships of war of the United States, being the one twentieth part of what is used on the merchant vessels, and undertook to make us believe that the one twentieth part of a thing was more than the whole. He could not make us believe it. We refused his bounty; we voted eighteen against him, being every Senator from the West; New England voted ten out of twelve against us; the South voted eight out of eight for us; and the in-

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creased duty on hemp was saved—saved by that South, in opposition to that New England, which the Senator from Massachusetts has so often declared to be the friend of the West, and to have carried every measure favorable to it, in opposition to the votes of the South!

Internal Improvement was the last resort of the Senator's ingenuity, for showing the affection of the Northeast to the West. It was on this point that his appeal to the West, and calls for an answer, were particularly addressed. The West will answer; and, in the first place, will show the amount, in value, in money, of the favors thus rendered, in order to ascertain the quantity of gratitude due and demandable for it. On this point we have authentic data to go upon. A resolution of the Senate, of which I was myself the mover, addressed to the ex-administration in the last year of its existence, called upon the then President to exhibit to the Congress a full statement of all the money expended by the Federal Government, from 1789 to 1828, in each of the States, upon works of Internal Improvement. The report was made, authenticated by the signatures of the President, Mr. Adams, the Secretary of the Treasury, Mr. Rush, and several heads of Bureaus. It is No. 69 of the Senate documents, for the session 1828—1829; and at page thirteen of the document the table of recapitulation is found, which shows the amount expended in each State. Let us read some items from it.

## The Table.

1. Kentucky,	-	-	\$90,000
2. Tennessee,	-	-	4,200
3. Indiana,	-	-	nothing.
4. Illinois,	-	-	8,000
5. Mississippi,	-	-	23,000
6. Missouri,	-	-	nothing.
7. Louisiana,	-	-	do.

A most beggarly account! [said Mr. B.] About one hundred and twenty-five thousand dollars in seven Western States, up to the end of that administration which assumed to be the exclusive champion of Internal Improvement. A small sum truly, for the young and blooming West to take, for the surrender of all her charms to the ancient and iron-hearted enemy of her name. Ohio, it is not to be dissembled, has received something more; but that depends upon another principle—the principle of governing the West through her.

But the Cumberland road—that great road, the construction of which, as far as the Ohio river, cost near two millions of dollars. Sir, the man must have a poor conception of the West who considers the road to Wheeling as a Western object, to be charged upon the funds and the gratitude of the West. To the Eastern parts of Ohio it may be serviceable; but to all beyond that State, it is little known except by name. A thousand Eastern people travel it for one farmer or mechanic of Indiana, Illinois, Missouri, Kentucky, or Tennessee: It is, in reality, more an Eastern than a Western measure, built in good part with Western money, taken from the Western States, as I humbly apprehend, in violation of their compacts with the Federal Government. These compacts stipulate that two per cent. of the nett proceeds of the sales of the public lands shall be laid out by Congress in making roads or canals “to” the States, not towards them. The laws for building the Cumberland road have seized upon all this fund, already amounting, in the four Northwestern States, to three hundred and twenty-six thousand dollars, and applied it to the Cumberland road. The same laws contain a curious stipulation, not to be found in any other law for making a road, which stipulates for the future reimbursement, out of the two per cent. fund, of all the money expended upon it. This truly is a new way of conferring a favor, and establishing a debt of gratitude! But when did the New England votes in favor of this road, and other Western objects, commence? How do they

compare before and since the Presidential election of 1825? Let the Journals tell. Let confronting columns display the contrast of New England votes upon this point, before and after that election.

## THE CONTRAST.

## Since 1825.

1. April 8, 1816. To postpone bill to construct roads and canals.—Yeas, 7 out of 10.

2. March 6, 1816. Bill to relieve settlers on public lands by allowing them to enter the lands, &c.—Nays, 8 out of 10.

3. January 29, 1817. Bill to admit Mississippi as a State into the Union.—Nays, 7 out of 10.

4. May 19, 1824. Bill to improve the navigation of the Ohio river.—Nays, 7 out of 12.

5. April 24, 1824. Bill for survey of roads, &c.—Nays, 9 out of 12.

## Before 1825.

1. February 24, 1825. Motion to postpone appropriation for Cumberland road.—Yeas, 5 out of 12.

2. March 1, 1826. Bill to repair Cumberland road.—Nays, 2 out of 12.

3. January 2, 1827. Bill to extend the Cumberland road.—Nays, 5 out of 12.

4. March 28, 1828. Bill to give land to Kenyon College.—3 out of 12.

5. December, 1828. Bill for making compensation for Indian depredations in Missouri.—Yeas, 4 out of 12.

Yes, [said Mr. B.] the Presidential election of 1825 was followed by a system of changes. There seems to have been a surrender and sacrifice of principles on that occasion somewhat analogous to the surrender and murder of friends which followed the conjunction of Antony, Lepidus, and Caesar. It would seem that some guardian genius had whispered, the “Tariff, Internal Improvement, and Slavery, are the questions to govern this Union. Now let us all agree, and throw up old scruples, and work together upon Slavery, Tariff, and Internal Improvement.” They did throw up! Old scruples flew off like old garments. Leading politicians came “to the right about,” the rank and file followed; and the consequence was, the confronting votes and conduct which five years of explanations and justifications leave at the exact point at which they began.

The canal across the Alleghenies is mentioned. I utterly disclaim and repudiate that canal as a Western object. And here, [said Mr. B.] I take up a position which I shall fortify and establish on some future occasion. It is this: That every canal, and every road, tending to draw the commerce of the Western States across the Alleghany mountains, is an injury to the people of the West. My idea is this: That the great and bulky productions of the West will follow the course of the waters, and float down the rivers to New Orleans; that our export trade must, and will, go there; that this city cannot buy all, and sell nothing; that she must have the benefit of the import trade with us; that the people of the West must buy from her as well as she from them; that the system of exchange and barter must take effect there; that if it does not, and the West continues to sell its world of productions to New Orleans for ready money, and carries off that money to be laid out in the purchase of goods in the Atlantic cities, the people of the West are themselves ruined; for New Orleans cannot stand such a course of business; she will fail in supplying the world of money which the world of produce requires; and the consequence will be the downfall of prices in every article. This is somewhat the case now. New Orleans is called an uncertain market; her prices for beef, pork, flour, bacon, whiskey, tobacco, hemp, cotton, and an hundred other articles, is compared with the prices of like articles in the Atlantic cities, and found to be less; and then she is railled against as a bad market; as if these low prices was not the natural and inevitable effect of selling every thing and buying nothing there. As to the idea

of sending the products of the West across the Alleghenies, it is the conception of insanity itself! No rail roads or canals will ever carry them, not even if they do it gratis! Onetrans-shipment, and there would have to be several, would exceed the expense of transportation to New Orleans, to say nothing of the up-stream work of getting to the canal or rail way; itself far exceeding the whole expense, trouble, and delay, of getting to New Orleans. Besides, such an unnatural reversal of the course of trade would be injurious to the Western cities—to Cincinnati, Louisville, St. Louis, and to many others. It would be injurious and fatal to our inland navigation—the steam-boats of the West. They are our ships, their tonnage is already great, say thirty thousand tons; the building of them gives employment to many valuable trades, and creates a demand for many articles which the country produces. To say nothing of their obvious and incredible utility in the transportation of persons, produce, and merchandise, each steam boat has itself become a market, a moving market, that comes to the door of every house on the rivers, taking off all its surplus fowls, and vegetables; all its surplus wood: the expenditure for this single object in the past year, in two calculations made for me, ranged between nine hundred thousand and one million of dollars. No, sir, the West is not going to give their steam boats—their ships, not of the desert, but of noble rivers. They are not going to abandon the Mississippi, *mare nostrum*—our sea—for the comfort of sealing the Alleghany mountains with hogheads of tobacco, barrels of whiskey, pork, and flour, bales of hemp, and coops of chickens and turkeys on their backs! We are not going to impoverish New Orleans, by selling our produce to her, and buying our merchandise elsewhere, and in that impoverishment committing suicide upon ourselves. Nor am I going to pursue this subject, and explore it in all its important bearings, at this time; I have that task to perform, but it will be reserved for another occasion.

I resume the subject of Internal Improvement. I say, and I say it with the proof in hand, that this whole business has been a fraud upon the West. Look at its promise and performance. Its promise was to equalize the expenditure of public money, and to counterbalance, upon roads and canals in the West, the enormous appropriations for fortifications, navy yards, light houses, and ships, on the Atlantic board; its performance has been to increase the inequality of the expenditures; to fix nearly the whole business of Internal Improvement on the east of the Alleghany mountains; to add this item, in fact, to all the other items of expenditure in the East! Such was the promise; such has been the performance. Facts attest it; and let the facts speak for themselves.

#### The Facts.

1. Cumberland Road to Wheeling,	\$2,000,000
2. Delaware Breakwater, (required)	2,500,000
3. Canal over the Alleghany, (subscribed)	1,000,000
4. Baltimore Rail Road, (demanded)	1,000,000
5. Delaware and Chesapeake Canal,	450,000
6. Nantucket Harbor, (demanded)	900,000

Here we go by the millions, while the West, to whom all the benefits of this system were promised, obtains with difficulty, and somewhat as a beggar would get a penny, a few miserable thousands. But, sir, it is not only in the great way, but in the small way also, that the West has been made the dupe of this delusive policy. She has lost not only by the gross but by retail. Look at the facts again. See what her partner in this work of Internal Improvement, the Northeast, which commenced business with her in 1825, has since received, in the small way, and upon items that the West never heard of, under this head of Internal Improvement.

#### The Facts—again.

1. Preservation of Little Gull Island,	\$30,000
2. Preservation of Smutty Nose Island,	15,000

3. Preservation of Plymouth beach,	49,000
4. Preservation of islands in Boston harbor,	63,000
5. Improvement of the Hyannis harbor,	10,000
6. Improvement of Squam and Gloucester,	6,000
7. Preservation of Deer Island,	87,000
8. Removing a sand bar in Merrimack river,	32,000
9. Building a pier at Stonington,	20,000
10. Making a road to Mars hill,	57,000

Near \$400,000 actually paid out in this small way, and upon these small items, in New England, while seven States in the West, up to the last day of the coalition administration, had had expended within their limits, for all objects, great and small, Indian roads and the light house at Natchez included, but \$125,000. And this, sir, is the New England help for which the Senator from Massachusetts, [Mr. W.] stood up here challenging the gratitude of the West! But this is not all; the future is still to come; a goodly prospect is ahead; and let us take a view of it. The late administration, in one of its communications to Congress, gave in a list of projects to be selected for future execution. I will recite a few of them.

#### The Projects.

1. Improvement at Saugatuck.	
2. do at Amounisuck.	
3. do at Pasmuc.	
4. do at Winnipissogee.	
5. do at Piscataqua.	
6. do at the Ticonic Falls.	
7. do at Lake Memphrymagog.	
8. do at Conneaut Creek.	
9. do at Holmes' Hole.	
10. do at Lovejoy's Narrows.	
11. do at Steele's Lodge.	
12. do at Cowhegan.	
13. do at Andromoggin.	
14. do at Cobbeiscontee.	
15. do at Ponceaupechaux, alias Soapy Joe.	

Such are a sample of the projects held in abeyance by the late administration, and to be executed in future. They were selected as national objects!—national! and not a man in the two Americas, outside of the nation of New England, who can take up the list and tell where they are, without a prompter or a gazetteer. And now, sir, what are the results of this partnership, of five years' standing, between the West and the Northeast, in the business of Internal Improvement? First: Nothing, or next to nothing, for Kentucky, Tennessee, Alabama, Mississippi, Louisiana, Illinois, Indiana, and Missouri. Secondly: Eight or nine millions of dollars for large objects east of the Alleghany mountains. Thirdly: Near \$400,000 for small neighborhood objects, in New England. Fourthly: A selection of objects in the Northeast, for future national improvement, the very names of which are unknown in the neighboring States. These are the results. Let any one weigh and consider them, and say whether this business of Internal Improvement has not been a delusion upon the West; if our partners in the East have not kept the loaf under their own arm, and cut off two or three huge huncks for themselves for every thin and narrow slice which they threw to us? What is worse, that is to say, what is truly mortifying to our pride, is, that we are not allowed to choose for ourselves. It is in vain that we contend that Western objects should be somewhere in the valley of the Mississippi; our partners, assuming the office of guardians, tell us it is a mistake; that every true, genuine, native-born, full-blooded western improvement must begin upon the Atlantic coast, and if one end of it points towards the setting sun, that is enough. It is now six years since I made a movement upon an object actually Western; one which, being completed, will produce more good for less money, according to my belief, than any other of which the wide extent of this confederacy is susceptible. It is the series of short canals, sir,

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amounting in the aggregate to twenty-seven miles, which would unite New Orleans and Georgia; which would connect, by an inland steam boat navigation, safe from storms, pirates, privateers, and enemy's fleets, the Chatahoochee and the Mississippi, the bays of Mobile, Pensacola, St. Marks; and enable the provisions of the Western country to go where they are exceedingly wanted, to the cotton plantations on the rivers Amite, the Pearl, and Pascagoula, in the State of Mississippi; the Tombecbee and Alabama rivers, in the State of Alabama; the Conecuh and Escambia, in West Florida; the Chatahoochee, for five hundred miles up it, on the dividing line of Georgia and Alabama. The Senator from Louisiana, who sits on my left, [Mr. JOHNSON] moved the bill that obtained the appropriation for surveying this route, four years ago; the Senator from the same State, who sits on my right, [Mr. LIVINGSTON] has sent a resolution to the Road and Canal Committee, to have the work began; and the fate of this undertaking may illustrate the extent to which the voice of the West can go, in selecting objects of improvement within its own limits, and for itself.

Such are the results of the Western attempts to equalize expenditures, to improve their roads, and enrich themselves upon public money by means of the Internal Improvement power exercised by the Federal Government. The South, we are told, and told truly, has voted no part of these fine allowances to the West. And thence it is argued, and argued incorrectly, that she is an enemy to the West. Sir, the brief answer to that charge of enmity is, that she has voted nothing on this account for herself; she has voted for us as she did for herself; the argument should be, that she loved us as well as she did herself; and this is all that conscionable people can require. But another view remains to be taken of this affection, which is to be tried by the money standard. It is this: That, if the South has voted us no public money for roads and canals, they have paid the West a great deal of their own private money for its surplus productions. The South takes the provisions of the West, its horses and mules besides, and many other items. The States south of the Potomac, south of the Tennessee river, and upon the lower Mississippi, is the gold and silver region of the West. Leave out the supplies which come from this quarter, and the stream that Missouri is drawing from Mexico, also to the South of us, and all the gold and silver that is derived from other places—from any places north of Mason's and Dixon's line—would not suffice to pay the postage of letters, and the ferrage of rivers. This Southern trade is the true and valuable trade of the West; the trade which they cannot do without; and with these States it is proposed that we shall have a falling out, turn our backs upon them, and go into close connexion with a political caste in a quarter of the Union from which the West never did, and never can, find a cash market for her surplus products. I know that the West is not credited for much sagacity, and the result of her Internal Improvement partnership goes to justify the *Boetian* imputation to which we have been subject; but there are some things which do not require much sagacity, nor any book learning, to discover how they lie. Little children, for example, can readily find out on which side their bread is buttered, and the grown men of the West can as quickly discover from which side of Mason's and Dixon's line their gold and silver comes. We hear much about binding the different sections of the Union together; every road and every canal is to be a chain for that purpose. Granted. But why break the chains which we have already? Commerce is the strongest of all chains. It is the chain of interest. It binds together the most distant nations; aliens in color, language, religion, and laws. It unites the antipodes; men whose feet are opposite, whose countries are separated by the entire diameter of the solid globe. We have a chain of this kind with the South, and woe be

to the politician that shall attempt to cut it or to break it. The late Presidential election was an affair of some interest to the West. The undivided front of the Western electoral vote tested the unity and the intensity of her wishes on that point. Was that election carried by Northern votes in opposition to Southern ones? Was the West helped out by the North, in that hard struggle of four years duration? Yes, to the extent of one electoral vote from the republican district of Maine; to the extent of many thousand individual votes; but these came from the democracy, some few exceptions; but nothing from that party which now assumes to be the friend of the West, and so boldly asserts that every Western measure has been carried by Northern in opposition to Southern votes.

The graduation bill, [said Mr. B.] is a Western measure: there is no longer any dispute about that. It came from the West, and is supported by the West. Memorials from eight Legislatures have demanded it; seventeen out of eighteen Western Senators have voted for it. Has the Northeast carried that bill in opposition to the South? It has repeatedly been before both Houses—was once on its final passage in this chamber, and wanted four votes, which was only a change of position in two voters to carry it. Did the Northeast, out of her twelve voters present, give us these two? She did not. Did she give us one? No, not one. There was but one from the North of Mason's and Dixon's line, and that of an honorable Senator—I do not call him honorable by virtue of a rule—who is no longer a member of this body—I speak of Mr. Ridgely, of Delaware, that little State, whose moral and intellectual strength on this floor has often kept her in the first rank of importance. How was it to the South? A brilliant and powerful support from the Senator of Virginia, not yet in his seat, [Mr. TAZEWELL] whose name, for that support, is borne with honor upon the legislative page of Missouri and Illinois; a firm support from the two Senators from Georgia, [Messrs. COBB and BERRIEN] since ceased to be members. A motion for reconsideration from the venerable MACOM—the friend of me and mine through four generations in a straight line—to reconsider the vote of rejection with a view of passing the main part, the first section, which contained the whole graduation clause. Several other Senators from the South, who then voted against the bill, expressed a determination to examine it further, and intimated the pleasure it would give them to vote for it at another time, if found, upon further examination, to be as beneficial as I supposed. Thus stood the South and West upon that greatest and truest of all Western measures; and we shall quickly see how they stand again; for the graduation bill is again before the Senate, and next in order after the subject now in hand.

How stand the North and South on another point of incalculable interest to the West—the motion now under discussion—no, not now under discussion—the motion now depending, to stop the surveys, to limit the sales of public lands, and to abolish the offices of the Surveyors General? How stand the parties on that point? Why, as far as we can discover, without the report of yeas and nays, the Northeast, with the exception of the Senator from New Hampshire, on my right, [Mr. WOODBURY] against us; the South unanimous for us. And thus, the very question which has furnished a peg to hang the debate on, which has brought out the assertion that every measure friendly to the West has been carried by New England votes, in opposition to Southern votes, is itself evidence of the contrary, and would have placed that evidence before the West in the most authentic form, if the ingenious Senator from Massachusetts [Mr. WEBSTER] had not evaded that consequence, by moving an indefinite postponement, and thereby getting rid of a direct vote on the resolution, which has become current under the name of the Senator who introduced it, [Mr. POOR, of Connecticut.]

How stand the South and North upon another point,

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also of overwhelming concern to the West—the scheme for partitioning out the new States of the West among the old ones? Whence comes that scheme? Who supports it? What its real object? The West will be glad to know the when, the why, and the how, of that new and portentous scheme. But, first, what is it? Sir, it is a scheme to keep the new States in leading strings, and to send the proceeds of the sales of the public lands to the States from which the public lands never came. It is a scheme to divide the property of the weak among the strong. It is a scheme which has its root in the principle which partitioned Poland between the Emperors of Russia and Germany and the King of Prussia. Whence comes it? From the Northeast. How comes it? By an innocent and harmless resolution of inquiry. When comes it? Contemporaneously with this other resolution of innocent and harmless inquiry into the expediency of limiting the settlement, checking emigration to the West, and delivering up large portions of the new States to the dominion of wild beasts. These two resolutions come together, and of them it may be said, “these two make a pair.” A newspaper in the Northeast contained a letter written from this place, giving information that the resolution of the Senator from Connecticut [Mr. Foote] was brought in to anticipate and forestall the graduation bill. I saw it in that light, [said Mr. B.] before I saw the letter. I had announced it in that character long before I received the letter, and read it to the Senate. This resolution then was to check-mate my graduation bill! It was an offer of battle to the West! I accepted the offer; I am fighting the battle—some are crying out and hauling off; but I am standing to it, and mean to stand to it. I call upon the adversary to come on and lay on, and I tell him—

“Damned be he that first cries out enough.”

Fair play and hard play is the game I am willing to play at. War to the knife, and the knife to the hilt; but let the play be fair. Nothing foul; no blackguardism. This resolution, then, from the other end of the capitol, twin brother to the one here, comes from the Northeast; is resisted by the South, and is ruinous to the West. New Hampshire, Rhode Island, Connecticut, Vermont, New Jersey, and Delaware, were unanymous for it; Massachusetts, nine to one for it; South Carolina and Georgia were unanimously against it; Virginia, ten to one against it; North Carolina, eight to four against it. This scene presents itself to my mind, [said Mr. B.] as a picture with three figures upon it. First, the young West, a victim to be devoured. Secondly, the old North, attempting to devour her. Thirdly, the generous South, ancient defender and savior of the West, stretching out an arm to save her again.

Let these two resolutions pass, and ripen into the measures which their tenor implies to be necessary, and the seal is fixed, for a long period, on the growth and prosperity of the West. Under one of them the sales of the lands will be held back; under the other, every possible inducement will arise to screw up the price of all that is sold. From that moment the West must bid adieu to all prospect of any liberal change in the policy of the United States in the sale and disposition of the public lands; no more favor to the settler, no justice to the States; no sales on fair and equitable terms. Grinding avarice will take its course, and feed full its deep and hungry maw. Laws will be passed to fix the minimum price at the highest rate; agents will be sent to attend the sales, and bid high against the farmer, the settler, and the cultivator. Dreadful will be the prices then run up. The agents will act as attorneys for the plaintiffs in the execution. The money is coming to the States they represent; they can bid what they please. They can bid off the whole country, make it the property of other States, and lease or rent small tracts to the inhabitants. The preservation of the timber

will become an object of high consideration to these new lords proprietors; and hosts of spies, informers, prosecutors, and witnesses, will be sent into the new States, to waylay the inhabitants, and dog the farmers round their fields, to detect and persecute the man who cuts a stick, or lifts a stone, or breaks the soil of these new masters and receivers. While the land is public property, and the proceeds go into the treasury, like other public money, there is less interest felt in the sales by the individual States; but, from the moment that the proceeds of the sales are to be divided out by a rule of proportion which would give nearly all to the populous States, from that moment it would be viewed as State property, and every engine would be set to work to make the lands produce the utmost possible farthing for the individual States. Each would calculate, in every question of sale or gift, how much his State, and how much he himself, as a unit in that State, was to gain or lose by the operation. And who are to be the foremost and most insatiable of these new lords proprietors? Let the vote, on the reference of the resolution, answer the question; let it tell. They are the States which never gave any land to the Federal Government! Massachusetts and Maine, which retained their thirty thousand square miles of vacant territory, and are now selling it at twenty-five, at twenty, at ten, and at five cents per acre. Connecticut, which seized upon two millions of acres of the land which Virginia had ceded to the Federal Government, and held fast to the jurisdiction as well as the soil, until the Congress agreed to give her a deed “to all the right, title, interest, and estate, of the United States” to the soil itself. Who are our defenders? They are the States south of the Potomac, which were, themselves, the great donors of land to the Federal Government. Virginia, the Carolinas, Georgia—these are our defenders! And without their defence, the West would fare now as she would have fared without it forty years ago, in the times of the old confederation.

I have now, [said Mr. B.] gone through the “chapter” of the conduct of the Federal Government, and the relative affection of the North and South to the West. I commenced without exordium, and shall finish without peroration. On two points more, and only two, I wish to be understood.

First, As to the reason which has induced me to enter, with this length and precision of detail, into the question of relative affection from the North and South towards the West. That reason is this: that having been accustomed, for the last five years, to see and hear the South represented as the enemy of the West, and the Northeast as its friend, and in the very words used by the Senator from Massachusetts, [Mr. WESTEN] on this floor, and “having always maintained the contrary in the West, I could not, without suffering myself to be gagged hereafter with an unanswerable question, sit still and hear the same things repeated on this floor, without entering my solemn dissent, supported by authentic references to its truth; especially when I labor under the thorough conviction that the object of these statements, both in the West and in this chamber, is to produce a state of things hostile to the well being of this confederacy. Secondly, That in repeated reference, in the course of my speech, to the federal party in the United States, I mean no proscription of that party in mass. I have a test to apply to each of them, and according to the proof of that test does the individual appear fair or otherwise before me. The test is this: Is he faithful to his country in the hours of her trial? As this question can be answered, so does he stand before me a fair candidate or otherwise for a ratable proportion of the offices, subordinate to the highest, which this country affords. This declaration, I trust, sir, will not be received as arrogant, but taken in its true spirit, as a qualification due to myself of things said in debate, and which might be misunderstood. I am a Senator; have a voice

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upon nominations to office; and the country has a right to be informed of my principles of action.

[Here Mr. BENTON brought his remarks to a close.]

Mr. BURNET said that he did not rise for the purpose of engaging in the debate; but merely to explain a law of the State of Ohio, which had been referred to by the Senator from Missouri; and to state, for the information of the Senate, the circumstances which induced the Legislature to pass it. One of the motives, and, perhaps, the principal motive, which actuated them, was a desire to prevent runaway slaves from seeking shelter within the State, and evading the pursuit of their masters. On that subject, frequent and loud complaints had been made by the citizens of neighboring States, and particularly by those of Kentucky; and, if his memory was not incorrect, there was a correspondence between the Governors of the two States on the same subject. The Legislature of Ohio, desirous of removing the cause of these complaints, and of checking the evil complained of, passed the law which has been referred to in the debate, by which all persons of color, on coming into the State, were required to bring with them authentic record evidence of their freedom, and to exhibit it to the clerk of the county court, whose duty it was to record it, and give a certificate of the fact. The law also imposed a severe penalty on every citizen who should harbor or employ persons of color, who have not complied with its requirements. Thus far [said Mr. B.] it will be admitted that the law was well calculated to guard the rights of property in the neighboring States. But, sir, the Legislature had another object in view, of great importance to themselves and their constituents. They found it necessary to take steps to guard the State, as far as possible, against the evils of pauperism; and, for that purpose, they introduced a provision that no black or mulatto be permitted to reside in the State without giving bond and security, in the sum of five hundred dollars, to indemnify the township against any expense that might be incurred in consequence of their own inability to support themselves. These [said Mr. B.] were the provisions of the law in question; and he submitted it to the Senate whether they were not both justifiable and commendable. The people of Ohio had excluded slavery, with its advantages, if it had any, and it was natural for them to desire, as far as was practicable, to escape its evils. Knowing the general character of free people of color, they were desirous of having as few of them as possible, and of having some indemnity against the charge and expense of supporting such as might settle in the State. Mr. B. further stated, that the law, which he understood the gentleman from Missouri as complaining of, had been in force more than twenty years; and that the movement at Cincinnati, to which he had referred, was nothing more than the giving of a notice, under that law, to those persons on whom it operated, and who had not complied with its directions, that they must do so, within a stated time, or leave the State.

WEDNESDAY, FEBRUARY 3, 1830.

The Senate resumed the consideration of the resolution heretofore offered by Mr. FOOT.

Mr. SPRAGUE rose, and concluded the speech which he commenced yesterday. His remarks were as follows:

Mr. S. said it was with reluctance that he entered into this extraordinary debate. The gentleman who had just resumed his seat [Mr. BENTON] had most gratuitously given to it an unpleasant sectional character. Some portion of his remarks related merely to measures of a party in opposition to the administrations of Mr. Jefferson and Mr. Madison. Had he confined himself to those acts, I should not have felt myself constrained to participate in the discussion; because I was, from the first, politically opposed to them, and have never changed my sentiments. I men-

tion this, that the position which I occupy may be distinctly understood. Animadversions upon party measures affect no particular geographical division of the country, but only the individuals who sustained them, wherever they may reside. But the gentleman has assailed all the Northern States, and particularly those of New England; accusing them of narrow views, and systematic hostility and injustice towards the West; while, on the other hand, he has lauded the South, as her generous, liberal, and magnanimous friend. Such assertions, in order to gain any credence, must be supported by proof. Of this, the gentleman seems to have been aware, and has, accordingly, attempted to sustain them by a recurrence to historical facts. I shall endeavor, concisely, to remark upon such as appear to be of importance enough to deserve attention, and which have been stated with sufficient distinctness to render them susceptible of being followed.

He has gone back to the days of the Old Confederation, and the records of the Continental Congress; and dwelt upon certain proceedings, in 1786, relative to the defence of what was then the western district of Virginia, now the State of Kentucky. A proposition was made to send two companies of Federal troops to the rapids of the Ohio. It is to be recollected that we had just then emerged from the war of the Revolution, that tremendous struggle, in which we had strained every nerve to agony, and had sunk down to a state of exhaustion; destitute of money, without revenue, and without credit. To send two companies to the then distant wilderness on the Ohio, was a severer burthen on the public finances than to send thousands now to the mouth of the Columbia. Upon this proposition, the votes of New England were equally divided. During its pendency, on the twenty-first of June, a motion was made by Mr. Lee, a delegate from Virginia, to add two companies more, making four in all, for her defence; which was supported by that State alone; all the delegates from the other States, excepting one from Georgia, answering in the negative.

It was upon his stating this vote, that the gentleman exclaimed, in tones of delight and exultation: Magnanimous Virginia, ay!

She is a great and magnanimous State. I would not retract aught from her merits. New England seeks not to prostrate the fabric of others' fame, in order to erect her own from its fragments; she is rich enough in her own splendid materials. But the gentleman has not been fortunate in selecting this vote, given for her own exclusive benefit against all the other States, as an illustration of her disinterestedness and liberality. To attribute in this instance so great merit to her, is an implication of demerit in all the others, which I leave to be repelled by their older and abler representatives around me.

On the 29th of June, eight days only after the almost unanimous refusal of Congress to send more than the two companies to the defence of Virginia, a committee, consisting of two members from that State, and one from Massachusetts, made a report in favor of authorizing the commander of those two companies to march into the Indian country and make war, or treat for peace, as he should see fit; and also to call, at his pleasure, upon the Governor of Virginia, for one thousand militia. This report being under debate, a motion was made to postpone it for the present, in order to take up another proposition, which, after reciting that there was not sufficient evidence of Indian depredations "to justify carrying war into their country," recommended the adoption, "without delay," of "such measures as shall effectually secure peace to the Indians, and safety to the citizens inhabiting the frontiers of the United States." This motion the Senator from Missouri pronounced "cold blooded, cruel, and inhuman; equalled only by the National Assembly of the French Revolution, which, when their fellow-citizens were falling around them by the daggers of assassins, passed to the or-

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ders of the day." It was made by Mr. Pettit, of Pennsylvania, and there were more votes for it out of New England than from within it.

But if the gentleman's sensibilities were so much outraged by the idea of passing over that report in favor of war and bloodshed, even for a moment, in order to take up a substitute of peace and security, what will he say, how will he bear the shock, when he finds that a motion was made, not by a delegate from New England, nor even from the north of the Potomac, but from the South, from Georgia, to postpone the whole for six days; and that there were no less than fifteen voices in the affirmative, and two-thirds of them from without the limits of New England! Nay, more, that this very report, which it was so monstrous and horrible to hesitate even for a moment in adopting, was, upon the final question, absolutely rejected, and that, too, not by a bare majority of the Congress, but by a vote of two to one—six States to three; and of the six, two only being from the Northeast! And of the individual delegates, seventeen voted in the affirmative, and nine only in the negative; Mr. Houston, of Georgia, being excused at his own request!

I have been accustomed, sir, from my earliest recollections, to cherish the memory of those who composed the Continental Congress with reverence and gratitude. I have supposed that the very existence of this great, prosperous, and happy republic, demonstrated the elevation of their intellectual and moral character, their wisdom, purity, and beneficence; that their monuments were every where but over their graves. Is all this illusion? Is their epitaph still to be written? And shall we now inscribe upon their tomb, Here lie the members of the Continental Congress of 1786—those cold blooded, cruel, inhuman monsters, who are to be paralleled in all history only by the fiends of the French Revolution, who washed their hands in the blood of their brethren?

There are some exaggerations too extravagant even for the figures of rhetoric or the fictions of poetry. My own section of country might be well content to appear sombre and unlovely to that vision which can present the revered patriots of the Revolution in colors so dark, and with features so distorted.

The next topic of crimination against our forefathers was a clause originally inserted in the ordinance for ascertaining the mode of disposing of lands in the western country, when it was reported by a committee, in 1785, and which prohibited the sale, by the public officer, of a second township, by sections, until after all the first should have been disposed of. It arose from an evident solicitude for the security of the frontier settlers, and a desire to keep them in some measure compact, that they might be competent to their own protection, instead of scattering over immense forests, beyond the reach of timely succor. This is well known to have been the policy of Washington. It is not a little singular that the gentleman should have made this a theme of reiterated and vehement condemnation, when he had just before complained so loudly of an alleged indifference to the safety of the new settlements. He insists that a majority of the committee lived north of the Potomac, and that their object was to stint the growth of the West. He did not tell us who composed it. [Mr. BENTON explained by reading the names of a committee consisting of one from each State, A. D. 1785.] Mr. S. proceeded. The committee, which the gentleman had just named was not that which originally reported the ordinance, but one to whom it was subsequently referred, and who do not appear to have made any amendments or alterations. It was, I believe, first reported in May, 1784, by a committee consisting of Mr. Jefferson, of Virginia, Williamson, of North Carolina, Reed, of South Carolina, Howell, of Rhode Island, and Gerry, of Massachusetts; and its paternity is thus transferred to the south side of the Potomac. It was not finally

acted upon during that session; and at the commencement of the next session, in November, 1785, all the unfinished business of the preceding was taken up, and this appears to have been subsequently referred to the large committee which the gentleman has mentioned. But the justice and charity with which sinister motives are attributed to the North, is further illustrated by the fact, that upon the motion of Mr. McHenry to strike out this obnoxious clause, every member, with the single exception of Mr. Howell, of Rhode Island, answered in the affirmative; and yet it is insisted that the North, who had the whole perfectly in their power, were wickedly intent upon it as a means to cramp the growth of the West, and were defeated only by those of a more magnanimous region.

By the same ordinance, one-third part of all the mines of gold, silver, copper, and lead, were in all sales to be reserved to the Government. Upon a motion to strike out this reservation, and thus leave the whole to the purchasers, Massachusetts was divided, Rhode Island divided, and all the other States and all the other delegates, excepting Mr. Monroe, answered in the negative. This instance of comparative liberality seems to have wholly escaped the gentleman's observation.

Strange as it may seem, it has, in this debate, been made matter of loud and bitter complaint, that the United States had sold the public lands for money; have coined the soil into gold and silver, as it was expressed. The right and the obligation of the Government to do this have been so unanswervably established by the gentleman from Massachusetts, [Mr. WENDELL] that I shall not discuss it. It would be useless, indeed, for me to follow where is seen the giant's track. I shall endeavor, throughout, to avoid the ground which he has occupied. I will only now add, that however illiberal some persons may now consider the selling, instead of giving away this common property of the nation, it is not a mere Yankee notion, nor even confined to the wrong side of Mason's and Dixon's line; but has, from the first, been insisted upon by the statesmen of the more congenial South. In February, 1786, a committee of Congress, consisting of Messrs. Pinckney, of South Carolina, McKean, of South Carolina, Monroe, of Virginia, King, of Massachusetts, and Pettit, of Pennsylvania, held the following language: We "contemplate with great satisfaction the prospect of extinguishing a part of the domestic debt, by the sales of the western lands, but a considerable time must elapse," &c. And in the Virginia convention, in 1788, Mr. Harrison said, "the back lands and imposts will be sufficient for all the exigencies of Government." Mr. Grayson spoke of the "domestic debt being diminished by the sale of western lands;" and Mr. Madison, speaking of the Mississippi, said, "a material consideration was, that the cession of that river would diminish the value of the western country, which was a common fund for the United States, and would consequently tend to impoverish their public treasury. These, sir, were rational grounds." And in 1786, the Virginia delegation to Congress, with reference to the same subject, say, "the States who have ceded it, and the confederacy at large, look up to the western lands as a substantial fund for the discharge of the public debt."

The navigation of the Mississippi occupied a large space in the gentleman's contrast of sectional liberality and illiberality. It is, indeed, a subject of importance, and vastly more worthy of attention than most of those upon which he has expatiated.

The specification of charge is, that, in the year 1786, Mr. Jay, then Secretary for Foreign Affairs, proposed the making of a treaty with Gardoqui, the Spanish minister, by which the navigation of that river should be relinquished to Spain, for twenty-five or thirty years, in consideration of certain commercial stipulations, for mutual interchange of commodities, by which all the productions of this country, with the exception of tobacco, were to be

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received into the Spanish dominions. This proposition was supported by the States of the North; and the gentleman charitably supposes, from a desire to deprive their fellow-citizens of the West of that great highway so essential to their prosperity.

It is to be recollected that Spain, being then in possession of Louisiana and the Floridas, most positively and peremptorily denied that we had any right to participate in the use of that river. Prostrated as our strength and finances then were, the country was not in a condition to enforce our claim by arms. Thus situated, it was apparent that we could have no immediate enjoyment of the waters of the Mississippi, and it was believed that the best mode for securing the future permanent possession of them was to lease it, for a while, to the Spanish Government, for a valuable consideration; and that, by assenting to such an arrangement, and holding it by our permission, Spain would unequivocally acknowledge our right, which would revert to us, accompanied by the possession, at the expiration of the stipulated term. And it was thought, moreover, that it would be dishonorable to the country to suffer a foreign nation to withhold it from us in a hostile attitude. It was also apprehended that Great Britain would unite with Spain in resisting our claim, and excluding us forever from the enjoyment of our right.

These facts rest upon no doubtful authority; they are supported by the disinterested testimony of high minded and honorable men, actors in the scenes which they describe, and who, in 1788, were willing to do that justice to their associates which is now attempted to be withdrawn.

General Lee, in the Virginia convention, made the following statement:

"I feel myself called on, by the honorable gentleman, to come forward and tell the truth about the transaction respecting the Mississippi." "There are men of integrity and truth here, who were also then in Congress. I call on them to put me right with respect to those transactions. As far as I could gather from what was then passing, I believe there was not a gentleman in that Congress who had an idea of surrendering the navigation of that river. They thought of the best mode of securing it. Some thought one way, and some another. I was one of those who thought the mode which has been alluded to the best to secure it. I shall never deny that it was my opinion. I was one peculiarly interested. I had a fortune in that country, purchased, not by paper money, but by gold, to the amount of eight thousand pounds. But private interest could not have influenced me. The public welfare was my criterion. In my opinion, I united private interest to public interest, not of the whole people of Virginia, but of the United States. I thought I was promoting the real interests of the people."

Mr. Madison said:

"There were seven States who thought it right to give up the navigation of the Mississippi for twenty-five years, for several reasons, which have been mentioned. As far as I can recollect, it was nearly as my honorable friend said; but they had no idea of absolutely alienating it. I think one material consideration which governed them was, that there were grounds of serious negotiation between Great Britain and Spain, which might bring on a coalition between those nations, which might enable them to bind us on different sides, permanently withhold that navigation from us, and injure us, in other respects, materially. The temporary cession, it was supposed, would fix the permanent right in our favor, and prevent that dangerous coalition."

For these transactions, as affecting the interests of the region beyond the Alleghanies, the gentleman has cast unmeasured opprobrium upon the North, and bestowed a corresponding eulogium upon the South, particularly Virginia; with what justice or candor may be seen, not

only from what has just been stated, but from the facts which I shall hereafter adduce, and to which he has made no allusion.

That a majority of the delegates from Virginia were opposed to the contemplated treaty, is unquestionably true; but is there not reason to believe that this was occasioned, in some degree, at least, by the circumstance that her great staple, tobacco, was not provided for; especially when we find that one of her most eminent citizens [Mr. Monroe] disapproved of it merely for its commercial regulations.

But the delegation from that State, in the same year, 1786, themselves proposed to enter into permanent stipulations with Spain, by which we should relinquish, forever, all right of transporting any articles up the Mississippi, from its mouth; and New Orleans should be made an entrepot, at which our produce, carried down the river, should be landed, and pay duties to the Spanish Crown; and a consul of the United States there should be responsible for every violation of these engagements. Now, sir, compare these renunciations and sacrifices, to endure through all time, with the mere temporary relinquishment for twenty-five or thirty years, and let the candid and intelligent declare which would have been most wise, and have best secured the true and permanent interests and safety of the Western country.

But the comparison ends not here. There was a time when the Southern States, and Virginia with the rest, were disposed to make an absolute and perfect surrender of all right to the waters of the Mississippi, but the Northern and Eastern States opposed it. It was at the period of their greatest distress, and for the purpose of obtaining succor from Spain. For this we have the high authority of Mr. Madison himself, who says,

"It was soon perceived, after the commencement of the war with Great Britain, that, among the various objects that would affect the happiness of the people of America, the navigation of the Mississippi was one. Throughout the whole history of foreign negotiation, great stress was laid on its preservation. In the time of our greatest distresses, particularly when the Southern States were the scene of war, the Southern States cast their eyes around to be relieved from their misfortunes. It was supposed that assistance might be obtained for the relinquishment of that navigation. It was thought that, for so substantial a consideration, Spain might be induced to afford decisive succor. It was opposed by the Northern and Eastern States. They were sensible that it might be dangerous to surrender this important right, particularly to the inhabitants of the Western country. But so it was, that the Southern States were for it, and the Eastern States opposed to it."

And Mr. Monroe, after speaking of the constant efforts of Virginia to preserve this navigation, says,

"There was a time, it is true, when even this State, in some measure, abandoned the object, by authorizing this cession to the court of Spain."

It is not my purpose to censure those who advocated that surrender. They felt themselves constrained by the necessities of the war. But the Northern States, more unyielding in their purpose, never despaired of the republic; they sent their own sons to fight the battles of their distant brethren, and freely furnished, from within themselves, that succor which others were willing to purchase from foreign hands, at so great a price; and now they are, even here, rewarded with contumely and reproach!

Such is the effect of partial or distorted views of distant events; of resting upon insulated parts of remote transactions; of seizing and following the mere shreds of history, which lead to error and injustice, instead of light and truth.



SENATE.]

Mr. Foot's Resolution.

[Feb. 3, 1830.]

By the terms of the treaty proposed by Mr. Jay, and which have been so much reprobated, Spain was to receive all the productions of the United States, with the exception of a single article; and yet the gentleman has, somehow, fallen into the error of asserting that the privilege was confined to fish and oil, which he several times repeated, adding, in a particular tone, "*id est*, from New England." Sir, whatever the manner in which that gentleman may choose to allude to the fruits of their labor, it is not in his power to depreciate the merits or importance of our hardy fishermen—of that class of men who, with John Manly, in 1775, first unfurled the American banner upon the ocean, and first caused the proud cross of St. George to bow to it in submission.

Yet even the fisheries, the right which Heaven gave, wherever the winds would waft, or the waves would bear us, which were deemed so highly of that Mr. Grayson denominated them the cornfields of the East; even these were so far abandoned, that the Congress refused to make their preservation a *sine qua non* of a treaty, but authorized peace to be concluded without any stipulations for their security. Thanks to the wisdom and firmness of the commissioners who saved us from that calamity.

In January, 1803, President Jefferson nominated Robert R. Livingston and James Monroe co-ministers to the French republic, for the purpose of obtaining, from the First Consul, an extension of our rights on the Mississippi. Upon the question of confirmation, by the Senate, of the nomination of Mr. Monroe, there were fifteen affirmatives, and twelve negatives. And this opposition is made food for accusation against the States of the Northeast, as evincing hostility to the objects of the mission and the interests to be affected by it. Yet, sir, without the affirmative votes which were given from those States, Mr. Monroe's nomination could not have been confirmed: for, if you subtract the three votes which their Senators gave in favor, and place them in opposition to the confirmation, there would have been but twelve for, and fifteen against it. But, on the same page of the Journal, and in the sentence next preceding the statement of the question of Mr. Monroe's appointment, we find that the nomination of Mr. Livingston was confirmed without a division. The mission and its purposes were thus unanimously approved. The votes against Mr. Monroe must have arisen from the conviction that the expense of a second minister was unnecessary; and when we consider the ability of Chancellor Livingston, and the subsequent history of the negotiation, that opinion may not appear to have been wholly unfounded. On the same page, too, we find that Mr. Monroe was immediately, without a division, confirmed as minister to Spain, in conjunction with Mr. Pinckney, the object of that mission being also, avowedly, to secure and extend our rights to the Mississippi. It is strange, indeed, that these facts should have escaped the gentleman's scrutiny.

When the Louisiana treaty was presented to the Senate, in October, 1803, there were twenty-seven votes in favor of its ratification, and seven only against it; and this, too, is made a topic of crimination against those on our side of the Potomac. Yet, of those years, one half were by Senators north of that river, and four of them from New England; and, as it required two-thirds to ratify, these four had it in their power to have rejected the treaty. Is this evidence of Northern hostility to the West? Mr. Jefferson, in 1805, attributed the little opposition which did exist, to higher and purer motives—to a "candid apprehension that the enlargement of our territory would endanger the Union." And we shall presently see that there may have been other reasons also in accordance with his own opinions.

The gentleman inveighed vehemently against the North, for its alleged opposition to the admission of Louisiana into the Union, the evidence of which was, that, when the

bill for that purpose was before the Senate, an amendment was proposed by Mr. Dana, providing that it should not take effect until the consent of each State should have been obtained. Yet this proposition was defeated by Northern Senators: if they had voted in the affirmative, it would have prevailed by a vote of eighteen to ten. The whole amendment of Mr. Dana consisted of two alternative propositions, providing that the act should not take effect until the consent of each State should have been obtained, or the constitution have been so amended as to authorize Congress to pass the act. A division of the question being required, a distinct vote was taken on the first proposition; which alone seems to have been selected for special animadversion. I marvel much that the gentleman's vision should have been confined to one half of the amendment, especially when he was in search of motives, and they would have been clearly disclosed by a glance at the other half. Doubts were entertained of the constitutional power of Congress to admit Louisiana. And were not those doubts entitled to respect? Is it not known that Mr. Jefferson himself, to whose opinions the gentleman bows with such profound reverence, repeatedly declared, in his letters to Mr. Dunbar and others, that Congress had no such power? and, if I mistake not, Mr. Madison, in March, 1803, then Secretary of State, framed his instructions to Messrs. Livingston and Monroe upon the basis of this constitutional disability. He was so particular as to give a formula of some of the articles to be inserted in the proposed treaty for the acquisition of Louisiana, one of which is prescribed in these words:

"To incorporate the inhabitants of the newly ceded territory with the citizens of the United States, on an equal footing, being a provision which cannot now be made, it is to be expected, from the character and policy of the United States, that such incorporation will take place without unnecessary delay. In the mean time they shall be secure in their persons and property, and in the free enjoyment of their religion."

Here, sir, our negotiators were unequivocally warned not only to make no agreement for the admission of the inhabitants of the ceded territory into the Union, but to declare that such a stipulation could not then be made. By what was it prohibited except the limits of the constitution? And what was the necessary delay, but to obtain the requisite authority by amendment? On the 12th of August, 1803, after the formation of the treaty, and before its ratification, Mr. Jefferson holds the following strong and explicit language, in a letter to Mr. Breckenridge:

"This treaty must, of course, be laid before both Houses, because both have important functions to exercise respecting it. They, I presume, will see their duty to their country in ratifying and paying for it, so as to secure a good which would otherwise probably be never again in their power! But I suppose they must then appeal to the nation for an additional article to the constitution approving and confirming an act which the nation had not previously authorized. The constitution has made no provision for our holding foreign territory, still less for incorporating foreign nations into our Union. The Executive, in seizing the fugitive occurrence which so much advances the good of the country, have done an act against the constitution."

It is not my intention to enter into the argument, or even to express an opinion upon the subject, but merely to show that it is not strange, that seven Senators, or even a Committee of the Legislature of Massachusetts, should have doubted the existence of a constitutional power which President Jefferson so peremptorily denied.

The Missouri question has been invoked upon this occasion. It is not a correct representation, to say that the North were opposed to the admission of that State; they proffered her their cordial embrace. But they wished to exclude involuntary servitude from her limits; and, be-

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*Mr. Foot's Resolution.*

[SENATE.]

lieving it, as they did, most sincerely and conscientiously, to be a great moral and political evil, they were actuated by no feelings of unkindness, but the purest motives of justice and benevolence, in endeavoring to secure what to them seemed a great blessing to her citizens. That it was a disinterested effort, is attested by the Senator from South Carolina, who declares it to be for their interest that slavery should exist at the South.

As to the admission of Mississippi, the preparatory act, authorizing the formation of her constitution, passed without a division, through the various stages, in the Senate, until it came to the question of engrossment, to which there were eleven negatives. Those gentlemen might have thought the application premature. But I shall not stop to inquire into their motives, because I perceive among them the name of the venerable Macon, of North Carolina, who so recently occupied a seat here, and to whose successor, now near me, it belongs, to vindicate him from any aspersion upon his intention; and also, the name of an honorable gentleman from South Carolina, [Mr. SIMS] now in his seat, for whose conduct it would be presumptuous in me to assign reasons, he being so eminently able to answer for himself.

The resolution for the final admission of that State was reported by a Committee on the 3d of December, 1817, being the third day of the session; was, forthwith, by unanimous consent, read a first, second, and third time, and actually passed on the same day, although any one member might have required its postponement. This shows how far there was a disposition to retard her progress into full communion with the American family.

I do not intend to exhaust the patience of the Senate, by following the gentleman through all the little, trifling incidents to which he has resorted, to sustain his general position. Their importance and pertinency may be illustrated by his thrice told story of an illumination at the surrender of Detroit, which flashed upon the world for the first time, in the gentleman's speech. I have not been able to find any one who ever heard of it before. [Here Mr. BENTON spoke to Mr. S. in an under tone.]—He now tells me it was in a small village in New Hampshire. I doubt the fact; but even if some individual there had the folly to put an extra candle in his window, is it to be gravely attributed to a general animosity of the people towards their fellow-citizens, who were thousands of miles distant?

Another matter, of almost equal gravity, was, that General Hull, a few years ago, was actually invited to dine with some of his friends; and the convivialities of the festive board are, by the gentleman's imagination, converted into the acrid humors of inveterate hostility. This occurrence took place long since the termination of the last war. General Hull had just then presented to the public some new explanatory statements in an appeal, well adapted to excite commiseration. Some persons, who had known that veteran officer of the Revolution in other and better days, listening only to his own story, were convinced that he had been wronged. Their sympathy was excited, and they extended the hand of charity and friendship to soothe the feelings of his estimable family, as well as to alleviate his own sufferings, and smooth his path to the grave. And this act of personal friendship and benevolence is adduced as proof that not only those individuals, but the inhabitants of New England generally, are actuated by unallowable passions of enmity towards others. After Aaron Burr's conspiracy, and subsequent to his arrest as a criminal, he was invited to a dinner at Richmond, and sat down at the same table with the Chief Justice, before whom he was soon to be arraigned upon a charge of high treason. Did any one ever imagine that this was to be charged as a State offence, for which the people of Virginia were responsible? Nay, may not circumstances have existed, which would exempt even the individuals from imputation! Sure I am that not the slightest shade rests upon the fame of

that wonderful man, to whose intellect the most powerful minds, and to whose goodness the purest hearts, do willing homage.

It has been broadly and strongly asserted, that "the North have, from the beginning, done all in their power to cripple and strangle the West;" and all historical facts, no matter how various or opposite their character, which pass through the alchemy of the gentleman's speech, are made to yield the bitter spirit of Northern hostility. If the act be in any degree doubtful in its appearance, it is of course viewed in its most offensive aspect; and if it be one of unmixed wisdom and beneficence, still its brightness is to be overshadowed by the ascription of impure and sombre motives. When the stream fertilizes and gladdens every thing in its course, still it may be insisted that the invisible fountain is corrupted and poisonous.

At one time, to decline a reduction of the price of the public lands, or even to require any price whatever, is crying and unheard of injustice—the poverty of the people is, portrayed to us in glowing colors, and we are told that we are grinding them into the dust by our exactions. But when we do reduce the price, or even relinquish existing debts, we are answered by the gentleman that no thanks are due to us; so far from a favor, it is an offence, because it carries with it an implication of poverty and inability to pay, which should be repelled as an insult. Even the system of Internal Improvements has, in his view, ceased to be beneficial to the West—nay, positively injurious. All its fruits have been blasted by the friendly salutations of the Northern breeze. He tells us that, if a road or canal be of any utility to a State, its benefits are to be measured only by the distance which it passes within her limits; and thus the one million seven hundred and twenty-one thousand eight hundred and forty-five dollars expended upon the Cumberland road, this side of Ohio, although projected as a Western measure, urged as a Western measure, and adopted and sustained as a Western measure, is, in fact, only for the benefit of the East. But, unfortunately for his argument, that East lies wholly on the south side of Mason's and Dixon's line. By this criterion, no matter what great avenues and markets are open to our citizens, they are of no value to them, if beyond the limits of their own particular State. By this means, too, he charges all the works for public defence and improvement of harbors to the particular section in which they are located. He might have extended the principle, and considered a fortification to be for those merely who inhabit the little island upon which it is placed; or a light house, for the sole accommodation of its keeper, the only tenant of the rock where it stands.

Sir, every man who produces or consumes any thing that is transported along our coast, or imported from, or exported to, any foreign country, is interested in these facilities to our commerce and navigation. If we owned not a ship in the United States, but depended solely upon foreigners for the vehicles of our commerce, still we must afford these accommodations, or pay more than their expense in the enhanced price of transportation, and rate of freight and insurance. Suppose we had adopted the gentleman's new criterion of the benefit of avenues of inter-communication, when we were securing the navigation of the Mississippi, that great highway of nature, and had said that the productions of each State may float upon its majestic current, to its own borders, but no farther, and that even this privilege is to be extended to those only whose territory is actually washed by its waters. Would this have satisfied the demands of the inhabitants and secured to them the benefits which they now enjoy?

The gentleman undertook a comparison of the appropriations for the improvement of certain sections of country, but entirely overlooked the immense donations of public lands to his own favorite region, which, at the minimum price, have amounted to no less than nine mil-

lions seven hundred and fifty-nine thousand five hundred and four dollars, as appears by a statement from the Secretary of the Treasury—an amount far greater than the aggregate of all the sums embraced by his enumeration.

"The North," says the gentleman, have, "from the beginning, done all in their power to cripple and strangle the West." Sir, before such an assertion was hazarded, all our history should have been dispassionately examined. It should have been recollected that, of the old thirteen States, nine were north of the Potomac; that in their hands was the whole Western country, to be moulded at pleasure; that they could have sealed up the magnificent Mississippi, and devoted the immense regions upon its borders to beasts and savages; or, if populated, they could forever have refused to receive them into the American family, or extended to them the rights and privileges of American citizens. Even the five New England States, constituting, as they did, more than one-third of the whole number, might forever have excluded Louisiana and Florida, and have rejected every treaty for enlarging or confirming the privileges of the West. The power of the North was ample, complete, and irresistible, over the whole region beyond the Alleghanies; and instead of being employed to wither and destroy, it has been assiduously exerted to cherish, sustain, and strengthen. Its inhabitants were regarded as children—bone of our bon, flesh of our flesh; their infant steps were sustained, and their path defended, by the strong arm of the nation. We rejoiced in their prosperity; the blessed fruit of our own benignant care. We received them cordially to the full communion of all the inestimable blessings of free government and republican institutions, which had been purchased by the blood of our fathers. We parted to them our inheritance; we gave them of our strength; we resigned to them our power. From being more than two-thirds of the whole number, we have voluntarily, by our own generous acts, made ourselves a minority of the States. And now we are told, here, in the Senate chamber of the United States, that "the North have, from the beginning, done all in their power to cripple and strangle the West!"

Sir, I deeply deplore the cause, be it what it may, which can at any time, or in any place, give birth to declarations of such a character, tending to alienate the affections, and poison the mutual confidence, of different portions of our country. Heaven itself has made them for union and happiness; and man and woman might as well quarrel with each other for the difference of their formation, as the great geographical divisions of our republic for the features and adaptations which their Creator has given them.

Mr. S. said he would now turn his attention to some of the remarks of the Senator from South Carolina [Mr. HAYNE.] That gentleman, after expressing his regret that the controversy should become sectional, and lamenting the supposed necessity of assuming an unfriendly attitude, proceeded to present the Southern States and New England in hostile array against each other. He [Mr. S.] believed that the responsibility of giving the debate that character must rest principally upon the gentleman himself; for there had been nothing in any previous speech which called for the attack which he had made upon the Northeastern States. I [said Mr. S.] will not follow his example; but, as far as possible, consistently with my duty, avoid every unpleasant allusion. From my earliest recollections, I have been deeply impressed with the sentiments inculcated by the Farewell Address of the Father of his Country, in which we are taught "to frown indignantly upon the first dawning of every attempt to alienate one portion of our country from the rest," and to lament that geographical discriminations of Northern and Southern, Atlantic and Western, should ever occasion the belief that there could be any distinction of views or interest. But if these distinctions are insisted on by the citizens

of one portion of our country—if the line of the Potomac is to be constantly drawn by those who live south of it, must they not expect that those who live north will sometimes remind them that there are two sides to that line? Or, if they point to a still narrower circle, and making the six Northeastern States their line of demarcation, constantly allude to them in ungracious tones, must not New England of necessity assume a corresponding attitude, and poise herself upon her own energies? Sir, we do firmly believe that we have exercised towards our distant brethren that "charity" which "suffereth long and is kind," which "envieth not," which "vaunteth not itself;" "doth not behave itself unseemly;" "is not easily provoked;" "thinketh no evil;" "rejoiceth not in iniquity, but rejoiceth in the truth."

The gentleman's attack upon New England has rested almost exclusively upon the transactions of the late war. If his only object had been to condemn certain measures of the leaders of a party there in opposition to the war, I should not deem it necessary to make a single remark in reply. I resisted them to the utmost of my ability at the time of their greatest strength, and my opinions are still unchanged. But I can assent to no indiscriminate censure. If it was intended to fix any stigma upon the general character of the people of New England, I, although the humblest of their representatives here, feel bound to repel it. We have the explicit declaration of Mr. Monroe himself, then Secretary of War, and since deliberately made, that the confidence of the Government in the people of Massachusetts was never shaken for a moment.

[Here Mr. HAYNE explained, by saying that he never intended to cast any reproach upon the people of New England. That his remarks were confined to a particular party, which he had designated and described.]

Mr. S. resumed. Although such were the ideas conveyed by one portion of the gentleman's speech, yet, taken in connexion with his declaration of war, at its commencement, a different result would seem to follow. He at first regretted that the contest should be sectional; and then arrayed the South against New England, as opposing sections of country; and having thus proclaimed the war by geographical lines, he of course assumed a hostile attitude towards the people of that territory which he assailed. Why should he regret the peculiar character of the contest as sectional, if it was merely one of old political parties? I am quite willing, however, to receive the explanation which the gentleman has just given, and shall omit some of the remarks which I had contemplated. If his only object, in entering the territory of New England, was to thrust at the dead, or wave his sword in triumph over their graves, I do not envy him either the glory or the magnanimity of the achievement. But there are some topics to which I shall advert, because they have been treated in a manner calculated to produce an injurious effect, whatever may have been the purpose of their introduction.

The Hartford Convention has filled no small space in this discussion; it is wielded as a powerful engine against the Northeastern States. I remember it well, and have never spoken of it but in terms of decided condemnation. It had but few friends while living, and still fewer mourners to follow it to the grave; and if its skeleton is now dug up, and held on high to the view of the whole nation, it will cast its shade upon a small part only of the fair surface of New England.

The sermons of Osgood and Parish have been produced here, and inflamed passages read, avowedly as evidence of public sentiment, and the gentleman called the writers "pious and good men." So do not I. Sir, they were infuriated fanatics, political madmen; condemned by the sober-minded of their own party; and I would as soon produce the outpourings of Bedlam as proof of public opinion, as effusions such as theirs.

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*Mr. Foote's Resolution.*

[SENATE.]

The honorable Senator told us, with great emphasis, that the enemy was permitted to establish himself, and to open a custom house upon the soil of Massachusetts; and so much reliance did he place upon this as a cause of reproach, that it was reiterated three times in the course of his speech. It is most unjust. The people of that State, without distinction of party, were at all times resolved to defend their territory, and prompt in resisting the approach of the enemy. The gentleman's allusion could not be misunderstood: it was to the capture and detention of Castine, a small village situated on a little peninsula, on the eastern side of the Penobscot river, in the remote parts of Maine, where the adjacent country contains but a sparse population. It is connected with the main land only by a narrow neck, and is surrounded on its various sides by water deep enough to float ships of the largest class, which might, within point blank shot, command every part of the village. I verily believe that a large naval force might bring more guns to bear upon that place than there were men in it at the time of its capture. So situated, and destitute of the means of efficient defence, an overwhelming British fleet captured and took possession of it. I would ask the gentleman what resistance he himself would have made? Could he have withstood the batteries of that fleet with nothing but his sword or his musket? The idea of successful resistance would have been mere fatuity. But it is said the enemy retained the place, and opened a custom house. It was not taken until about the first of September, 1814, and the treaty of peace was signed in December of the same year, of which information reached us in February following. Could it have been retaken? The British had there a large military and naval force. The neck which connects the peninsula with the main land is so low and narrow, that a canal was dug across it, and Castine was thereby converted into an island. All access to it was completely commanded by the guns of the enemy's fleet, and we had not a single ship to aid us; beside which, the whole sea-board of Maine, for more than two hundred miles, and its numerous rivers, bays, and inlets, containing millions of shipping, were constantly harassed by the enemy ranging along the coast, and requiring the presence of the militia at every point to repel his threatened depredations. And, even if the militia could have been spared for the enterprise, and it had been possible to recapture the place, the British might easily have taken possession of any of the numerous adjacent islands in the Penobscot bay, and carried on all their operations with great facility.

Are we then to be repeatedly reproached with the capture of Castine, and that too, here—in this capitol—within these walls, which have but just risen from the conflagration of the enemy, and are hardly yet purified from the pollution of hostile feet; and having at this moment at your public navy yard here, a monument bearing an inscription perpetuating the presence and the barbarism of the British? And these acts done, not under the guns of their ships, but by a few thousand men marching fifty miles by land, through a population of two hundred thousand persons; and you having here, in aid of the militia, a thousand regular troops, a public armory, and the brave little band of sailors commanded by the gallant Barney!

The gentleman from South Carolina, himself, told us, (I would not otherwise have alluded to the fact) that his own State was completely overrun during the war of the Revolution. It was so, indeed. The British considered it entirely subdued, and, for a time, held over it resistless sway. I mention it not as a reproach; it was inevitable. But that gentleman should have been the last to suggest the idea that the presence of an enemy upon the soil is a necessary impeachment of the patriotism or gallantry of the people.

Maine, from its local position, was more exposed than any other State in the Union; having Lower Canada on

the north, New Brunswick on the east, and from two to three hundred miles of sea coast, which the enemy commanded, on the south. She owned one-ninth part of all the tonnage of the United States, and at the commencement of the war there were not two hundred regular troops in the State. Her citizens did not wait to be solicited, but voluntarily tendered their services to their country, and three regiments were immediately organized, by which her territory was defended at all points, until, in 1813, all the troops raised for the defence of Maine, even those in the garrisons, were, by order of the Secretary of War, marched to the Niagara frontier. The British having a strong force in each of the adjacent provinces to the north and the east, and a powerful armament on the sea, were, by that withdrawal of the troops, tempted to annex the lower and unsettled parts of the country to their colony of New Brunswick; and, with this view, took possession of Castine, in September, 1814. It was immediately determined to compel the adversary to withdraw, by carrying the war into his own territory. An army of ten thousand men, commanded by a distinguished citizen of Maine, was to invade New Brunswick at the opening of the spring; and such progress was actually made, and with such zeal and alacrity did the people offer their services, that it was well ascertained that the whole number of troops would be raised within the limits of Maine and New Hampshire. The peace alone prevented the plan from being carried into execution; and I hazard nothing in saying that, had the invasion been made, with such troops and such a commander, it would have been no second edition of the campaigns of Hampton and Wilkinson.

Notwithstanding all that has been said of the late war, as derogating from the character of New England, I hold, I ask, from what part of the country was it sustained with more efficient aid? The gentleman tells us that money was withheld by a combination of all the banking interest. One bank, sir, in the town of Boston, alone, advanced the Government two millions of dollars; and a single individual there a million more. The large amount loaned in the town of Salem, my friend from Massachusetts now before me, [Mr. SILLMAN] whose ample fortune was entrusted to his country, can well attest. Sir, without the hard money—not the depreciated paper of broken banks, but the gold and silver which the citizens of New England caused to be paid into the treasury from loans and the customs, your tottering credit must have fallen completely prostrate. And when clouds of despair lowered around you, and thick darkness enveloped your whole horizon, it was the gleams of glory from the ocean that dispelled the gloom and illumined your path. That sun of glory arose in the East, and was lighted up by the mariners of New England. You manned not a ship; you fired not a gun upon the lakes or upon the ocean, without the aid of the sons of New England; and in every battle upon the water, they poured out their blood in your defence. Upon land, too, their achievements were unequalled. Those who, having voluntarily tendered their services, were not permitted to defend their own homes, but marched to the frontiers of New York, constituted the regiment which well earned their expressive appellation of the bloody ninth; which stood alone against twice their force of British veterans, whilst half their own numbers had fallen upon the field! They composed, too, the twenty-first regiment, which, at the battle of Niagara, by a desperate effort, in face of a blazing battery of deadly artillery, took the eminence which it commanded, and, meeting the foe man to man, repulsed and defeated him in successive onsets, and destroyed forever the boasted invincibility of the British bayonet.

I would not have inquired what services South Carolina rendered during the war, had not the Senator from Missouri, in contrast with the East, made it a theme of praise and gratitude. When he introduced that topic, I

was, indeed, somewhat curious to hear his enumeration of her exploits; and what were they? Why, sir, that she sent her able and eloquent representatives to raise their voices in Congress. I trust that I fully appreciate their services, and that no one is more cordially disposed to award them their full measure of honor and gratitude. But I believe that the enemy would rather that we should have sent thousands of our most eloquent orators, to make their most eloquent speeches upon the floor of Congress, than to have met the single crew of that frigate which compelled the haughty and boastful Dacres to strike the flag of the *Guerriere*, and bow in submission to Isaac Hull.

When the gentleman from South Carolina spoke in terms of commendation of the merits and exertions of the republicans of the East, I was relieved and gratified. I supposed that he was willing to embrace, with him that description, all who cherished true republican principles. But what was my astonishment when he afterwards narrowed his description; and confined his approbation to the few who united with him in the last Presidential election. He told us that the "democracy of New England" had always acted with the South; not only in the war of 1812, but, "in the civil contest of 1828," that it was then, as now, the ally of the South. This is, indeed, restricting our republicanism to very narrow limits; by the test of the electoral votes, to one-fiftieth, and by any other just criterion, to a small part only of the people. And thus veterans of the democratic party, those who sustained it in the darkest times, and have been ever true to their principles and to their country—who were its fearless and unwavering champions, during embargoes, non-intercourse, and war, are now denied the name of republican, because they have dared to think for themselves, as to the qualifications of a candidate for the Presidency, and bowed not down to the idol which others had set up. While, on the other hand, some of their most violent opponents, even aiders and abettors of the Hartford Convention, those ultra federalists, who opposed Mr. Adams, because their unforgiving spirits could never forget that he had once left their party, are received into full communion, and cordially embraced by those who claim to be, by their own appointment, exclusive guardians of pure, primitive, unspotted democracy.

The gentleman seems to have no other criterion of republicanism than adhesion to the South. Not the assertion of principles, but devotion to Southern men. He told us, in so many words, that "the South had made New England," and it seems that, in his view, those only are of the true faith who will bow down and worship this new creator!

A very considerable portion of the speech of the Senator from Missouri was devoted to a comparison of the liberality of the North and the South; and he yesterday reminded us that, in the last election of President, there was but one vote in all New England for the Southern and Western candidate. Since he has chosen to introduce this test of sectional disinterestedness and magnanimity, let us bestow upon it a moment's attention. The whole number of votes which have been given for President in the electoral colleges since the organization of this Government, has been: two thousand and nineteen, of which nine only have been thrown, in all the States south of the Potomac, for candidates residing north of that river, viz: one in Virginia and one in North Carolina, in 1796; four in North Carolina, in 1800; and one in Illinois, and two in Louisiana, in 1824. While, during the same period, the States north of that river have given no less than seven hundred and nineteen votes for Presidential candidates living south of it. They have supported southern men three times unanimously; at another time with but a single dissenting vote; and in another instance with but six; and again by a large majority. Upon these facts I make no comment.

The subject of slavery, incidentally touched by the gentleman from Massachusetts, [Mr. WADSWORTH] has been taken up and dwelt upon with great zeal by those who followed him. It is a topic of such delicacy and difficulty, that I have always abstained from referring to it in debate; and others from the North have, very generally, practised the same forbearance.

I have deeply lamented that the sensitiveness of the slaveholding States should have been so often operated upon, out of this House, to produce unkind feelings and unjust accusations against their brethren. We have been told that it can always be made a bond of union in political warfare, and I much fear that the cry of hostile designs to their rights and property has been too often rung as a larum to rally the whole slaveholding population in one array against those who have never indulged an unfriendly thought.

The people in the North do, undoubtedly, condemn slavery in the abstract, and deeply deplore its existence in our country; but they have not the remotest intention of disturbing this domestic relation, by thrusting themselves between the master and his bondmen. They know that, as the institution actually exists, they have no right, by the constitution, to attempt to overturn it; that to do so might dissolve the Union; and that their interference, so far from relieving the slave from bondage, would probably aggravate his condition, and rivet his chains more firmly. The gentleman has spoken of the prejudices of the East. Sir, what he has thus denominated are disinterested, pure, benevolent, and elevated principles. They wish, indeed, that their friends of the South could be relieved from what they deem a great moral and political evil; but they are aware that the remedy is to be found and applied by those only among whom the evil exists, and have no disposition to touch it with inexperienced hands.

Had the gentleman been content to express, in general terms, his approbation of involuntary servitude, and his exultation at its existence, I should have made no reply. He might even have insisted, as he did, that it added to the physical strength of the country; although I cannot well understand how withdrawing one-half of the whole population from the contest can strengthen the common arm in the hour of battle; and although such was not the opinion even of Southern statesmen after the experience of the Revolution. Mr. Madison, in 1788, said, "what parts of the United States are most likely to need protection? The weak parts, which are the Southern States."

And again, sir, "it was said, and I believe with truth, that every part of America does not stand in equal need of protection. It was observed that the Northern States are most competent to their own security." But the gentleman has chosen to make this very topic the ground of a comparison degrading to the republicanism of the East. He asserted that, from the possession of slaves there had always been a greater love of liberty in the South than in the North; and rested his assertion upon the authority of Mr. Burke. What kind of love of liberty is it which Burke says is generated and fostered by the institution of slavery? He says that to slaveholders liberty is not only an enjoyment, but "a rank and privilege," and subsequently speaks of their "haughtiness of domination."

Who does not perceive that this love of liberty is but the love of rank, of power, of absolute and uncontrolled dominion, and that too over their fellow men, extorting from them the most abject submission? It is the same love of liberty which is possessed by the privileged classes; the aristocracy, in other countries; an attachment to their own immunities, to arbitrary control and domination over others, and impatient of all restraint upon themselves. Let it be remembered that this delineation is not mine,

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but was furnished by the Senator from South Carolina. If I had imputed such sentiments to any portion of our country, I should have felt myself obnoxious to the charge of unkindness. I trust, sir, that he has done himself and his friends injustice; and that such is not the democracy of the South. It was not that of Mr. Jefferson, as is shown not only by the proposition against involuntary servitude which he made to the old Congress, but by the general tenor of all his political writings. It is not the democracy of New England. We have heard, in this debate, of the oligarchy and aristocracy of New England; and they are so often spoken of elsewhere, as terms of general application, that I fear very erroneous opinions are prevalent as to the character and institutions of that people.

I thank the Senator from South Carolina for reminding us of the oppression which drove our forefathers from their native land: for I delight to recur to the patriarchal founders of Massachusetts, the puritans; who, for the enjoyment of civil and religious liberty, left their country, friends, civilization, plenty, and security, for exile in a wilderness, across a world of waters, exposed to every suffering, and every danger; those indomitable spirits who would yield to no usurped dominion, but resolved to live free or cease to live. When they landed upon the rock of Plymouth, it was with the bible in their hands, and its precepts in their hearts; and they laid deep the foundations of a Christian commonwealth. From the sacred volume they imbibed the true spirit of all our institutions; the native equality of the human race; formed of the same materials, fashioned by the same hand, animated by the same breath, and destined to the same grave. Do unto others as ye would that they should do unto you, was, to them, the impressive command by which Heaven itself placed all mankind upon the common level of moral right and mutual obligation, and declared that "man was not made the property of man."

They acted upon the principles which they professed, and constituted one society of equals and brethren. As their numbers increased, and spread over a greater area, it became impracticable for all to unite in transacting the public business at one place; and they therefore formed territorial districts, of convenient extent, by some called townships, but there denominated towns, which continued to be multiplied as population advanced. These towns were then, and are still, throughout New England, pure democracies, in which the whole people, in their original sovereign character, assemble at one place, to order their own business in their own way, each free man having an equal voice, and every man being free. In these primary assemblies they choose their own agents, prescribe their duties, call them to account, and censure or approve, as their conduct may seem to deserve. They raise money, direct its expenditure, and order and control all measures of general concernment.

Here, too, are supported our free schools—an institution unrivalled in the history of human education; by which children of all classes are brought together, upon the basis of perfect equality, and receive instruction from the same source, without distinction or partiality. The funds for the support of these schools are annually raised by vote, in the primary assemblies of the towns, where the poor man, having, perhaps, a dozen children, but wholly destitute of property, has an equal voice in determining the amount, and its appropriation, with him who has hundreds of thousands, and is childless. The sums thus ordered are directly assessed upon property. The annual amount, in my own State, is not less than one hundred and fifty thousand dollars. A system more perfectly democratic, in its immediate character and ultimate tendencies, was never devised by man. It is upon this broad foundation of universal instruction that all our political institutions rest; it sustains, too, our colleges, our academies, our

hospitals, asylums, and all those benignant charities whose streams extend to the uttermost regions of the earth.

I thank the gentleman, too, for his reference to the American Revolution. He told us that the South had no ships, nor commerce, to cause them to resist Great Britain. Sir, that resistance was not for ships and commerce merely, but against the principle of taxation without representation, which extended equally to all the colonies. It was the claim of the Imperial Parliament to "bind us in all cases whatsoever;" and, if we had not resisted, they would have bound our infant giant limbs in fetters. And Massachusetts has the enviable distinction—that glory of which nothing can deprive her, to the end of time—of having been the first to make this resistance, alone and unaided, in defiance of the whole power of the British Empire. Lord North himself declared, on the floor of Parliament, that Massachusetts alone was to blame; that, but for the evil example of her violent opposition, the obnoxious tea would have been every where else quietly received, and that she should be visited with exemplary vengeance. And Col. Barre, who has been sometimes called the friend of America, declared, that her conduct, as the prime mover of all the disturbances, had been so reprehensible, that the Boston port bill, which was intended to reduce thousands to starvation, was a measure of mercy. While another member thundered forth, against Massachusetts, the anathemas which was, not long since, uttered, at the other end of this capitol, against New England—"delenda est Carthago."

The true character of a people is best ascertained by their conduct at those times when, rising against oppression, and absolved from the restraints of law, they are a law unto themselves. With this view, look at the destruction of the tea, by what has been called a Boston mob. They assembled in the night, went on board the ships, hoisted the chests upon deck, and poured their contents into the sea, with the order and regularity of an ordinary business operation. No other article of property was touched; not an act of violence committed; but, when the work was done, the multitude who had assembled to witness the scene quietly and peaceably retired to their respective homes.

Since gentlemen are fond of introducing their reminiscences, they will indulge me in another exemplification of the conduct of an educated, moral, fearless, republican people. After what has been denominated the Boston massacre, an event calculated to inflame the multitude to the highest degree of excitement; when, as the historian tells us, they seemed utterly regardless of personal danger, and immovable by the bayonets of the soldiery, did they resort to tumult and outrage, to conflagration and bloodshed? No: they assembled in town meeting, and chose a committee of citizens to require of the royal Governor the removal of the troops. When they came into his presence, he was surrounded by his high officers, civil and military, and spoke in such lordly language as became the viceroy of a king. "They must go!" was the firm and laconic reply. Seeing this spirit, and lowering his tone, he attempted to compromise, by offering to send away one regiment. The chairman, the venerable Samuel Adams, fixing upon him his piercing eye, and stretching forth his tremulous hand, exclaimed, "all—or none, sir!" The mock majesty of artificial creation shrunk before the native dignity of true republicanism. The mandate was obeyed; the troops were removed.

Such were the people who constituted the militia that fought the battles of Lexington, of Bunker's Hill, and of Bennington. "This night (said a Grecian commander to his soldiers) we shall sup with Pluto." A speech which has been thought worthy to be handed down to us through many centuries. How immeasurably more elevated and touching was the simple address of the gallant Stark to the husbands and fathers, his neighbors and friends, whom

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Indian Agencies.

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he commanded at Bennington: "There are the enemy; we conquer them; or this night Mary Stark is a widow!"

I shall not attempt to enumerate the worthies or the achievements of New England. Time, indeed, would fail me to delineate her character, or speak of her services. They stand out in brilliant colors upon every page of your history. She may be followed through every section of our country, by the blood and exploits of her sons; to your own native South Carolina, where Green and Sullivan fought, and "Scammel fell;" to the West, where their bones rest on the battle grounds of St. Clair's defeat, and of Harrison's victory. Every valley is vocal with the voice of her children; her blood swells every vein of this great republic; her fame is reflected from the whole bright surface of this wide spread and mighty nation. I glory in such a blessed parentage, and in the brotherhood of her hardy, educated, enlightened, virtuous, generous, brave, republican population.

With deep felt gratitude, I reverently thank God that, of all places upon his earth, he gave me my birth in the land, and among the descendants, of the *Puritan Pilgrims of New England*.

[Here the debate closed for this day.]

THURSDAY, FEBRUARY 4, 1830.

#### INDIAN AGENCIES.

The bill authorizing the President of the United States to divide Indian agencies in certain cases was read the second time; when

Mr. WHITE, the Chairman of the Committee on Indian Affairs, said, that the bill originated from a resolution submitted by the Senator from Missouri, [Mr. BARROW] and was framed by the Committee after an examination into the subject, together with such information as the Committee had before them. The bill contained nothing which would compel the President to divide any of the Indian agencies; it merely provided that he might do it, when the public good, and the convenience and comfort of the agents themselves, might, in his opinion, require it; there being no additional expense created by the provisions of the bill, as the compensation now given to one agent was to be divided when the agency was divided. It appeared to the Committee that many of the Indian tribes were divided into different bands, residing at remote points from each other, and the consequence was, that the agents for such tribes, selecting their own places of residence, either located themselves in one of the frontier towns, or resided with one of the separate bands, and thus the business of the Government could not be as well transacted as if the agent had all the Indians under his care, placed immediately within his own view. If the agent selected the town of one of the bands belonging to the tribe placed under his superintendence, for his place of residence, instead of the other, jealousies and heart burnings were engendered; and the band that believed itself to be neglected were too apt to accuse him of partiality and injustice. In some instances, agents had two distinct tribes placed under their superintendence, and thus a greater inconvenience was created than where one tribe was divided into two bands. Under every view which the Committee had been able to take of the subject, they were of opinion that the adoption of the measure proposed in the bill would be productive of much good, without the possibility of any disadvantage resulting from it.

Mr. BARTON said that, from the information he had received from those who had been employed among the Indians, and who had, therefore, an ample opportunity of judging of the policy of the proposed measure, he was inclined to the opinion that it was a bad one. He thought it impolitic to create further division of the Indian tribes by extending statutory discretion to the Executive of the

United States. One of the greatest evils which now afflicts the Indian tribes, may be traced to the ambition, divisions, and dissensions, of petty chiefs, who claimed distinction, presents, and power, from their respective tribes. Mr. B. stated that the more closely the Indians were brought together in their relations with the General Government the better: for the experience of those engaged in Indian affairs proves that consolidation is much more desirable than separation. The latter encouraged that ambitious spirit by which the Government was already too much harassed; the disunion of small chiefs, forming separate bands to promote their own evil purposes. Each of these wished to be head of his little band; and this may be considered one of the greatest evils which the Indians and the Government had to contend with. Under these views he had come to the conclusion that it would be better to consolidate the Indians, than to pass a law by which they would be separated. The truth is, said Mr. B., a general complaint has long prevailed against our Indian agents. Instead of living with the tribe or nation for which they are appointed agent, they settle themselves in one of our frontier towns, at a great distance from many of those Indians who have to transact business with them. This evil, Mr. B. thought, would be increased by the proposed law; as it was not to be supposed that an agent could bestow as much attention to the business when the compensation is to be so reduced, as they would devote when receiving a more liberal salary. The President, under the operation of the law, will be constantly harassed with the broils of little chiefs and petty agents.

Mr. WHITE replied that he thought, with the Senator from Missouri, [Mr. BARROW] that the soundest policy would be to pursue that course which tended to concentrate the individuals belonging to the same tribe of Indians, in preference to permitting them to be divided in various bands; and he was inclined to think that the adoption of the measure before the Senate would produce a result contrary to that apprehended by the Senator from Missouri [Mr. BARROW] who had last addressed the Senate. Under the present state of things, it might be the policy of individuals residing with the Indian tribes (consulting their own comforts) to encourage their division into distinct bands, as they would, in such case, be sure of finding an apology for residing with neither subdivisions of the tribe; while, on the other hand, if the bill should pass, they would find it their interest to prevent any separation of the tribe under their care; knowing that, if the President did divide the agency, he would divide, also, the emoluments attached to it. It was highly probable that, if the Indian agents themselves were consulted, a variety of opinions would be received from them in relation to the measure; some would believe it would produce much good, while others would be of a contrary opinion. Take, for instance, the case of the Chippewas, who were divided into three bands; one of which had, when necessary to transact its business with the Indian agent, to travel a considerable distance, and through the borders of the country of the Sioux, with whom they were frequently at war: a division of the agency, therefore, in this case at least, would tend to prevent collision, and perhaps bloodshed. Under all these circumstances, Mr. W. was of opinion that placing the power proposed by the bill in the hands of the President, would be the means, not only of providing against disunion among the Indians themselves, but of making it the interest of the agents to use all the influence they might possess to discourage discord, and of taking away any excuse they might have for residing at a distance from the tribes placed under their superintendence. He [Mr. W.] had no personal intercourse, it was true, with those tribes which were to be affected by the bill; gentlemen who lived nearer doubtless possessed more information, in relation

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to them, than he did; but he had seen letters from several Indian agents, recommending the measure now under discussion, though the gentleman from Missouri might have received information of a contrary nature; and from these and other information which had been before the Committee, he was perfectly satisfied with its expediency.

Mr. BENTON observed that it was, perhaps, unnecessary for him to say any thing on the subject, after the explanation that had been given by the chairman of the Committee on Indian Affairs, [Mr. WHITE.] Mr. B. said that there was no doubt but agents would be opposed to the present arrangement; that they were opposed to living among the Indian tribes, and this was one of the greatest causes of jealousy and hatred. One band of the Osages separated from their nation on the last day of receiving their donation, charging the agent with partiality. Evils of a similar character were constantly occurring; besides, one tribe, in passing to and from the agency, comes in collision with another tribe, and thus irritations and quarrels were continued. He, Mr. B., knew of no plan by which these evils would be more effectually prevented than by the operation of the proposed measure. He observed that the bill does not authorize the President to divide the Indian tribes, but merely, when a division already exists, to appoint a separate agent. He thought that a division of salary corresponding with the division of labor would have a salutary tendency, both with regard to the Indians themselves, and the agents appointed to regulate their concerns.

The bill was then ordered to be engrossed, and read a third time—yeas 30, nays 9.

#### MR. FOOT'S RESOLUTION.

The Senate resumed the consideration of the motion of Mr. FOOT.

Mr. ROWAN rose and addressed the Senate about two hours, when he gave way for a motion for adjournment.

FRIDAY, FEBRUARY 5, 1830.

The Senate were this day principally occupied in discussing the bill to increase the compensation of certain Judges. Adjourned to Monday.

MONDAY, FEBRUARY 8, 1830.

The Senate again resumed the consideration of

#### MR. FOOT'S RESOLUTION.

Mr. ROWAN addressed the Senate about an hour and a half, in continuation and conclusion of the remarks which he commenced on Thursday last.

The entire speech follows:

Mr. R. said that, in the share which he proposed to take in the debate, he should enter into no sectional comparisons. He should not attempt to detract from the just claims of any one of the States, nor would he disparage his own by any attempt to eulogize it. A State should be alike uninfluenced by eulogy and detraction. In his opinion, she could not be justly the subject of either. There existed, necessarily, among the States of the Union, very great diversities. It would be strange if there did not. The habits, manners, customs, and pursuits of people would be different, as they should be found to be differently situated, in reference to climate, soil, and various other causes, which exerted a powerful influence over their condition: for he held that we were more influenced by pride, than reason or philosophy, when we asserted that it was competent to any people to shape their condition according to their will. We were all more or less affected by the force of circumstances; and while we seemed to be under the direction of our will, were under the influence of the causes which, though they were imperceptible, were unceasing in their operation upon our inclinations. The fluids which sustain the life of man [said Mr. R.] are not less of atmospheric or solar concoction, than those which sustain life in other

animals, and even in vegetables. Can any man say, upon any other hypothesis, why the tropical fruits do not grow in the New England States; why certain animal and vegetable growths are peculiar to certain climates, and found in no other; and why the stature and complexion of man is different in different climates; and why there is a corresponding difference in his temper and appetencies?

Now, would it not be as reasonable for men to taunt each other with these differences, which are obviously the effect of physical causes, as to indulge in the jeers and taunts which have characterized this debate? I would not ascribe to physical causes all the differences which are found to exist in the political, moral, and religious sentiments of people situated in different climates; but I would not deny to the heavens their legitimate influence upon people differently situated in reference to that influence. I suppose that an infinity of causes combine to diversify the human condition. The pursuits of a people possessing commercial facilities, will be very different from those of a people remote from the ocean, or any navigable stream. Their manners will take their hue from their pursuits; nor will their sentiments escape a tincture from the same cause. The truth is, that, with every people, their first and great object is their own happiness. To that object all their thoughts and all their exertions are directed. For those who inhabit a fertile country and a temperate or warm climate, nature has more than half accomplished this great object. The manners, habits, and notions, (to use a phrase of our Eastern brethren) of such a people will be very different from those of a people who have to win, by strenuous and unintermitted industry, a meagre subsistence from a sterile soil, in a rigorous climate. We all know that the soil of a southern is more prolific than that of a northern climate; that in the first the people are almost literally fed by the bounty of nature; while in the latter, a subsistence has to be conquered from her parsimony, by the most unceasing toil. The climate of the North imposes upon those who inhabit it the duty of obtaining, by much labor, a competent subsistence. It invigorates, by its rigors, the power of the muscular exertion, which it requires. That of the South inflicts languor, and with it an aversion from that labor which its prolific influence has rendered almost unnecessary. Frugality and economy, as the consequence of their necessary industry, characterize the Northern people: Those of the South are almost as profuse as their soil is prolific. In a Northern climate the labor of all is necessary to their sustenance and comfort. In the Southern the labor of a few will sustain all comfortably; and hence the labor of the South has fallen to the lot of slaves. Yes, sir, that slavery which the gentleman from Boston [Mr. WEBSTER] has, in a spirit of implied rebuke, ascribed to Kentucky, in the contrasted view which he took of that State and the State of Ohio, has, if it be an evil, been thrown upon Kentucky by the destinies. That Kentucky has been somewhat retarded in its advances by the perplexity of its land titles, and its toleration of slavery, is, in his estimation, the misfortune of that State; and the exemption of Ohio from those evils has accelerated her march to the high destiny which awaits her. That she may be prosperous, great, and happy, is, I am sure, the wish of the people of Kentucky. They do not repine at their own condition, nor envy that of Ohio. The two States are neighbors, and have much intercourse, social and commercial. Nothing that can be said in relation to either of the States, by that or any other gentleman on this floor, can in the least affect the subsisting relations between them, or the internal police of either. The Senators from Ohio may have been gratified with the eulogy which he bestowed upon their State. Those of Kentucky were not in the least chagrined by his animadversions upon the condition of their State. They make no complaint that they were not assisted by the East in their wars with



the savages. They feel a just pride in having triumphed over their savage enemies, without much assistance from that or any other quarter. Notwithstanding the imputed weakness of slavery, they were strong enough for their foes. Kentuckians never complain: complaint is the language of weakness—a language in which they never indulge. The Kentucky Senators perceived that the object of the Senator from Massachusetts, in complimenting Ohio so profusely, was really to compliment his own State: for, in the sequel, he ascribed all the fine attributes of character possessed by Ohio, and all their blissful effects, to the wisdom of New England statesmen.

It is true, that the people of Kentucky have been a good deal harassed by an unhappy perplexity in the titles to land in that State. The titles were derived mainly from Virginia, and the perplexity in them, to which allusion has been made, could not, at that time, and under the circumstances which then existed, have been avoided by any wisdom or foresight whatever. No blame attaches to Virginia or Kentucky on that account. A few years more and that perplexity will yield to the sacred force of proscription, the condition to which all titles to land must ultimately be reduced.

Yes, sir, perplexity of land titles and slavery have both existed in Kentucky; they both still exist. The former will, with the permission of the Supreme Court, soon cease to exist. But will those evils be at all mitigated by their introduction into this debate? Will the gratuitous mention made of them by the honorable Senator even alleviate them? Slavery must continue to exist in that State, whether for good or for evil, for years yet to come, notwithstanding his kind solicitude on the subject. And I have only to tell him that it is a subject which, so far as that State is concerned, belongs exclusively to herself, as a sovereign State. But, as the gentleman has mentioned that subject, (and it is one about which no gentleman from a non-slaveholding State can ever speak with any good effect, or for any good purpose) I must be permitted to talk a little about it. Sir, while I do not approve of slavery in the abstract, I cannot admire the morbid sensibility which seems to animate some gentlemen upon that subject.

It would appear, from the agony which the very mention of slavery seems to inflict upon the feelings of the two Senators who have discoursed about it, that it was a new thing in our land; that it had never been noticed or discussed before; or that those who had noticed and discussed it, were remarkable for the callousity of their feelings, or the obtuseness of their intellect. They seem not to be aware, that slavery has been not only tolerated, but advocated by the wisest and ablest jurists that ever lived; and that too upon first principles; upon the principles of natural justice.

The jurists deduce its justification from *war*; as a right which the captor has over the captive, whom he might have slain. From *crime*; that a life forfeited by crime may be justly commuted for, or rather transmuted into, slavery. From *debt*; that the debtor may justly enslave himself, in payment of a debt, which he cannot otherwise pay. From *substinence*; that, in a state of population so dense as to reduce labor to its minimum price, that of mere subsistence, those individuals who cannot otherwise live, may justly enslave themselves for subsistence. In that state of things, the female who has thus enslaved herself becomes pregnant; during a portion of the period of gestation, she is unable, by reason of her pregnancy, to earn her subsistence by her labor; for subsistence during that period, both she and her offspring are hopeless debtors—the child, on account of the incapacity of the mother, during that time of gestation and parturition, of which it was the occasion—the mother on her own account; so that the infant was indebted before it was born, and becomes further indebted for its support during that period of its

infancy in which it was incapable to earn its subsistence by its labor: and that thus, after laboring its whole life for its subsistence, it dies indebted for the support of itself and mother, during their respective incapacities.

Whether this reasoning be sound or fallacious, it is needless to inquire. It has the sanction of very high names. Without being able to refute it, my feelings have always been opposed to the conclusion to which it conducts my mind. But I have not been able, while I deprecated slavery, to perceive any practicable mode of weeding it out from among us. The condition of free people of color is infinitely worse than that of the slaves. Shunned by the whites, and not permitted to associate with the slaves, they are in a state of exile in the midst of society, and hasten through immorality and crime to extinction. I would ask the gentlemen if the States of New England would agree to receive into their society the emancipated slaves of the South and West? Sir, slavery has been reprobated throughout all time, but has never ceased to exist. It has prevailed through all time, and been tolerated by philosophers and Christians, of every sect and denomination, Jews, Gentiles, and Heathens. But if slavery be an evil, is there not some consolation in the reflection that it is not unmixed—that with a large portion of mankind it is connected with the very greatest good which they enjoy. It is a fact, verified by observation, that those who tolerate slavery are uniformly the most enthusiastic in their devotion to liberty. Montesquieu, whose name is, upon all subjects of this kind, very high authority, tells us that slavery is the natural state of man in warm, and liberty his natural state in cold climates. This sentiment is unhappily but too well supported by history.

The barrenness of the soil in high latitudes, the quantity of labor required of all, to produce a comfortable subsistence for all, and the rigors of the climate in which they live and toil, impress upon the people great vigor and hardihood of character; and qualify them to maintain and vindicate their liberty, whenever, and under whatever circumstances, it may be assailed. Amid the severity and gloom of the climate, and the penury of nature, they find nothing so valuable, nothing which they estimate so highly, as their liberty. It is to them the greatest good, and compensates for the absence of all those bounties which nature has lavished upon the people of a warmer climate. They are necessarily free, and necessarily impressed with the value of their freedom, and possess the inclination as well as the power to maintain it.

In Southern climates, nothing is so much dreaded as exposure to the fervid rays of the sun; and scarcely any thing is more unfeeling and oppressive than that exposure is, to those who are not habituated to it. The special kindness of Heaven to man is illustrated in holy writ, by reference to the refreshing influence of "the shadow of a great rock in a weary land." In such a climate none will labor constantly, but those who are forced to do so; and those who are constrained by the force of circumstances to labor, soon become reconciled to their condition. The languor inflicted by the climate disqualifies them to conquer their condition, and fits them for it; and, owing to the bounty of nature, the labor of a comparatively small portion of the people will support them all. Those who do not labor, while they enjoy the refreshing influence of the shade, are left in the possession of liberty, with leisure to cultivate its theory, and contemplate its charms, until they become enamored with it. Liberty is the besu idea of the Southern and Western slave-holders; and indeed is more or less so with all the white population. Their devotion to it partakes of the spirit of idolatry; and this sentiment is heightened by the constant presence of slavery, and is more and more strengthened by the contrast which every day exhibits between their own condition and that of the slaves. So that, if this reasoning be correct, the cause of civil liberty

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is gainer by the numerical amount of her votaries, thus rescued from the fervors of a Southern climate. But a few, instead of all the people in such a climate, are slaves; and our Northern brethren, if this theory be correct, have only to lament, in common with all the disciples of liberty, that nature exacts from the people of the South the toleration of slavery, as the only condition upon which they can themselves be free.

Then, sir, the toleration of slavery ought not to be imputed by our Northern, to their Southern brethren, as matter of reproach: for if, according to the jurists, it be justifiable upon principles of natural justice, the people of each State are at liberty to tolerate it or not, as they may choose. It is, in that case, a mere question of policy. But if the writers on public law should in this case have erred, and slavery is not in accordance with the laws of nature, the slave-holders of the South are excusable, because they have been reduced, by the climate which they occupy, to the necessity of submitting to it, as the least evil; and that, at last, is the alternative presented to man, in his progress through life, whether in his individual or aggregate capacity. His choice is, in no instance, perfect good; it is between a greater and a less evil.

But is not the theory which I have been urging affirmed and illustrated by the history of the condition of mankind in all ages? Of what instance to the contrary does history furnish any account? Of what Southern country were the people ever free, who did not tolerate slavery? There are many instances of Southern people, who tolerated slavery without being free themselves; but I believe there is no instance on record, of a Southern people being, and continuing to be, free, who did not tolerate slavery. The Jews, the Greeks, the Romans, were respectively the freest people of the periods in which they lived, and they each tolerated slavery in its most repulsive form. They, too, were greatly in advance of other nations in civilization and all the arts which embellish life. They gave important lessons on the science of free government to their contemporaries, and to succeeding generations. They, who but for the slavery which they tolerated, would have been slaves themselves, taught mankind how to live free, and, what was greatly more important, how to die for the maintenance of their liberty. I do not mean that the science of free government was thoroughly understood by either of them. They were greatly in advance of their contemporaries in that science, perhaps as much so as we are in advance of them. And we, I regret to believe, are yet far short of perfection in it.

Whether the principles of free government will ever be so simplified as to be comprehended and understood by the people generally, and whether it will be possible, even if such should be the fact, for them to resist successfully the unceasing and almost imperceptible enactments of aristocracy upon their rights, is a problem of the very deepest interest, and remains to be solved. But I have been led away by this subject. It is one of great delicacy and deep interest. It must not be meddled with from abroad. The Southern and Western States cannot agree that it shall be discussed by those who can have no motives, of even a philanthropic cast, to meddle with it at all. It is exclusively their own subject, and must be left to them and the destinies.

The gentleman seemed to think that the Senator from South Carolina [Mr. HAYNE] was looking out for Western allies; that his object was to conciliate the West. The sentiments uttered by the Senator from the South, [Mr. HAYNE] in relation to the public lands in some of the Western States, were elevated and just, and such as in my opinion might be expected from an enlightened statesman. There are no lands belonging to the United States in the State of Kentucky, and I thank heaven that such is the case. The slavery and perplexity of land titles, which have been imputed to Kentucky, may be very great evils,

and the first of them has been felt as such by the people to an afflicting extent. But in my judgment both together are a very little matter, compared with the evil experienced by a State whose territory belongs to the United States. In Kentucky, however perplexed the titles of her citizens to their lands were, the title of the State to all the territory within her limits is unperplexed, simple, and sovereign. The Senator from South Carolina, therefore, could not, in all that he said in reference to the public lands, have expected to operate upon Kentucky, nor could he justly be suspected of an intention to propitiate the States in the valley of the Mississippi, by any thing he said; because it was what they had a right to expect from him, and every other member of this body. And they ought not to be supposed to take as a favor, what they have just cause to demand as a right. No, sir; if there was any indication given of illicit love, it was most obviously on the part of the Senator from Massachusetts, towards the State of Ohio. That he had no love towards Kentucky, was very obvious, and that his regards for Ohio were of the tenderest sort, was most obvious. Whether she will reciprocate his love, I, I think, somewhat problematical, but about that matter I have no concern. I can only say that, whatever may be the inclination of the East, or the South, towards Kentucky, in regard to alliances, it may be abandoned. She is not in a woeful condition; she is wedded to the Union, and will not hear of any other alliance.

The Senator from Maine, too, [Mr. SPAKES] has given us a most glowing description, or rather depiction of New England. He does not, as the gentleman from Massachusetts did, speak of New England through Ohio. He speaks right at her, and directly of her. He has told us of the first colonists, of the manner of their landing, and of the place at which they landed. He has described them, not as hardy puritans, but as venerable pilgrims, landing upon the rock at Plymouth, with the Bible in their hands; yes, sir, the Holy Bible in their pious hands! He has told us, too, that they extracted the model of their free and happy governments from that sacred volume, and that they got from that same holy book those pure principles of morality and piety, and that love of order, which so signally characterizes them at this day. And he has taken special care to inform us, that they were inspired with an emphatic abhorrence of slavery, by the divine injunction of that same sacred volume, "to do unto others as they would that others should do unto them."

While the Bible furnishes the very best rules by which to regulate the conduct of individuals towards each other and their Maker, I must be allowed to say, that the pilgrims of Plymouth must have been very ingenious to have discovered in it either the model of a free government, or the political principles upon which a free government can be predicated—with the exception of what is called a theocracy—in which the priests ruled; all the governments of which it treats, were those of kings and judges. At present, the representatives of the people of New England seem to have a very decided preference for the judges. No man can read in the Bible of a republic. Those pilgrims only took their government from the Bible, until they found leisure to make a better, and they did make, and do now enjoy, a much better government than any of which that good book speaks.

Sir, I was so charmed with the eloquence of the gentleman, that I fancied for the while that New England was a very clysium; that its surface was gently undulating, without any abruptness, carpeted with verdure of the deepest hue, interspersed with flowers of every tint and flavor; that the forests were composed of sacred growths—the palm, the cedar, the fir tree, and olive; tenanted by birds of the most varied and vivid plumage, and of exquisite notes. That the music of the grove was rendered somewhat more solemn, by the plaintive cooing of the

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dove, perched, not upon the withered limb of a thunder-scathed oak, but upon the verdant bough of its own olive, the tree from which it plucked the emblematic sprig which it bore in its beak to the patriarchal voyager. That the venerable pilgrims sauntered upon the surface, or reclined, in graceful recumbency, upon the green banks of the pellucid streams, which meandered in every variety of curve, through the stately groves, and discoursed sweet music with the pebbles, except on Sundays. That in this posture of graceful recumbency, they inhaled the odiferous breezes, which gently agitated the balmy air, and occasionally quaffed nectar from the hand of the obsequious Ganymedes. But when the gentleman had closed his description, and the illusion produced on my fancy by his eloquence had subsided, or, in other words, when the poetry of his description was reduced to plain prose, I found it was all a notion. That he had been talking about the hardy New Englanders, and about the poor broken scrubby lands of New England, out of which the virtuous yeomanry of that country, by the dint of persevering industry, extract not only comfort, but wealth. That the fancied nectar was neither more nor less than plain New England rum; and that, in the generous use of it, each man was his own Ganymede, and helped himself with an alacrity proportioned to his thirst.

Now, sir, I am willing to admit that the people of New England have many virtues; they are honest, industrious, enlightened, enterprising, and moderately pious. I admire their free school system, and have no doubt that it conduces greatly to the diffusion of much useful knowledge among the mass of the people. But, after all, they are no better than they should be; no better than their Southern or Western neighbors. The people of every State have their respective advantages and inconveniences; and are all of them more or less under the control of circumstances, over which they have themselves no control. They are all aiming at the same object, and all employ such means to promote it as their condition permits. To be happy is not less the aim of the people of the other States, than of New England; and they perhaps have not been less successful than she. Let her not be so weak as to suppose that none can enjoy it who do not conform to her standard. Let all the States unite in maintaining the freedom of each, and let each be free to pursue its own happiness in its own way. Comparisons, taunts, and reproaches, can produce no good effect, and may tend to disturb those good relations which ought to subsist among the people of our Union.

Let me not be understood as disparaging New England in any, the slightest degree. I rank her with her sisters of the Union; neither more nor less fair or accomplished than either of them; they are all virtuous. The only freckle which I can discern on the face of New England, is, that she is sometimes a little too vain of her beauty, and too much disposed to trumpet it. I have never been in that region; but if I were to take their late representative in this body [Senator Lloyd] as the criterion by which I should judge of them, I would certainly rate them very high. He would have filled the character of Senator in the proudest days of the Roman republic; no man ever occupied a seat in the Senate of the United States who was his superior in all that constitutes excellence of character in the Senator and the gentleman. I have no prejudices against, but rather partialities for, New England. Of one thing I am satisfied, and that is, that New England can, and will, take care of herself. My inclination is, that the other States should do the same; and that neither should unnecessarily, or wantonly, intermeddle with the concerns of the others.

But I did not rise, let me assure you, to discuss the subjects which I have cursorily noticed. I could not have been tempted, by them, to encounter the embarrassment which speaking in this body has always inflicted upon me. I rose mainly to enter my solemn protest against some of

the political doctrines advanced by the honorable gentleman from Massachusetts, [Mr. WABSTER.] He has asserted, in the course of this debate, that the constitution of the United States was not formed by the States; that it is not a compact formed by the States, but a Government formed by the people; that it is a popular Government, formed by the people at large; and he adds "that, if the whole truth must be told, they brought it into existence, established it, and have hitherto supported it, for the very purpose, among others, of imposing certain salutary restraints on State sovereignties."

He asserts farther, that, in forming the General Government, the people conferred upon the Supreme Court of the United States the power of imposing these certain salutary restraints upon the sovereignty of the States. Now, sir, believing, as I do most solemnly, that these doctrines strike at the root of all our free institutions, and lead directly to a consolidation of the Government, I cannot refrain from attempting, however feeble the attempt may be, to expose their fallacy and their dangerous tendency. It is the first time they have been openly avowed (so far as I have been informed) in either House of Congress. They were thought to be fairly inferrible from the tenor and import of the first message of the late President Adams to the Congress; but they were left to inference, and were not explicitly avowed. The recommendation of Secretary Rush, that the industry of the people should be regulated by Congress, must have been predicated upon his belief, and that of Mr. Adams, in these doctrines. But still, the friends of Mr. Adams, when these doctrines were imputed to him, and his message quoted in support of the imputation, resisted it with warmth, and ascribed the inferences from the message, and from the report of Secretary Rush, to unkind or party feelings. Now, the explicit avowal of the honorable Senator [Mr. W.] removes all doubt from the subject. We can no longer doubt as to what was the political faith of Mr. Adams. His most zealous and most distinguished apostle has avowed it. The two parties are now clearly distinguishable by their opposite political tenets; the one headed by our illustrious Chief Magistrate, who is the friend and advocate of the rights of the States; the other party is now headed by the honorable Senator from Massachusetts, [Mr. WABSTER] and is, as I shall contend, and attempt to prove, in favor of a consolidation of the Government—of a splendid empire. The doctrine avowed is neither more nor less than that the State sovereignties are merely nominal, and that the Government was consolidated in its formation. How it has happened that this essential characteristic of the Government was so long kept a secret from the people of the States, is a matter of some mystery. Why was it not avowed at the time the constitution was formed? Why was this disclosure reserved until this time, and for this occasion? Is there any thing in the message of the President, or in the political condition of the people of the States, which demands its promulgation at this time? Are the people prepared, think you, to receive an entire new version of their constitution? Will they give up their dependence upon their States, respectively, and rely upon the great central Government for the protection of their lives, liberty, and property? Sir, I think not; they are not yet sufficiently tamed and subdued by the aristocracy of the land, and the encroachments of the General Government upon the rights of the States, to submit just at once.

I would ask the honorable Senator [said Mr. R.] how his doctrine can be correct, consistently with the known state of facts at the time the constitution was formed. What was the condition of the people at that time? Were they at large, and unconnected by any political ties whatever? Or, were they in a state of self-government, under distinct political associations? It is known to every body that the people consisted of, and constituted, thirteen distinct, independent, and sovereign States. And those

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States were connected together by a compact of union; and that the great object of the people of the States, in forming the constitution, was that declared in its preface, to make the Union more perfect. What union, I would ask, or union of what? Most certainly of the States, already united, whose union was thought to be imperfect. To give more compaction, and render more perfect, the Union of the States, was the great desideratum. To consolidate the Union of the States was the object of the constitutional compact.

But I desire to be informed how the people could absolve themselves from their allegiance to their respective States, so as to be in a condition to form a National Government? And what need could they have for a National Government, before they had formed themselves into a nation; and how they could form themselves into a nation, one nation, without abandoning, or throwing off, their State costume, and even dissolving the compacts by which they were formed into States?

We all know that there are but two conditions of mankind. The one natural, the other artificial, or pactional. And we know that, in a state of nature, there is no government; that all are equal in that condition; and when all are equal, there can be no government. The laws of nature are the only rules of human conduct in that condition, and each individual is his own expounder of those laws. He is the arbiter of his own rights, and the avenger of his own wrongs. Such was not the condition of the people when the constitution was formed. They were not at large, and at liberty to improve their condition by their conjoint voice or agency. And if they had been so situated they would not have formed such a constitution as they did, as I shall attempt hereafter to show. The constitution is not adapted to the people, in any condition, which, as one people, they could occupy, while it is admirably adapted for their use, in their State capacities—the purpose for which it was formed.

I desire further to know in what sense the words State, and people, are used by him, when he says, "The people brought it (the constitution) into existence, for the purpose, amongst others, of imposing certain salutary restraints upon State sovereignties." Indeed, I should like to know in what sense he uses the word sovereignties, in that connexion. Now, sir, I understand State to mean the people who compose it—that it is but a name by which they, in their collective capacity, are designated. By the people of the United States I understand the distinct collective bodies of people who compose the States that are united by the Federal Constitution. And by the United States I understand the distinct collective bodies of people of which the States are composed. But I shall make myself better understood by a short analysis of the process by which a State is formed.

The power which is exerted in governments must either have been willingly conceded by the people, or taken from them against their will. If it could only be obtained in the latter mode, there could be no free governments. In a state of nature, there is no power (I mean moral power) in one man, to direct, control, or govern another—all are free. The evils inseparable from this condition need not to be enumerated by me: they have been portrayed by all other elementary writers on the science of politics. It suffices to say that they are such as to induce those in that condition to hasten to escape from it. All political doctors agree in telling us that the transition from a state of nature to a state of civil society is effected by an agreement among all who are to compose the society—of each with all, and all with each, that each, and its concerns, shall be directed by the understanding, and protected by the force or power of all. The agreement is reciprocal on each with all, and of all with each. The right which each man possessed, in a state of nature, to direct himself and his own concerns, by his own will, is

voluntarily surrendered by him to the society; and he agrees that he and his concerns shall thereafter be subject to the direction and control of the understanding or will of the society. This contract is either express or implied, but most frequently implied, and is necessarily supposed to have been formed by every people among whom laws and government are found to exist. I say necessarily: for the power to make a law, or to govern, can be obtained upon no other supposition. It is denominated the social compact. It is the charter by which civil society is incorporated; by which it acquires personality and unity; by which the action of all the people, by a majority, or in any other mode which they may designate in their constitutional compact, is considered as the action of a moral agent—of a single person. This moral agent is, in reference to its own condition and concerns, called a State—probably from the fixed and stable condition of the people, compared with their variable and fluctuating condition in a state of nature. In reference to other States it is called a nation, and acts and holds intercourse with them as an individual person. Much confusion has arisen from the indiscriminate application of the word State to different and distinct subjects. Sometimes it is used to mean the Government of the State, instead of the people in their political capacity.

There is nothing more common than to hear men, who are even distinguished for their political knowledge, say, that, in forming government, men surrender a portion of their natural rights to secure the protection of the balance. Yet there is no error more palpable. If that notion were correct, the legitimate power of the State (and throughout this argument I shall use that word to mean the people of the State) would be too limited for any beneficial purpose. Then, indeed, a State would not possess sovereign power. The State, in that case, could not protect either the citizen or his property. He would not even be a citizen: for it is in consequence of his having surrendered, not a part, but the whole, of his self-control, that he is a citizen: and it is only as a citizen that a State can demand any public service from him, or control him in any way. Neither could his property be subject to the control of the State, even in reference to its protection, if the control of it all had not been surrendered in the social compact. Now this individuality of the people, produced by the social compact, subsists while that compact lasts, and it confers upon the State which it has formed, the self-preserving power to the extent of the moral and physical energy of all. The motives which lead to the formation of a State can never cease to exist; a state of nature is, at all times, equally infested with insecurity and wretchedness; and, of course, there will always be the same motives for shunning it, and it can only be avoided by remaining in a state of civil society. Hence, we have no account in history of the voluntary dissolution of the social compact. Civil societies have been destroyed by earthquakes, by deluge, and by the exterminating ravages of war, but never by a voluntary dissolution of their social compacts. They have, to be sure, been often subdued into vassalage, or reduced to the condition of provinces. Indeed, it is difficult to conceive how they could be dissolved by the will or agency of the people who compose them. The will of the whole is the will of one political body, of one corporate agent; and a self-destroying will, or purpose, would be as unnatural in a body corporate as in a body natural.

Again: any attempt by any of the members of the society to thwart or counteract the self-preserving will of the whole, would be highly criminal, would be treason, and subject those who made the attempt to the fate which they meditated against the body politic.

The States, therefore, remained in full vigor while the constitution of the United States was forming. They were not even shorn of any of their sovereign power by that process: for the gentleman says that that instrument

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was brought into existence, amongst other reasons, for the purpose of imposing certain salutary restraints upon State sovereignties.

Now, that which does not exist cannot be restrained. If therefore admits the existence of the sovereignties of the States, not only at the time, but ever since the formation of the constitution. If the sovereignty of each State was separate and distinct, and consisted in the concentrated will of the people of each, by what authority could the people of the State of Georgia interfere in the reduction or modification of the sovereign power of the State of Virginia? and if they could not interfere in the regulation of the power of the State of Virginia, by what mode could the people of Virginia itself, other than their collective, their State capacity, diminish or modify the sovereign power of that State? The people of no one State could interfere with the rights of another, nor with its own, in any other capacity than as the collective body which composed the State. But, upon the supposition that the people of all the States, not in their State capacities, but at large, and by their concurrent voice or agency, formed the constitution, the difficulty still presents itself: by what authority did all unite in modifying the constitution of each? They had not entered all into one general compact, and thereby conferred power upon the majority to form the constitution, by the adoption of the State machinery which they had thrown off. This Government is not formed by the people at large, out of the *exuviae* of the States. But will the gentleman have the goodness to tell us what is the power, and where does it reside, which is employed in altering the constitution of a State? Does it not reside, exclusively, in the people of the State, and in their collective capacity, and must it not be exerted in that capacity, to produce any alteration in their constitution? And must it not be exerted according to the mode prescribed in the constitution? Can the people, pursuing that mode, be viewed in any other than their State capacities? The gentleman, I am sure, will answer these questions in the affirmative. Well, the State constitutions were all affected, and seriously, too, by the constitution of the United States. Now, if none but the people of a State, in their distinct State capacity, could affect its constitution, then their action, in forming the constitution of the United States, must have been exerted in their State capacity. The States, whereby I mean the people of each, as a distinct political body, then, must have formed the constitution, and not the people at large. If these views are correct, how can the gentleman reconcile his idea that the constitution was formed by the people, and not by the States, with his other idea that it was formed by the people to impose certain restraints upon State sovereignty? If the people acted in their distinct State capacities, then they could consistently impose restraints upon the exercise, by the States, of their sovereign power; but then they acted as States, and imposed the restraints by compact; and in no other capacity could they act, nor by any other mode than by compact could they achieve that object. The social compact gives, as I have urged, unity, compaction, and oneness, to the people. It gives the power to the State which it forms, of expressing its will by a majority. And thus it acts in forming its constitutional compact, and in the exercise of its legislative power. This power of acting by a majority would be tyranny over the minority, if it had not been conceded by the social compact. Upon this ground, it must be obvious that the social must precede the constitutional compact, and that the power to form the latter must be derived from the former. But, until there be a State, there can be neither need for a government, or the power to form it. So that, if the people had not, at the time the constitution was formed, existed in distinct political bodies, they must all have existed in one political body, before they could either need a government, or possess the power to form one.

Sir, I know that the discussion of the elementary principles of government is dry and uninteresting; indeed, all abstract discussion is so: but the Senator from Massachusetts has led the way. He has made it necessary for me, either to acquiesce in doctrines which I consider dangerous to the liberties of the people, or to attempt to refute them. Indeed, I think it is greatly to be regretted that the true principles of our free institutions have not been more frequently the subject of discussion. The clear comprehension and maintenance of them is essential to the liberty of the people. To obliterate or obscure them will always be, as it always has been, the purpose of those who would misrule and oppress the people.

That the constitution must, of necessity, have been formed by the States, and not by the people at large, I have attempted to prove by referring to natural principles, and to the existing state of things at the time it was formed. I will refer you to that instrument itself for further proof of that fact. I have already called your attention to the preamble. It is in these words: "We, the people of the United States, in order to form a more perfect union," &c. Let me ask again, if the words "we, the people of the United States," meant we, the people not of the United States? Why were they termed people of the United States, if they considered themselves as absolved from their State relations, and at large? Can we construe the words "United States," in this connexion, to mean the people within the outer boundaries of the exterior States, without reference to the States and State institutions in any other sense? Are we not forbidden to give them this meaning by the words which follow, viz: "to form a more perfect union?" The word union can relate to nothing but the States. The object, as I have before stated, was to unite them, not the people, more perfectly: Besides, a more perfect union of the people cannot be produced by a constitutional than by the social compact. It is not the object of a constitution to unite the people. It pre-supposes their most perfect union under the social compact. It is owing, alone, to that pre-existing union, that they can form a constitution, or have any need for it. It would have been inappropriate, therefore, in the preamble to the constitution, to have said "in order to form a more perfect union," in reference to the people: besides, there was not then, nor had there existed, any political union among the people, merely as people. The union which existed under the articles of confederation was a union of the States. To form a union of the States, more perfect than the one which then existed, was the object, I repeat, of the present constitution.

That such was the intention of those who framed the constitution, is obvious from the structure and phraseology of that instrument. In the 2d section of the 1st article we find this provision: "The House of Representatives shall be composed of members chosen every second year, by the people of the several States." And again, "Representatives and direct taxes shall be apportioned among the several States which may be included within this Union." We see, from what I have read, that the members were to be chosen, not by the people at large, but by the people of the several States, and this shows what was meant in the preamble, by the words "we, the people of the United States." It shows that these words meant "the people of the several States." The people who formed the constitution were to elect their members in the same character in which they formed that instrument—as the people of the several States. This idea is confirmed by the provision "that representation and direct taxes shall be apportioned among the several States." What several States? The answer is given in the same sentence—those "which may be included within this Union." Then the Union was of States: they

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were to be represented as States, and taxed as States; and only the States which might be included within the Union were to pay taxes and be entitled to be represented. Here, too, the word State most evidently means the people who compose it. They are to choose representatives and they are to be taxed as the collective bodies who constitute the State. Again the same provision, farther on, reads thus: "The number of Representatives shall not exceed one for thirty thousand; but each State shall have at least one Representative, &c.; and, until such enumeration shall be made, New Hampshire shall be entitled to choose three, Rhode Island one," &c. Here it is very evident that the word "State" is used to mean the people of the State; population is made the basis of representation; the ratio is fixed at thirty thousand; but whether thirty thousand, or a smaller number of the people, composed a State, it should have one Representative.

So, too, the provision that the State of New Hampshire should, until the next enumeration, be entitled to choose three Representatives, means, that the people who composed that State should choose, and implies that their number was at least ninety-thousand, and so of the other States. But hear this provision of the constitution still further to the same effect: "When a vacancy happens in the representation from any State, the Executive authority thereof shall issue writs of election," &c. Who can misunderstand this language? Who does not see, from the clauses of the constitution which I have read, that that instrument was made by the people of the States, in their State capacity? That the States made it? In the last clause there is an evident distinction between the State, and the Government of the State; "to fill a vacancy happening in any of the States, the Executive authority thereof should issue writs of election," &c. A State was to have one Representative for every thirty thousand composing it, and the Executive authority of the State was to issue writs to fill vacancies happening in the State. Now, the State is formed by the social compact; the Executive authority was formed by the constitutional compact; the constitution, in all its references to the people, and in all its requisitions on them, refers to them either by the term "State," or by the terms "people of the State," as is evident from the clauses which I have read. But this distinction between the State and the Government thereof, is obviously displayed in the third section of the first article: It relates to the creation of the Senate, the body which we now compose, and reads thus: "The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof." Here the word State, as in the other instances which I have read, means the people incorporated by the social compact; and the Legislature which was created by the constitutional compact must be referred to the constitution by which it was created.

The social compact created the State; the State created, by its constitutional compact, its government; and, hence we say, the Government of the State, the Legislature, Executive, and Judicial authority of the State. The people of the State can speak or act only through their constitutional functionaries, or by convention.

The prevailing idea that, when the constitution of a State is abolished, the people are thrown back into a state of nature, is erroneous, and one which, as used by aristocrats and office-holders, does much harm. It is urged to deter the people, who are often duped by it, from that reasonable resort to first principles which is essential to the preservation of their liberty. Now, we all know that the abolition by a State of its constitution, no more affects the social compact, or the existence of the State, than the repeal of a statute affects it. The State made its constitution, and enacted the statute. The same sovereign power was exerted in both instances, alike in the creation and the abolition of both: and exists in the unimpaired efficacy

of the social compact. Every State has its fixed and its variable attributes of character. The former is political, and identified with the social compact; the latter exists on the changeable qualities or habits of the people. Thus a nation is said to be brave or cowardly, sincere or faithless. The people of Spain were at one time remarkable for their fine chivalric spirit. Not so now. Punic faith is a lasting stigma upon Carthage. But that the compression of the people, by the social compact, into the unit called a State, remains, under all the changes of character which the people undergo, and all the changes of its government which choice or accident may produce, or war or convulsion inflict, itself unchanged. If a republic becomes a monarchy, or, if a monarchy becomes a republic, these are but changes of government; the civil society, or State, remains unaltered, and is sovereign, while ever it manages its own affairs by its own will. It is upon this principle that States are not absolved from their debts by revolution. The State, and not "the Government," is the contracting party, and nothing but the dissolution of the social compact, and consequent extinction of the State, can absolve from its payment.

Now, sir, unless I am wrong as to the formation and character of States, and unless I have read the constitution wrong, that instrument not only was not formed by the people at large, but could not, as I have before said, have been formed by them. It could not have been formed by the people in any other capacity than as States. It was, we know, formed by Representatives from the States, and it was adopted by the Representatives of the States, severally: for the members of the conventions in the several States were not less representatives of the States severally, than their legislative representatives. I contend, therefore, that the States made the constitution, and thereby rendered the Union greatly more perfect than it was under the articles of confederation. I contend, also, that the individuality and sovereign personality of the States were not at all impaired by that instrument. That the States remain plenary sovereigns as much so as they were before the formation of the constitution. That they have not by that instrument parted with one jot of their sovereign power. You seem to startle; but hear me: I contend that the States as plenary sovereigns, agreed by the constitution (which is but their compact of Union) that they would unite in exerting the powers therein specified and defined, for the purposes and objects therein designated, and through the agency of the machinery therein created. The power exercised by the functionaries of the General Government is not inherent in them, but in the State whose agents they are. The constitution is their power of ally to do certain acts, and contains, connected within their authority to act, their letter of instructions as to the manner in which they shall act. They are the servants. The power which gives validity to their acts is in their masters, the States. Where, let me ask you, is the power of Congress during the recess of that body? Certainly not in the individual members—they do not carry it about with them. Suppose the Judges of the Supreme Court were by some fatality thrown out of existence, where would be the judicial power which they exercised, until others were appointed? Upon the death of the President, where is the supreme executive power of the Union? You may tell me in the Vice President. But between the death of the President, and induction of the Vice President, where is it? The answer to these questions is most obvious. It is, that they possessed no sovereign power; that they were but the agents of the sovereign States; that the States retained all their sovereign power, and still retain it. That it is inherent in them; not in three-fourths of the States, but in all of them. In amending, or altering the constitution, they have agreed that the voice of all shall be expressed by three-fourths. The sentiment that the States, by the formation of the constitu-

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tion, divested themselves of a large portion of their sovereign power, is, in my humble opinion, as erroneous as it is unhappily prevalent. And this error will be advocated by all who are hostile to State sovereignty, and friendly to a consolidated Government.

I have attempted to prove, in a previous part of my argument, that a State could not, without dissolving its social compact, divest itself of its sovereign power. To suppose that a State could be dependent and sovereign at the same time, would be to suppose it destitute of that unity which is of the essence of its nature. It would be not only to misconceive the character of a State, but to ascribe to it two inconsistent modes of existence. Nor is it more admissible to suppose that a State is sovereign, and, at the same time, subject to certain salutary restraints upon the exercise of its sovereignty by any other power. For I lay it down as a truism in political science, that whenever a State is subject to the control of the will of any other power, it has ceased to be sovereign, and is the province of the power that may control it. I say, may control it: for its objection does not consist in the actual exertion upon it, of the controlling power, but in its subjection to that control. Slaves are not always under the controlling action of their master's will. Indeed they are but seldom so. Yet they are not the less slaves when they are not, than when they are, under his actual control, because their slavery consists in their subjection to his will, and not in their actual continuous conformity to it.

It is for that reason that slaves cannot form or enter into a social compact. They lack that exemption from control, that freedom of will, of which the sovereign power of the State is created by the social compact. Then, if it is essential that the component parts of sovereignty, that the will of each member of the social compact, shall be free from subjection, does it not follow that the sovereignty itself should be alike free from subjection? The sovereign power of the State (as I have before urged) consists in the free will of all the members of civil society, compacted by the social compact into a corporate person. The elements of this power being free, the aggregate must be so. There is, therefore, no law obligatory upon a sovereign State but that which was obligatory upon its constituent parts. The laws of nature were alone obligatory upon man in a state of nature, and no other laws are obligatory upon a sovereign State: for all the rights, powers, and privileges, which were possessed in a state of nature, by the individuals who compose the State, are concentrated, by the social compact, in the State, and constitute its sovereignty. Control implies superiority on the part of the controlling, and inferiority on the part of the controlled. But sovereigns are equal; and it is of the essence of sovereignty that it cannot admit of salutary restraints *abundant*. It is a governing and self-governed power. Besides, a State would be unfit, indeed disqualified, to protect its citizens according to its stipulation in the social compact, if it were, as the Senator supposes, subject to those salutary restraints, by the judicial functionaries of the General Government. It would indicate, by its weakness, that, instead of protecting it needed protection. The reciprocal duties and obligations which now exist between the States and their citizens, would vanish. But the gentleman is kind in subjecting the States to none but salutary restraints. The Supreme Court are to judge whether the restraints are or are not salutary, which they will, no doubt, seasonably impose upon State sovereignties. The sovereign State is not to form any opinion on this subject, and therein, and by its passive acquiescence, display, according to its own opinion, its sovereignty. I can form no idea of a sovereignty subject to such restraints. It is illusive, and but the precursor, as I fear, of a declaration hereafter to be made, that the States are not sovereign. Indeed it is to my mind nothing short of a virtual declaration to that effect now: for there is no such thing as half, or three-quarters, or

seven-eighths sovereign. Every State being a unit, must be entirely of one character—must be either sovereign or vassal; and I repeat that a State, subject to be controlled by any other power, is the vassal of that power.

I admit that a sovereign State may forbear to exercise her sovereign power in relation to given objects, or classes of objects. She may stipulate thus to forbear the exertion of her sovereign powers, or she may stipulate to exercise her sovereign powers in conjunction with other States, in relation to a certain class of subjects, and to forbear to exert them individually upon any of those subjects. But the very stipulation, instead of renouncing the powers which are to be jointly exercised, implies their retention. Such a stipulation I consider the constitution to be. I view it as an agreement between the sovereign States to exert, jointly, their respective powers, through the agency of the General Government, for the purposes and in the manner delineated in that instrument of compact. Each State exerts its plenary sovereign power jointly, for all the legitimate purposes of the Union; and separately, for all the purposes of domiciliary or State concerns. An individual citizen may stipulate to transact a portion of his business by agent, and the balance by himself; and that he will forbear to exert his moral faculties or physical energies upon that class of subjects which, by his stipulation, are to be acted upon by his agent; has he, by his stipulation, lessened, impaired, or diminished his moral or physical powers? Certainly not. The validity of the agency depends upon his retaining those faculties: for if he shall become insane, or die, the agent cannot act, because the power of his principal has become extinct. So it is the power, the full subsisting sovereign power of the States, which gives validity to the acts of the General Government. The validity of those acts does not result from the exercise of a portion of the sovereign power of each State.

Sir, we cannot conceive of a sovereign act, without the consciousness that it must have been performed by a sovereign power. An atom is a very small part of a globe, and yet the creation of that implies the exertion of as plenary sovereign power as the creation of the globe. The power in the State, which is exerted in taking from a citizen an acre of his land for a public highway, is not less sovereign than that which is exerted in taking his life for crime—nothing less than plenary sovereign power can effect either; and there are no degrees of comparison in sovereign power; there is not sovereign, more sovereign, and most sovereign power. The States were, before the formation of the constitution, equal, for they were sovereign; since that instrument was formed, they are not less equal; because they are still sovereign, as much so now as then; and because the powers which they stipulated in that compact to forbear to exercise separately, and to exercise jointly, were equal. So that, if the powers which they exercise jointly, under the constitution, be considered, they are equal, and equally exerted, by the joint action of all the States, through their agents; and the powers which each may, consistently with their constitutional compact, exert separately, are equal; and whether viewed in their joint or separate action, they are equal. And when a new State is admitted into the Union, it enjoys, by constitutional stipulation, an equality with the other States of the Union. And here I would ask the honorable Senator, if the constitution was formed by the people, as he alleges, and not by the States, how it happened to be provided, in that instrument, that the enlargement of the Union should be by the admission of States, and not of people, as such; and why the stipulation as to equality should have related to the States and not to the people? And, while on this point, I would ask him why the provision in that instrument, for its adoption, referred it to the States and not to the people; and why, under that provision, the little State of Delaware had as much weight in its adoption as the great State of Virginia?

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But, sir, I fear that I am fatiguing you and this honorable body; my object has been to show that the constitution was not, could not, have been formed by the people; that it must have been formed by the States; that the States acted as plenary sovereigns in forming it; that their sovereign character and individuality was not impaired by that instrument; that it is now administered by them in the character in which they made it, that of full and perfect sovereigns; that the constitution is nothing more nor less than a compact between sovereign States, who are parties to it; that the union of the States produced by it is more perfect than that which existed under the articles of confederation; and that its increased perfection consists mainly in the stipulation that the States may exert their joint legislative, executive, and judicial power upon the people of each. This is a stipulation of each with all the others, and of all the others with each; and this is the stipulation to which the illustrious Washington alluded when he spoke of the consolidation of the Union. But still, in this stipulation, the people are regarded as citizens, as collective bodies, constituting the States respectively. The States, in the joint exercise of power, through the agency of the General Government, must confine themselves to the powers stipulated in the bond of union—to the constitution; and in doing that they must consider the people as citizens of their respective States. Thus, the constitution provides that all trials for crime shall be in the State where the crime is alleged to have been committed; and so in the exercise of the power which allowed to Congress to provide for organizing, arming, and disciplining the militia, and for governing such part of them as shall be employed in the service of the United States, they are regarded as the militia of the States severally; and each State has the right to appoint the officers for its own militia. So, also, it is stipulated that "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States."

Now, if I have been correct in my sentiments as to the process of forming a State, and as to the relation which the people of a State bear to each other, and their duties resulting from that relation to the State, and the obligation of the State to them; and as to the origin, extent, and character, of the sovereign power of a State, I think it will follow, that the sovereign power of a State is an unfit subject to be disposed of by judicial decision; and that the Supreme Court is an unfit tribunal to dispose of the sovereignty of the States; or, in the language of the Senator from Massachusetts, [Mr. WEBSTER] "to impose certain salutary restraints upon State sovereignties." It will follow, too, that his views and mine are *tozoto* apart. He thinks that this is a consolidated Government. His denial that it was formed by the States, and assertion that it was formed by the people at large, cannot, whatever he may say upon that subject, be construed into anything else than that this was a consolidated Government in its very formation. And the assertion of power which he has made for the Supreme Court, if it be sustained, must lead to the consolidation of the Government, if it were not before consolidated; so that, according to his notions, if we have not now, we must have, a consolidated Government. If it was formed by the people, it is so; if they did not make it so, the judges will; and, therefore, according to his propositions and arguments, there is no mode of escaping from a consolidation of the Government.

My hope is in the intelligence of the people of the States. I consider that they will never submit that the sovereign power of the States shall be narrowed down, controlled, or disposed of, by a quorum of the judges of the Supreme Court. They will discern the intrinsic unfitness of the sovereignty of their States for either forensic discussion or judicial decision, and oppose it with their suffrages, with the force of public opinion, and in whatever other way they may. We would deride with scorn and indignation any sovereign of Europe who would

agree to submit the sovereignty of his State to the arbitrament of even neighboring sovereigns. How infinitely more exalted is the sovereignty of a State composed of free citizens! And how degrading is the idea that sovereignty, the sovereignty of free States, must be subjected to certain salutary restraints! Sir, the history of the world does not furnish an instance in which the sovereignty of a State was ever subjected to judicial decision; or to any other power than the God of Battles and the Lord of Hosts!

But allow me, sir, to inquire into the fitness of this tribunal for the exercise of the power asserted for it by the honorable Senator; and allow me to preface the inquiry by a few observations upon the nature of our Governments. I have thus far spoken much more about the States than about their governments. In the republics of our country, the great, the leading principle is, that the responsibility of the rulers, or public agents, shall be commensurate with the character and extent of the power confided to them. Our Governments are contrivances, or devices, by which the people govern themselves—by which the governed govern; ours are governments of laws. Indeed all free governments are of that character; and the great difficulty has always been to guard against, and check efficiently, the influence of the selfish principle (which is so deeply rooted in human nature) over those who are entrusted with making and administering the laws. Now when we regard the zeal and vigilance with which the States, in the formation of their respective constitutions, and in the formation of the General Government too, endeavored to check this selfish principle in their political agents, and render them responsible, we shall be slow to believe that it was their intention, when they formed the constitution of the United States, to confer upon the Judicial Department this transcendent and all absorbing power.

It is to secure against the influence of this selfish principle of our nature that, in almost all the governments of the States, the members of the Legislative Department are elected for short periods—those of the Representative branch generally for one year, and those of the Senate for from two to four years, and the Governors for a like period. The election of the Representatives is annual, that they may be under the control of the people. The longer period allowed to the members of the Senate is, that they may not be deterred from checking any popular ebullitions, which might be displayed on the part of the House of Representatives; while, in turn, the members of the latter might check any aristocratical tendency on the part of the Senate. The Governor is invested with a qualified checking veto upon both branches, and is himself checked by allowing a defined concurrent power in both to overrule his veto; and he is further checked, and the better qualified to exercise his checking power, by being rendered ineligible, after a given period, to the gubernatorial chair. I speak of the checks provided by a majority of the States in their constitutions. I do not pretend to accuracy or precision as to the detailed provisions of any.

So, too, in the General Government, biennial elections were intended to secure the responsibility of the members of the House of Representatives, and thereby to check the influence of the selfish principle in the members. The members of the Senate are elected for six years, and by the Legislatures of the States, to check the tendency to consolidation which the gentleman advocates. The two Houses were so constituted as to check each other, and the President was to check and be checked by both. The States were reduced to the condition of perfect equipollence in the Senate, and thus the small were enabled to check the large States, in any attempts they might make to oppress the small.

Sir, on this part of the subject I do not pretend to minute exactness. It would be tedious, and is not required for my object, which is only to exhibit an outline of the



vigilance and solicitude displayed by the States, in their respective Governments, and in the General Government too, to guard against the influence of this selfish principle in those to whom political agency might be assigned. But I need not have referred you to the State and General Governments, without referring specially to any of their provisions on this subject. They exhibit abundant, almost redundant solicitude to guard the liberty of the people against misrule on the part of the Government. And think you, sir, that, after all this elaborate provision against misrule, the States could have intended to subject their Governments, and their self-governing power, together with the liberties of the people, to the discretion of an irresponsible and unchecked Judiciary? Who does not see that the only security the people have for their liberty, their lives, and their property, is in the protecting power of the sovereignty of their respective States? and that, when that sovereignty is subjected to the will of the Supreme Court, the people are subjected to the same tribunal; and that, after all their vigilance and caution, in guarding, by every conceivable check, against oppression from their rulers, they are, by this doctrine, to be subjected to the rule of a judicial aristocracy? to the rule of four men—a majority of that tribunal—who are unknown to them, except by the fame or the feeling of their encroachments upon State rights; whose tenure of power is for life, and irresponsible? And yet the Senator modestly tells us "that, if the truth must be told," such was the intention of the people who framed the constitution.

Sir, if it be a truth, it had better not have been told. It is a truth worse than falsehood; or, if told, it should have been told many years ago. The gentleman, by the manner of telling it, seems to admit that it had been concealed. He treats it as one of those precious truths, which nothing but necessity could drag from its concealment—"if the truth must be told." Must is a word which imports necessity. The necessity which produced this long concealed truth will, no doubt, in due course of time, come out, as a truth that must be told. The sentiment, whether it be a truth or not, lurked in every part of the first message of Mr. Adams. He did not feel that he must tell it in the message, and yet he could not conceal it. Perhaps the design was only to make such an implied presentation of it as might operate as an experiment upon the public feeling. If such was the design, they have mistaken the indications of public sentiment, unless I am greatly deceived, and yet it is announced with great confidence. The gentleman tells us that the States must submit to the judicial restraints upon their sovereignty, or incur by resistance the guilt of rebellion. That the decision of the Supreme Court affirming a palpably unconstitutional law, which invades the sovereignty of a State, must be submitted to by the State, or it must incur the guilt of rebellion.

Could the doctrine of passive obedience and non-resistance have been more explicitly urged? Has it ever been more zealously advocated, in any country? It is premature; the people of the States are not prepared for it yet. They are too well informed of their rights, and the principles upon which they depend, to be the dupes of that doctrine. There is scarcely a man in the community, who has participated at all in political discussion, that does not know that rebellion consists in the resistance of lawful authority; that the resistance of lawless authority is not a crime, but a virtue. That the only mode of escaping from oppression, is, by resisting the exercise of unlawful power. That patriotism requires such resistance. The citizens must, at their peril, distinguish between lawful and lawless power; and while they determine to retain their freedom, conform to the one, and oppose the other. It is a high duty, and full of peril; but, I repeat, it is the only condition on which liberty, the most precious gift of Heaven to man, can be enjoyed and maintained. The alterna-

tive is a hard one; it presents slavery, to which passive obedience and non-resistance leads, and liberty, which requires from its votaries a prompt obedience to all lawful requirements, and a bold and unflinching resistance to lawless encroachments.

Sir, it is, I must repeat, too soon for those who rule, or hope to rule, to address their arguments to our credulity and our fears; to deny us the intelligence to discern our rights, and the right to maintain them. Will the gentleman say that the States of Virginia and Kentucky, in the steps which they took to nullify the alien and sedition laws, were guilty of rebellion? Were their acts treasonable? If they were, then all the States were guilty of treason; at least, as accessories after the fact; for they all sanctioned, by the moral force of their opinion, the proceedings of the resisting States. But against whom did those States, or can any State, rebel? Rebellion means the resistance by an inferior of the lawful authority of a superior. It implies the violation of allegiance. To what power does a State owe allegiance? To what power is it subordinate? No one State owes allegiance to another; for if it did, that other would owe protection to it. Will the gentleman say that any such relation exists between the States? Or, will he say that a sovereign State can owe allegiance to any earthly power? I have attempted to prove that the States of this Union are equal; and have always been so, as well before as since the formation of the constitution; that the duties which they owe to each other under the constitution are pactional; and, if I have succeeded, then it is impossible that they can commit rebellion, or incur the guilt of treason, by any violation of their covenant relations with each other. But, sir, the idea that a sovereign State can commit treason, rebellion, or any crime whatever, is utterly inadmissible in the science of politics. The idea of crime cannot exist where there is no conceivable or possible tribunal before which the culprit could be arraigned and convicted.

Still less, sir, can any State be supposed to incur the guilt of rebellion or treason, by resisting an unconstitutional law of the General Government, or an unconstitutional decision of the Supreme Court, upon a valid law of Congress. The General Government is the creature of the States—the offspring of their sovereign power. And will the gentleman say that the creator shall be governed by the lawless authority of the creature? Will he invert the rule of reason and of law, upon that subject, and say that it is the superior that incurs guilt, by resisting the inferior, and not the inferior, by resisting the superior?

But the threats which are brandished against States, or even individuals, who shall oppose the encroachment of the General Government upon the States, are uncalled for, and can only have the effect to provoke illegal resistance, or to awe into a degrading submission. If the States are true to themselves, and faithful in the discharge of their high duties, they will move on in the majesty of their sovereign power, and maintain, with a steady and equal hand, both their governments, by restraining each, in the exercise of its legitimate powers, within its appropriate sphere. They will not incur the Supreme Court with the exercise of this restraining power. In their hands it would not be a restraining, it would be an absorbing power.

This epithet of supremacy, [said Mr. R.] which is so unceasingly applied to that court, is calculated to swell the volume of their power, in the minds of the unthinking. Its supremacy is entirely relative, and imports only that appellate and corrective jurisdiction which it may exercise over the subordinate courts of the General Government. The appellate court of every State is just as supreme as it is; and in the same way, and for the same reasons. It is not supreme in reference to the other departments of the Government; nor has it any supremacy in reference to the States; and yet the gentleman will

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have it that this Supreme Court, which derives its title of supremacy from its control over the proceedings of inferior judicial tribunals, shall control and restrain the Supreme Courts of the States, and the States themselves. That the mere modicum of judicial power which they are permitted by the States to exercise, shall be exerted to control them in the exercise of their sovereign power.

Sir, I deny that it was the intention of the States, in the formation of the constitution, to invest that tribunal with the power of doing any political act whatever. The power accorded to that court was purely judicial, and was intended to be so. If it had been intended that they should exercise the political power, which is not asserted for them, its exercise would have been subjected to some checks, to some responsibility. It cannot be reasonably supposed that, after subjecting the exercise of political power by all the other functions of the Government, to judicious and well devised checks, it was intended to subject all to the unchecked and irresponsible power of this court. But, upon this point, I have given my opinions in a previous part of my argument. I must, however, be permitted to say, that the judges, in the States, as well as in the General Government, even in reference to the exercise of their mere judicial powers, are left by the constitutions dangerously irresponsible. The independence of the Judiciary has, in my opinion, been greatly misconceived. Sir, the true independence of the judges consists in their dependence upon, and responsibility to, the people. The surest exemption from dependence upon any is independence upon all. In free governments, we have nothing more stable than the will of the people. To be independent of that, is to rebel against the principles of free government. It is a dependence upon, and a conscious responsibility to, the will of the people, that will best secure the judge from local, partial, and personal influences. But on what principle should those who administer the laws be less responsible to the people than those who make them? The laws operate as they are expounded, not as they are made. It is in the exposition of them that they operate oppressively; and all responsibility is to secure against oppression. But there can be no oppression, or scarcely any, without the consent of the judges. The judges are irresponsible, and the people are every where oppressed? But I hold it to be universally true that all power which may be irresponsibly exercised will be exercised oppressively. It has always been so; it always will be so: for the judges are but men.

But to return to the judges of the Supreme Court. They are authorized "to take jurisdiction of all causes in law and equity, arising under the constitution, laws of Congress, and treaties made pursuant to it;" and that constitution, together with the treaties, and the laws of Congress made pursuant to it, are to be the "supreme law of the land." This is their power; and this the character and force of the constitution, laws of Congress, and treaties. Now, suppose there shall exist, between two of the States, a dispute, as to territorial boundary, and the Congress shall pass a law giving the disputed territory to one of the contending States; and suppose the judges shall affirm the validity of this law: must the State whose territory has been thus invaded and taken from it by Congress, submit to the decision, or incur the guilt of rebellion? Is that to be the practical operation of the gentleman's doctrine? Or, suppose the territorial boundary of any one of the States shall be altered by treaty, and a portion of its territory transferred to a foreign Power, and the Supreme Court were to decide that the treaty was constitutional, must the State thus dismembered acquiesce, or, by resisting, be denounced as a rebel? And would the gentleman assert that this operation was merely imposing a salutary restraint upon State sovereignty? Now, sir, I deny that the power to declare a law of Congress, or of any of the States, unconstitutional, was ever conferred, or intended

to be conferred, upon the judiciary of any of the States, or of the General Government, as a direct substantive power. The exercise of this power is incidental to the exercise of the mere judicial power which was conferred. The validity of a law, involved by a case, may be incidentally decided, in deciding the law and justice of the case. But the decision must be made with an eye to the law and justice of the case, and not in reference to the just or unjust exercise of the legislative power which was exerted in making the law. Not in the view to check, control, or restrain the legislative power. It must be given in the exercise of merely a judicial, and not of political power.

Thus exercising its jurisdiction, the court would command the respect and confidence of the people as a judicial tribunal. But when it merges its appropriate judicial, in an assumed political character; when it exchanges its ermine for the woolpack and the mace, and asserts its right to impose restraints upon the sovereignty of the States, it should be treated as a usurper, and driven back by the States within its appropriate judicial sphere. It is due from the States to their own self-respect, and the just rights of their citizens, to assert that they are competent to decide upon every question involving their own sovereignty; and that, to neglect to maintain it, would be to renounce the character in which they formed the constitutional compact of union. That the maintenance of its own sovereignty unimpaired, by each of the States, is essential to the liberty of the people, and to the preservation of the Union, and that, to submit their sovereignty to the control of the judiciary, would be to substitute a judicial oligarchy for the free institutions employed for self-government by the people.

All the purposes for which civil society was instituted would be defeated in the control of the States by the judiciary. Nothing less than sovereign power is competent to the management of the concerns of a State, and nothing less was pledged by the States, in the social compact, for the protection of the people. The State cannot redeem this pledge, if it shall be controlled by the judiciary. The judiciary will govern, and not the State: for that power that governs those who govern, governs those who are governed; and how can a State protect its citizens from oppression, if it is itself liable to be oppressed by their oppressor? So that a State is under a political necessity to vindicate its sovereignty from any salutary restraints which the Supreme Court may attempt to inflict upon it, by resistance, or whatever means it may.

For security against oppression from abroad, we look to the sovereign power of the United States, to be exerted according to the compact of union; for security against oppression from within, or domestic oppression, we look to the sovereign power of the State. Now, all sovereigns are equal: the sovereignty of the State is equal to that of the Union: for the sovereignty of each is but a moral person. That of the State and that of the Union are each a moral person, and in that respect precisely equal. In physical force, the latter greatly transcends the former; but, in essential sovereignty, they are not only naturally but necessarily equal: just as the sovereignty of the State of Delaware is equal to that of New York, or of Russia, though the physical power of those sovereignties are vastly different.

The unrestrained exercise of the sovereign power of the Union is necessary to all the purposes of the Union; and it is not as necessary that the sovereign power of the State should be unrestrained, as to all domestic purposes; and can any reason be assigned why the latter, more than the former, should be restrained by the Supreme Court? No reason can exist for the restraint of the one, that does not equally apply to the other. But, in truth, the idea of controlling a sovereign State is so inconceivable that I do not know in what terms to combat it.

I must be indulged in some further inquiries in relation to the unfitness of the judges of the Supreme Court for the exercise of this controlling power over the sovereignty of the States, which the Senator from Massachusetts has asserted for them. What is there belonging to that court which can, in the contemplation of sober reason, entitle it to the exercise of that transcendent and all-absorbing power? Are the judges peculiarly gifted, and exempt from the frailties incident to human nature? Are they, and will they always be, pure and infallible? Will they always be free from the influence of the selfish principle, against which all free States have so sedulously endeavored to guard in their constitutions? On the contrary, are they not, will they not always be, subject to those impulses of ambition, those prejudices and partialities, which are uniformly displayed by those who are at all concerned in the discussion or decision of political questions? I have no reference to the present incumbents: they are, some of them, talented, and all respectable men; they have my respect, and if they possessed the power of controlling sovereigns, they ought to be worshipped, because their likeness has never existed beneath the sun. But I would ask again, if any reasonable man can suppose that there is more safety to the rights of the Union, or of the States, in the wisdom and patriotism of the seven men who compose that court, than in the wisdom and patriotism of the million and a half of people who compose the State of New York, or even the fifty or sixty thousand who compose the little State of Delaware? Must the saying of the wise man be reversed in favor of that court? Is it no longer true that "there is safety in a multitude of counsel?"

Does the gentleman pretend to have discovered that the converse of the proposition is true? I am sure that he will prefer no such pretensions, for it has been long the known belief of aristocrats, of monarchs, and of despots. With them, it has been, and always will be, a cherished truth, a truth sustained by their votaries, and enforced by themselves, at all times, and every where. The monarch who proclaimed that "there was safety in a multitude of counsel" did not himself act upon the principle which he avowed. This principle, so dear to republicans, was asserted under the inspiration of that wisdom which distinguished the monarch of Judea from all other men, of that wisdom which is from above. May I not conclude, then, that no argument in favor of the power asserted for that court can justly be drawn from the paucity of its numbers? and that every argument which can be drawn from the number of the judges is against confiding to them a control over the States? Sir, if we refer to what may always be supposed to be the wisdom, purity, and patriotism of the judges of that court, we cannot suppose that there will ever be a time when even the smallest State in the Union will not have, engaged in administering its Government, a much greater number of men, any of whom will, in these respects, be the equals of the judges. They will not only be their equals in patriotism, intelligence, and integrity, but greatly their superiors in an intimate practical acquaintance with the condition of the people, their habits, manners, customs, wants, and enjoyments. And, in addition to these, there will always be in the State a great many citizens, as enlightened and as pure as either of the judges, or the State functionaries, whose vigilance will be employed in checking the officials, and restraining them within the sphere of their duty.

And, let me ask, if the enlightened functionaries of the State, and its enlightened citizens, will not always be as much interested in the correct administration of the Governments, General and State, in the happiness of the people, and in the perpetuity and prosperity of the Union, as those same judges can be supposed to be? By what reason, then, can it be supposed the framers of the constitution

were influenced, to have accorded such power to the judges? It is not expressly given in the constitution: it is presumed to have been given by implication. But how can we obtain the power by implication from that instrument, unless we can reasonably suppose that those who framed it meant to confer it? But, when we consider that this court forms one department of the Government, which Government is supposed to have encroached upon the sovereignty of a State, can we believe that the States, in forming the constitution, intended to arm the court with the power of deciding upon the legitimacy of its own encroachments? with the power of conserving its own usurpations by its own decisions? A law of Congress, made in pursuance of the constitution, is admitted, on all sides, to be supreme, and will be acquiesced in and conformed to by the States. The question is, whether a law in violation of the constitution is supreme, or can be made so by the court? Whether a State cannot form an opinion as to its invalidity, and interpose its veto, where its operation goes to deprive the State of its sovereign power? I contend that neither weakness nor idiocy can be ascribed to a sovereign State; and, therefore, that a State may both think and act in the maintenance of its sovereignty.

Who ever before thought that one of the parties to a contest was a competent judge of the matter in dispute? For, although the General Government was no party to the constitutional compact of union—that having been formed by the States, who are the only parties to it—yet the Government, which was created by that compact, when it encroaches upon the sovereign power of a State, may justly be considered, *quoad* the dispute, as a party to the contest with the State, and, therefore, unfit to decide the matter in controversy. The case, it would seem to me, need not be stated to secure, with all intelligent men, the reprobation of the doctrine contended for on the part of the court. Even in a contest between school children, about their toys, or their amusements, neither will agree to let the other decide the matter in dispute. Sir, who does not perceive that the specification of the powers to be exercised by the General Government was entirely useless, if it was intended that those who were to exercise them were to be the exclusive and final judges of the extent and legitimacy of their exercise?

But the power asserted for the court, by the honorable Senator, is unreasonable in other views. If, then, those who formed the constitution had intended to invest this tribunal with the political power of checking and regulating the Legislative and Executive Departments of the General Government, and of imposing certain salutary restraints upon the sovereignties of the States, they would not only have expressed that intention, but would have adopted and suited the forms of the constitution to the full and efficient exercise of that power. Have they done so? This question must be answered in the negative by all who have paid the slightest attention to the specification of the powers, allowed to be exercised by the General Government, and to the powers reserved to be exercised by the States. Let us suppose that the House of Representatives were to refuse to permit the members, or a portion of them, from a particular State, to take their seats in the legislative hall of Congress: and suppose the Senate were to do the like, in relation to the Senators from any one of the States; or that any one of the States, or even a majority of them, were to refuse to elect Senators to Congress, or that a State were to make a treaty with a foreign Power, or were to coin money; or let us suppose, further, that a person charged in any one of the States with treason, felony, or other crime, were to flee to another, and that other were to refuse, upon the demand of the Executive authority of the State from which he fled, to deliver him up, to be removed for trial to the State having jurisdiction of the crime: by what forms of the constitution can the judicial power of the United States

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interfere in any of these cases, or in a hundred others which might be named? Sir, this mighty State conserving power will be found, when subjected to the scrutiny of reason, to consist more in the fancy of those who are desirous to see one splendid central government supply the place of the sovereign States, than in the nature and genius of our Governments, or in the intention of the States in forming the constitutional compact of union. And the great error which lies at the root of this monstrous doctrine, is in the erroneous supposition that the States, when they formed the constitution, divested themselves of, and delegated to, the General Government, all the sovereign power which may be rightly exercised by the latter, and that they are less sovereign by so much power as may be thus exercised. That this sovereign power, so delegated by the constitution, is mysteriously lodged in that instrument, and exercised by the General Government in virtue of that lodgment. Sir, let me just say that sovereign power is an article that will not keep cold. Others think that this power abides in the functionalities of the Government, and almost all believe, that, let it be lodged where it may, it is out of the States and belongs to the General Government. That those who formed the constitution cut the sovereignty of each State into two parts, and gave much the largest portion to the General Government. I hope that I have, in a previous part of my argument, sufficiently refuted these erroneous, and, as I think, mischievous notions, and proved that sovereignty cannot exist in a divided state; that its unity and its life are inseparable; and let me here add, that you might as well divide the human will: we can conceive of ten thousand diversities of its operation, but we cannot conceive of its separation into parts, neither can we conceive of the separation of sovereignty. It is the will of civil society; which society is a person whose will, in all its modes of operation, like the will of a human being, cannot, without destroying the person, be divided or separated into parcels: for then it will be extinguished, not divided.

But, I may be asked, to what tribunal I would refer a question, involving the sovereign power of a State? I answer, most certainly not to the assailant of that power, not to the General Government, which shall have usurped it, and still less to the judicial department of that Government. And in my turn, I would ask to what tribunal should be referred an encroachment by the Supreme Court upon the sovereign power of a State: for that court cannot only affirm an unconstitutional law, which assails the sovereignty of a State, but it can, by construction, (as we have in too many instances seen) give an unconstitutional efficacy to a perfectly constitutional law. It can, as we have seen, usurp the exercise of legislative power, and under the denomination of rules of court, make laws under which the citizens of a State may be imprisoned contrary to law. Sir, the Congress have been obliged to interpose to prevent the exercise of this usurped power of the judges over the citizens of at least one of the States; I mean the State of Kentucky. And now, sir, the power of that State to legislate over its own soil, awaits upon the docket the decision of that tribunal.

But suppose the Congress, instead of restraining, as it did, the judges of that court, from incarcerating the citizens under color of their rules of court, and contrary to the laws of the State, had refused to interfere; to what tribunal must the State have appealed for the protection of her citizens against lawless incarceration? The honorable Senator would say, to the Supreme Court; to that very tribunal which had committed the outrage. I answer emphatically, no. The sovereign power of the State should have been exerted for the protection of its own citizens. It can and ought to refuse to the court the use of its prisons, for purposes so oppressive of its citizens, and subversive of its sovereign power. It ought to exert its own governmental machinery to the extent of all their apti-

tudes, and of its own power, to protect its own citizens against aggressions so lawless and so enormous.

In such a case, the State should appeal to its own sovereign power, and decide for itself. Indeed, in every case involving its sovereignty, it must do so, or renounce its sovereign character. Whether it shall exert its self-protecting power, through the organs of its government, or through a convention, or by what other means it may, will depend upon the character of the aggression. Every State must speak its will through one or the other of those mediums. It may use the former or employ the latter, according to its own opinion of their respective fitness for the urgency.

And what, you will ask me, will be the result of this resistance by a State, of an unconstitutional law of Congress, or an unconstitutional decision of the Supreme Court? I answer, that the first result will be, the preservation of the sovereignty of the State, and of the liberty of its citizens, at least for a time. The next result will be, that the attention of the people of the other States will be awakened to the aggression, and the Congress, or the Supreme Court, which ever shall have been the aggressor, will be driven back, into the sphere of its legitimacy, by the rebuking force of public opinion. Such was the result of the nullifying resolutions of the States of Virginia and Kentucky, in relation to the alien and sedition laws. And such was the rebuking effect of public opinion in relation to the famous compensation law.

But if these results should not follow, you ask me what next? Must the State forbear to resist the aggression upon her sovereignty, and submit to be shorn of it altogether? I answer, no, sir, no; that she must maintain her sovereignty by every means within her power. She is good for nothing, even worse than good for nothing, without it. This, you will tell me, must lead to civil war. To war between the General Government and the resisting State. I answer, not at all, unless the General Government shall choose to consecrate its usurpations by the blood of those it shall have attempted to oppress. And if the States shall be led, by apprehensions of that kind, to submit to encroachments upon their sovereignties, they will most certainly not remain sovereigns long. Fear is a bad counselor, of even an individual; it should never be consulted by a sovereign State.

No, sir, it is in the power of Congress, instead of shedding the blood of the citizens, who assert the sovereignty of their State and resist its prostration, to refer the question to an infinitely more exalted tribunal than the Supreme Court. I mean to the States of this Union. They formed the constitution; they are fit judges of questions involving sovereignty, being themselves sovereigns. The fifth article of the constitution provides for this. It reads thus: "The Congress, whenever two-thirds of both Houses shall deem it necessary to propose amendments to this constitution, &c. &c. which when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, (not of the people at large, but of the States) shall be valid, to all intents and purposes, as a part of this constitution." Three-fourths of the States constitute the august tribunal to which Congress can refer the question. To this tribunal the State can have no objection, because it was created by the constitutional compact; because the power of amending the constitution was accorded to it in that compact.

I state the case thus: The powers which the States, in their constitutional compact, have allowed the General Government to exercise, are special. The agents of the United States, in the exercise of those special powers, have, as one of the States alleges, transcended their specific limits, and infringed upon their sovereignty. The State resists the exercise of the power of which it complains, as unauthorized by any stipulation in the compact, and as incompatible with its own rights and duties as a sovereign. The agents, as functionaries of the General Government,

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say that the exercise of the obnoxious power is within their legitimate competency; but rather than be thought fastidiously nice, or perversely obstinate, modestly propose that the Supreme Court shall decide the matter. The State replies that it cannot, without violating every principle of congruity and self-respect, submit any question, in relation to its own sovereignty, to any portion of the subalterns of the States. That it is itself, in virtue of its sovereignty, the judge of its own rights, and bound as a sovereign to maintain them. That while a sovereign State cannot decently be supposed to violate the clear rights of the General Government, it cannot reasonably be required to surrender its own obvious rights to the assertion of dubious powers on the part of that Government. That the right of sovereignty in the State is clear and unquestionable. That the right, under the alleged authority of which its sovereignty has been assailed, if it exist at all, must exist in specific grant. That the denial of its legitimate existence by a sovereign State ought to induce the General Government either to abstain from exercising it, or to call upon the States to remove all doubt about its legitimacy, in an amendment to the constitution, by the concurrent vote of three-fourths of their number.

Let me urge that this reply of the State is very reasonable, infinitely more so than the proposition on the part of the General Government, to which it is made. For if the power in question does not exist in the constitution, and is believed to be necessary for any of the great objects of the Union, the States will, by an amendment to the constitution, accord its exercise to the General Government. Or if its existence in the constitution is dubious, they will, by an amendment couched in explicit terms, remove all doubt; and thus, sir, the Government will avoid the tumult, confusion, and, perhaps, bloodshed, which might be connected with any attempt on the part of the General Government to divest a State of its sovereignty, and subdue it by force into vassalage. This is the course which the General Government ought to take in a question between itself and a sovereign State, in relation to the sovereignty of the latter, and the legitimacy of the power exerted by itself, in derogation of that sovereignty.

I say that Congress should take this course—that Congress should make the appeal to the tribunal of the States, because it claims to exercise a special power, and reason requires that, when the existence of the power, or the legitimacy of its exercise, is questioned by a sovereign State, it should be able to show its authority free from all doubt. It is upon rational principle that, in all Governments, courts of special and limited jurisdiction are required to accompany their acts with the authority by which they were done; and their doings, unless their power to act is clearly shown, are considered as lawless and void. Sir, this principle limits the exercise of all special powers, whether legislative, executive, or judicial. A common corporation, chartered by a State, must be able to show in its charter an explicit authority for whatever power it claims to exercise, and its acts are void, unless its power to do them is explicitly granted in its charter. If the power under which it claims to act be dubious, instead of persisting to act, it must obtain from the Legislature an amendment of its charter, or abandon its claim to the power of acting *quoad*. Now all the reasons which apply to the smallest corporation, in relation to its chartered powers, apply with equal, with increased force, to the Government of the United States, and to the constitution, its charter. It is a stupendous corporation, and becomes fearful in powers, when it claims for its judicial department the exclusive right of legalizing, by its decisions, the encroachments made by itself upon the sovereignty of the States. The constitution is its charter. Its powers are special and limited. To be safely exercised, they must be confined within the clear limits of the charter. If these limits may be transcended, all limitation was useless. If

dubious powers may be exercised and enforced, then specification was useless. It is upon this principle that officers of Government, before they can do any official act, must exhibit their commissions—their authority. No man occupies a seat in this body, without having exhibited a clear title to it; and it might as reasonably be urged that he could take his seat by force, without exhibiting title, or upon a doubtful title, as that the General Government shall exert by force a non-existing or dubious power. If a doubt had existed in the title of the honorable Senator to a seat in this body, he would have to go back and get his title so amended as to remove all doubt, before he could occupy his seat. So the Congress, in relation to the exercise of even a doubtful power, should go back to the States, and obtain, by an amendment of their title, a removal of all doubt as to its legitimacy.

But another reason why Congress, and not the injured and resisting State should make the appeal to the tribunal of the States, is, that an appeal by the State, would be as unavailing as it would be unwise. A majority of the States have passed the obnoxious and questionable law complained of by the State. The State therefore cannot make the appeal efficiently; the Congress can. The State cannot do more than she has done. She must only poise herself upon her sovereignty, and resist its prostration. The Congress can do more. It can appeal to and obtain from the States an explicit decision of the question. And if it shall fail to make the appeal, and obtain the decision of that tribunal affirming its power, it should decline all further attempts to exert it. But again, the State is acknowledged to be a sovereign, and its sovereignty is acknowledged to be necessary to the liberty of its citizens, and its own existence as a State. Its power is primitive, clear, and certain. That of the Government by which it is assailed is derivative and doubtful; can any reasonable man say that the former should yield to the latter, upon any other principle than that the latter is as abundant in force as it is deficient in right? Reason itself would say, that the natural state of things should remain unaltered, unless the authority for removing or altering them shall be full, clear, and legitimate.

Throughout this debate the States have been treated as restless, querulous, impatient, disorganizing beings. It seems to have been taken for granted that they are either too dull to comprehend the provisions of the constitution, or too unprincipled to observe and maintain them. That the zeal to maintain the Union and support the constitution, by which it was formed, is exclusively with the functionaries of the General Government, that the States feel none of. Now, let us examine into this matter a little. All intelligent men act from motive. The States that formed the Union were composed of intelligent men. The motives which led to the formation of the constitution were, to promote the happiness, tranquility, liberty, and security, of the people of the States. In furtherance of these great objects, the States agreed, in that instrument, to exert their sovereign power jointly, in making war, peace, and treaties, and levying money, and regulating commerce, &c. Their powers were to be exerted through the agency of the General Government. Now, can it be supposed that the motives which led to the formation of the Union have ceased to exist—have evaporated? That the people of the States are less inclined to be happy, tranquil, prosperous, secure, and free, now, than they were when the Union was formed? Or that their perceptions of its utility are less distinct and strong now, than its beneficial effects have been experienced, than they were then, when its beneficial effects were only anticipated? The States made the constitution, and formed a more perfect Union, under the conviction that it was needed. Have occurrences since that time been calculated to prove that their convictions of its utility and necessity were erroneous? Have they given any indications to that effect?

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I believe not. On the contrary, they have evinced, from the period of its formation, up till this very moment in which I am speaking, no sentiment in relation to any subject, so strongly as that of an affectionate regard for, and devotion to, the Union. Why then this iniquitude about the Union? Why is the gentleman inspired at this time with such a devotion to its consolidation? There was a time, during the late war, when some zeal on that subject was felt; but at that time, the reasons for it were apparent to all. For myself I regard it as the union of twenty-four sovereign States, and rely more upon their intelligence and zeal for its support and continuance, than I do upon the power of the Supreme Court, or the inordinate zeal of any given number of politicians. It is upon the people of the States, and not upon the politicians, that solid reliance is to be placed for the continuance and just operation of all our institutions. They will maintain and vindicate the Union, not for the purpose of imposing certain salutary restraints upon the sovereignty of the States but for the high purposes and objects for which it was formed. Utility was the object for which it was formed; and while it subserves that purpose, it will be maintained. But when purposes of splendor and magnificence, of pageantry and parade, shall supersede those for which it was formed; whenever it shall be supposed that the sovereign States of which it is composed must be whipped by the patriotic functionaries of the General Government into the support of it; whenever its continuance shall be made to depend upon the power of the Supreme Court, exerted in subduing to its support the sovereign States; whenever the compact of Union shall be so construed as to give to the General Government the right of deciding upon the validity of its own encroachments upon the sovereignties of the States; and, let me add, whenever the States cease to maintain their sovereignty, and their own competency to maintain it against the encroachments of the General Government, then, indeed, will the duration of this Union become problematical.

We should never forget that the greatest good, when perverted, becomes the greatest evil. The Union, while it continues to be what it was when it was formed, and what it was intended it should continue to be, an Union of free, sovereign, and independent States, will be considered by the States as the greatest conceivable political good; and for the maintenance and support of which the people of the States would, when the occasion should demand it, pour out their blood like water. But, even in their high estimation of it, they do not hold it as the greatest good. There is one still better, still more precious, which they rate infinitely higher. It is their liberty; and for the people to be free, the States must be free; and no State can be free, the sovereignty of which is subject to the control of another—is subject to certain restraints, however salutary, imposed by the judicial department of another Government. But, I feel confident that, while ever the Union conduces to the maintenance of the freedom of the States, the people of the States will maintain it; and whenever it shall be made the instrument of tyranny and oppression, they will cast it off and form one more perfect. That is, if they retain the spirit of freedom: if they do not, it matters but little what kind of Government they have.

And, indeed, upon the doctrine of the honorable Senator, relative to the power of the Supreme Court over the sovereignty of the States, I cannot see what is to prevent a perfect consolidation of the Government, and consequent monarchy or despotism. We have now, if he is right, a fearful oligarchy. Nothing but the forbearance of that tribunal can save us: we are denied the right of saving ourselves. The States must yield obedience to their sovereign mandate; must doff their sovereignty at the nod of the Judges. They cannot interpose their veto, but must submit to any salutary restraints which the

Judges may choose to inflict upon their sovereignties. Sir, the power of imperial Rome, in her proudest days, was not superior to that asserted by the gentleman for the Supreme Court, nor were the humblest of her provinces in a condition more abject than that of these States, according to his doctrine.

The conquests of Rome were achieved at an incalculable expense of blood and treasure. But this tribunal may vassal twenty-four sovereign States, without shedding one drop of blood, or expending one dollar of money. A single *curia advisare nullo* will do the business.

Now, sir, what is the condition of the States? They are not to resist encroachments upon their own sovereignty: resistance with them is crime. The Congress will not resist encroachments made by the Judiciary upon State sovereignty, because that encroachment is but a salutary restraint, and because the decision of the court may, and no doubt often will, be but an affirmation of encroachment by the legislative department of the General Government; so that, sooner or later, State rights will be named only to point a sarcasm, or to excite a smile of derision. Indeed, a smile of that kind may even now be seen mantling upon the face of some gentlemen when that subject is named. Sir, these rights are exercised by the States in relation to subjects within their own territorial limits, and in a manner so little imposing as to attract but little attention from without. The exercise of them is as obscure as it is beneficial. A State, in regulating its domiciliary concerns, exerts its sovereign power without its exterior trappings; without the usual lustre and imposing glare of national sovereignty. It never appears in court dress. It has no navy, no army, no diplomacy, no boundless revenue. In relation to all these subjects, the sovereign power of each is exercised jointly with that of the others. The General Government, through whose agency the sovereign power of the States jointly is exerted, in relation to all these subjects, without having any national characteristic, without being more than a mere fiduciary for the States, is surrounded with the splendors and the patronage of a nation. And there is reason to apprehend that there are many influenced by appearances, not less disposed to ascribe to it unqualified power, than some of its functionaries are to assume and exercise it.

But the whole argument of the gentleman has gone upon the predication that the States are to be kept in order by coercion only. That, but for the controlling power of the Supreme Court, they would transcend their appropriate spheres, and usurp the powers assigned by the constitution to the General Government. Now, sir, in what instance, I would ask, has any State displayed such a disposition? What exertion of power, by any one of them, since the formation of the constitution, has been of that character? When did any one of the States attempt to make a treaty with a foreign Power, or with any of the other States? Has any of them attempted to make war, to coin money, to regulate commerce, to grant letters of marque and reprisal, to erect a navy, to raise and support armies? or to do any other act, or exercise any of the great powers separately, which they had agreed in the constitution to exercise jointly? Has any State failed to send its proportion of members to the House of Representatives, or its two members to the Senate of the United States? or denied full faith and credit to the public acts, records, and judicial proceedings of the other States? No State has violated, or attempted to violate, the constitution, in any of these particulars. I mention them, because in no one of them could the Judiciary have interposed its restraining power, even if it were possessed by that department to the extent contended for. It could not, by the forms of the constitution, have reached any one of the cases, by any conceivable exertion of its power. What, then, restrained the States from violating the constitution, in any of the particulars which I have enumerated? If

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they are as prone to transcend the limits of their power as they are represented to be, one would think that, in the course of fifty years, some instance of violation must have occurred. No, sir, the security of the constitution from inroads upon it by the States, is to be found in that wisdom which is always associated with sovereignty. If the concurrent will and the concentrated wisdom of the people who compose a State, is not to be confided in, on what else under Heaven, I ask, can confidence be placed? That will is necessarily pure, because it is the will of the people; not as people, but as citizens. It is the will of all in relation to each, and of no one in relation to himself specially; and there is not a man, or set of men, on earth, who, if they can be freed from selfish influences, will not act justly. Sir, that is the condition of the citizens of the States; their sentiments are all of that character; they are discolored in their operation by the selfish influences of the political fiduciaries through whose agency they take effect; and this discoloration, which is produced by the functionaries, is charged upon the citizens. It is the functionaries, then, and not the citizens, who are to be feared; and those of the General Government not less than those of the States; and with both, those are most to be feared who are least responsible to the citizens; and, therefore, the judiciary is more to be dreaded than any other department. What motives, let me repeat, can the States have, to weaken or destroy the Union? They formed it, and, after all, they have the power of maintaining or destroying it. It lives in the breath of their nostrils; in their intelligence; in their affections; and their conscious need of it. It was not formed by them under the coercive influence of the Supreme Court; it was the offspring of the unrestrained and unconstrained sovereignties of the States. Sir, the doctrine contended for is parabolic: it is for the destruction of the parent by its offspring: it is not the doctrine of Jefferson, or Madison, or Hamilton. But I am averse from quotation; a doctrine should be approved or reprobated, not because it has, or has not, the sanction of this or that distinguished man, but because it is intrinsically right or wrong. I am opposed to the government of living men, still more of the dead. Our government should be that of laws, through the agency only of men. Every civil society, large enough to constitute and maintain itself as a State, should govern itself by its own will, through the medium of such devices as its wisdom shall select. It should act jointly with its associates, in reference to foreign objects, and separately in reference to its interior concerns; but it should maintain its sovereignty by all means, and at all hazards: for there is not, in the catalogue of evils, a single one so much to be deprecated by a State as the prostration of its sovereignty: it is the loss of their liberty, to the people who compose it.

Sir, I fear I have fatigued you and the Senate; the only apology I can offer is, the importance of the subject which I have endeavored to discuss. I view the State sovereignties as the afloat anchor of the Union. I look to the States, and not to the Supreme Court, for its strength and perpetuity. I view the doctrine asserted by the gentleman as greatly more dangerous to this Union than the Hartford Convention, or the war, through which it so gloriously passed.

Sir, there is no danger of the States flying off from the Union; you may possibly drive them off, by attempting to prostrate their sovereignty, and make them vassals of the Supreme Court, or provinces of the General Government; but, left in the undisturbed enjoyment of their own sovereign rights, they will cling to the Union as the rock of their safety, and adhere to it until time itself shall have grown old.

I cannot close without expressing my concurrence in the sentiments so eloquently and forcibly expressed by the honorable Senator from South Carolina, [Mr. HAYNE] in relation to the public lands. The Union would not, in

my opinion, be weakened, but strengthened, by his mode of disposing of them; upon his plan, you would have farms where you have now a wilderness, freeholders where you have now day-laborers; and the abjection of poverty would be exchanged for the pride and patriotism of proprietorship. Sir, the strength of the Union is in the number and patriotism of the people of the sovereign States which compose it; and the wealth of the States consists in the productive industry of their citizens. Now, the strongest incentive to agricultural industry consists in the consciousness of each citizen that he is the proprietor of the soil which he cultivates. Let the public lands, then, be sold, not given, at a price which aims rather at multiplying freeholders, than at increasing the revenue; as the primary object of selling them. Another motive with the United States to sell the public lands at a very moderate price, should be to strengthen the weak and more exposed parts of the country. Emigrants should find in the reduced price of the lands, strong motives to settle, and thereby strengthen those weak and exposed parts. But the great, the paramount motive with me, to sell the public lands at the very lowest price, would be to release the States in which they lie from their dependence upon the General Government; and the other States from the degradation of soliciting, of supplicating Congress, for donations of them. The States should have the eventual or transcendental right of sovereignty to the soil within their limits.

Every policy which has a tendency to humiliate the States, either by force or seduction, should, in my opinion, be deprecated. It is a tendency towards the consolidation of the Government, and the slavery of the people. Revenue, for the same reasons, should not be unnecessarily accumulated in the public treasury. The money, not needed by the Government, should not be exacted from the people. It should be left in their pockets; there it increases the incentives to industry, and the facilities to reward it. When the treasury of a monarch overflows, his subjects bleed: for war is the game at which monarchs delight to play, when they have money to bet. When the revenues of a republic are redundant, speculation, fraud, and corruption, nestle about the treasury. Among free governments, that is the best which promotes the happiness, and protects the rights, of the people, at the least expense. The people get their money by labor: whatever the Government takes of it, more than is necessary to pay the just expenses of its administration, is, to the extent of the excess, an infliction of slavery upon them. Revenue beyond the necessary expenses of this Government can only be necessary for purposes of consolidation—not of the Union, but of the Government.

A word upon the road-making power of the Government, or rather upon the expediency of the exercise of that power, by this Government: for the State of Kentucky has, for the present, silenced the question with me as to the power. I am an instruction man, and will speak the sentiment of my State, according to its instructions, without inquiring into the reasons by which it was influenced in giving those instructions. I cannot, however, repress the expression of my fears that there is more of seduction in the captivating terms by which this system is designated, than there will be of solid, practical utility in its process and results—"The American System." These are words of magic potency with those who do not examine into their import, into the operation and effect of what they mean. If they are construed to mean the exercise of any power, not expressly allowed by the States to be exercised by the General Government, then their import sanctions usurpation; then the constitution ceases to be alone the bond of union. If they mean that the powers of the Union, instead of being exerted for the States, and for the great objects contemplated by the States, shall be exerted within each State, then, it be-

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hooves the States to inquire into the *cui bono*, into the policy of it. It behooves them to inquire whether the money expended in making roads in each State is the money of that State, collected from the people of it, or is the money of, and collected from, the people of another, to make roads in that State. Each State should then inquire of itself whether it would be willing to be taxed for the purpose of making roads in another State. The people of Massachusetts would not be so much enamored with the American System as they are, if they understood it to mean that they should be taxed to make roads in Kentucky; nor would the people of Kentucky admire it greatly, when, by its operation, they were taxed to make roads in the State of Massachusetts, and so with the other States. Each would refuse to surrender the surplus produce of its labor, to embellish with fine roads and canals the surface of another State. Well, when they understand it to be nothing more than the exercise of a power by the General Government, in taxing the people of each State, and collecting the money from them, to make roads for them, in their own State, they will say that the power of the State is competent to collect this money, and to make its own roads.

Sir, each State has discernment enough to lay out and superintend the making of its own roads, upon its own land. The General Government has no land in most of the States, and no sovereign jurisdiction over any of them. The only result of the exercise of this power by the Government, within the States, is to diminish the power and patronage of the State, and swell unnecessarily that of the General Government. If the State makes the road, it employs all whose agency shall be needed in the operation, engineers, superintendents, overseers, laborers, &c.: and it, instead of the tax-gatherers of the General Government, collects, by the operation of its own revenue laws, from its own citizens, the money required for the object. It retains, as it ought, jurisdiction over the road, as a part of its own soil. It erects the gates, and regulates and collects the toll, by the agency of its own officers. All this is natural and appropriate: it is the just and natural operation of the sovereign power of the State, within its own limits, and with its own means. But, is the operation of the American System of this character? Is it natural, just, expedient, or legitimate, in this view of it? What, let me ask you, are the States for, if they are incompetent to make their own roads? You reply, to protect their citizens and their property. But will they not, in this instance, surrender them over to be taxed by the General Government, and will they not subject their citizens to the jurisdiction of the Federal courts, in all disputes which may arise, relative to the collection of the tolls, and relative to the lands over which the roads pass? The road is to be made, the gates erected, and tolls fixed, under a law of Congress; and then those laws are to be supreme, and cognizable by the Federal Judiciary alone. Sir, we have heard the power of the Supreme Court discoursed of, by the honorable Senator from Massachusetts, in relation to its control over State sovereignty; and ought the States to swell the power of this tribunal, by a voluntary surrender of their jurisdiction over their soil, their citizens, and the road-making power? Does any man, even the most devoted to the American System, believe that the people of the States would agree to a direct tax for the purpose of making roads in the States? And would the people of any one State agree to pay a direct tax for the purpose of making roads in another State?

The true American System is the sovereignty of the States, the freedom of citizens, and the constitutional strength and compaction of the Union. We hear nothing now scarcely about any thing but the beneficent operation of the American System, and the beneficence of the General Government. We should take care that it may not

turn out as it did with the prophet who swallowed the book—"sweet to the palate, but bitter to the stomach." Would the people of Tennessee agree to be compelled by the General Government to labor upon the roads of Kentucky, or the people of the latter to labor on the roads of the former? I think they would not. Well, is not the money of the people of each State their labor? Is it not the earnings of their labor? And where is the odds, in reason, between making the people of Tennessee labor upon the roads in Kentucky, and taking the money which they have earned by their labor, and expending it upon making roads in the latter State?

But if the power of levying money in one State, and expending it in making roads in another, be conceded to Congress, what is to prevent that body from regulating and equalizing the labor of the people of the States? and under that power to equalize the crops of the different States? Is not that in fact the result of the principle? For the most productive States pay the most money into the treasury. They make their money from their crops; and if it is to be expended in the least productive States, is not that equalizing the crops? But upon this principle might it not happen, that some of the small States would not have any of the money of other States expended within their limits, and even their own expended within the limits of another State? Might not the large, and as many of the small States as would form a majority in both Houses of Congress, combine to expend the surplus revenue, in making of roads and of encouraging manufactures, within the limits of their own States, respectively, to the entire exclusion of the minority? Eleven States in that case might be sacrificed to the encouragement of manufactures, and the making of roads in the other thirteen, and that, too, forever, according to the doctrine of the honorable Senator from Massachusetts, [Mr. WABSTER] and the beneficent operation of the American System. None of the excluded States could, according to his doctrine, interpose its veto. If they did they would incur the guilt of rebellion or treason. Sir, I am for the system of the Union, according to the constitutional compact of the States in the constitution of the United States.

Every institution of man is purer at its commencement than at any after period of its history. There is in all human institutions a fatal proclivity to degeneracy: even the institutions of our holy religion degenerate. Hence the people of every Government have their choice between reform and revolution. They must do the one, experience the other, or submit to vassalage. But even reform is decided now. No doctrines are well received that do not tend to centre all power in the General Government, and conduce to the annihilation of the sovereignty of the States, and the erection upon their ruins of a magnificent empire.

I am, with my whole heart, and in all its feelings, in favor of the Union; but it is the Union of the States, and not an indiscriminate union of the people. I would not, by construction, or otherwise, reduce the States to mere petty corporations, and make them subservient to a judicial oligarchy—to a great central power of any kind. I would have the Union to consist of the free, sovereign, and independent States, of which it was intended by the constitution to be composed; I would have the citizens of each to look to their State for the security and enjoyment of their rights and their liberty. The Union which I advocate is also represented by the stripes and the stars. Each stripe a State, and each star its sovereignty. I would not mingle the stripes or blot out a star for any earthly consideration; and I would have each star to brighten with its benign and unclouded light the whole sphere of State sovereignty; I would have them all to shine with confluent lustre throughout the legitimate sphere of the Union. The stripes should thus wave, and the stars thus shine, if my wishes were consulted, until even Time himself should be enfeebled with age.



SENATE.]

Mr. Foot's Resolution.

[FEB. 9, 1830.]

TUESDAY, FEBRUARY 9, 1830.

The Senate resumed the discussion growing out of Mr. FOOT's resolution, relative to the further survey and sale of the public lands.

Mr. BARTON, of Missouri, rose, and addressed the Senate for more than two hours. He began by saying he was one of those "unlincal and bastard sons of the West," who had been denounced as false to their country, during this strange debate; in the commencement of which, he was persuaded, the Grand Sachems of the party could not have been consulted. All was going on harmoniously here. The magnanimous victors in the late Presidential campaign seemed satisfied with their triumph and their trophies. All parts of the Union were expressing favorable dispositions towards the young West. A liberal system in disposing of our public domains, propitious to our growth and our prosperity, and to the development of all our resources, was openly advocated by the North, the South, the East, and the West; when a minor chieftain of the party, of not much renown for either policy or war, [Col. BENTON] not satisfied with the scalp he had taken in the late campaign, fell suddenly and unexpectedly upon the prisoners of the minority, and commenced a scene of massacre of the living, and, dragging the dead from their graves, even rescalped those who had been scalped and buried by other arms more valorous than his own, during the existence of the by gone war! And thus one, arrogantly speaking for the whole West, threw the fire-brand among the members of this body, and lighted up the flame of this partisan warfare, of sectional prejudice, local animosity, and civil discord!

The latitude and liberty of this debate [said Mr. B.] seem to be a kind of Saturnalia in the Senate of the United States. This may be a good thing during a long session of Congress, if not too often repeated. The Romans, too, had their Saturnalia, in which it was allowable to the veriest slaves in the empire to speak home truths to their masters, without either fear or reserve. It is not my purpose to avail myself of the full range of my privilege; nor to affect to speak daggers to the bosoms of either the ruling majority here, or that board of rewards and punishments yonder; who, having obtained possession of the treasury, the press, and the offices, honors, and emoluments, of the republic, have been enacting such freaks of "party discipline" as would make the fathers of the Revolution weep if they could behold them.

It is not my purpose [said Mr. B.] to remeasure all the grounds of this extended debate; but I propose to review the prominent points—to pass from hill to hill, from river to river, and from mountain to mountain, as well as I may, giving a brief and imperfect sketch of the principal features of each. And if gentlemen will not be surprised, and think me out of order, I will even touch upon the matter in debate—the proposed inquiry for information, of the Senator from Connecticut, [Mr. POOR] and the amendment offered by the Senator from New Hampshire, [Mr. WOODBURY] which covers the whole resolution over, as a cloak covers a Senator, and looks very much like a substitute.

I have the honor to be one of those "unlincal and bastard sons of the West," who were so unmercifully denounced by the author of this party warfare, in the concluding part of his three days' harangue in the cause of sectional prejudice, local animosity, and civil discord. I am one of that great and patriotic minority in the West, who so disinterestedly endeavored to sustain the hunted administration of Mr. Adams, against which all the arrows of party malignity were shot, all the hell hounds of sectional prejudice, local animosity, and civil discord, were let loose; and all the lust of office and power of combination were arrayed. And in this our fallen condition and day of adversity, and of our country's adversity, we have reason to feel thankful that this notice of us from such a quarter did not come in the more milddewy form of approbation or of praise.

But as this debate has been converted into a mere partisan warfare of sectional prejudices and civil discord, and as this war has degenerated into a mere relentless massacre of prisoners, sacking of towns, and robbing of graves, I will shield myself under the great fundamental principles of the constitution, and, with the light of the Farewell Address of the Father of his Country in my hand, and with something of the little liberty still remaining to the minority, carry back the war into the enemy's country, so far as to attain that indemnity for the past, which can only consist in recapturing our lost property; and that security for the future, which can only consist in placing our motives above the reach of the assailant; not hoping to conquer in him the propensity to violate the rights of others, or to destroy in him the ability to do further mischief, while backed and sustained by such a majority as that to which he has attached himself.

Aware of the unequal contest against such a physical superiority of force, in possession of all the strong holds, all the artillery, and all the munitions of war, with my sling and my pebbles I advance to the field.

Never did a more disinterested and patriotic body of men appear in one of our Presidential contests than that minority in the West with whom I had the honor to be associated under the administration of Mr. Adams, and the equal honor to be denounced under that of his successor, as the "unlincal and bastard sons of the West!" We saw, with sorrow, the line of our revolutionary worthies extinct; that henceforth a new race of aspirants would spring up among us, divide and distract the country into personal factions, arrayed under the banners of their local leaders; and those harmonious elections by general consent, which marked the elevation of most of our former Presidents, about to disappear from our country, perhaps forever! We were not ignorant of the fact, that in such an array of parties, under a great plurality of leaders, those who did not succeed might coalcesce, and form an opposition, to hang upon the rear of any future administration, and paralyze all its efforts for the public weal. We saw the Presidential elections of our country about to assume a new character; to become mere raffling matches and lotteries, in which the desperate in fortune would take a chance, in hope of relief; and the bankrupt in reputation would seek protection "in the shelter of crowds, and the strength of combination." We belong to neither of these two classes; we had no personal stake in that raffle, no ticket in that lottery, except in common with our country; we neither desired nor expected any office or individual advantage. We were not the subjects of defeat in a Presidential contest, except in common with the constitution and liberties of our country. If these went down, we went with them. If our candidate succeeded, we rejoiced for our country; if his rival succeeded, and the constitutional liberties of the country were preserved, and its welfare were promoted, in an equal degree we were content, and had gained our victory.

We did not dream of this reckless proscription for opinion's sake that now makes the land pale! of this ravaging persecution for the exercise of the high and sacred right of election, which now tears the vitals of this republic! It never entered our imagination that a combination, guided by the fiends of party discipline, office-hunting, and vote-auctioneering, could so soon convert the high and happy privilege of free elections into a species of contest for victory and vengeance, and the Presidential elections of our country into the sacking of cities by the troops of Suwarrow; and the offices, and honors, and emoluments of our country into the mere spoils of barbarian war. We fondly believed the time to be far, far in unknown futurity, when the Presidential elections of the United States, as the elections of the Emperors of Germany and the Kings of Poland, should become the signals for civil discord and sectional strife; and, like them, prove

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the rock upon which the vessel of state must be ultimately wrecked and lost. We beheld a great nation spring up on this continent, and suddenly extend itself from the Atlantic Sea to the Mississippi, from a stock of fugitives from persecution and proscription, both religious and political, in the old world; and we have been taught, and fondly believed, that, so far from those demons of human misery reaching us here, they had been effectually excluded by the ramparts of our own free constitution; that the exercise of this great fundamental right of election, which lies at the foundation of all our liberties, would never even embitter the charities of life, or disturb the harmonies of society for a moment; but that each freeman would like the other better for his honest difference of opinion, guaranteed to him by the sacred compact of our civil institutions, and consecrated by the blood of the Revolution.

It is true we had been solemnly warned, in the Farewell Address of the Father of his Country to the people of the United States, in the most anxious and parental solicitude, that Catilines would arise in days to come, in these then happy States, and that demagogues and aspirants would spring up among us, whose objects would be to gratify their inordinate and unhallowed ambition; whose means of mischief would be to inflame sectional prejudices and local animosities in one portion of the Union against another; to represent their interests to be different and inconsistent with each other; and to cultivate and cherish the young devils of discord to tear out the vitals of the Union, and scatter them to the dogs of civil war and horrid anarchy; that such Catilines might reign as champions of their deluded sections of the Union, and enjoy a little illegitimate and parricidal renown. Of these, above all other enemies, the Father of his Country had warned us to be on our guard.

Thus forewarned, in 1824-5 that great minority believed they saw symptoms of the coming evil. They beheld the people of the United States, like an agitated ocean, threatened with the storms of sectional ambition, and no revolutionary worthies at hand to seize the helm and guide the vessel of state through the tempest with the firmness of Washington and the wisdom of Nestor. We conscientiously believed Mr. Adams the better qualified of the two principal candidates. General Jackson had taught us to divert ourselves of such sectional prejudices as our situation and education had subjected us to, and to revere Mr. Adams for his virtues, and to admire him for his talents; and had lauded his appointment as prime minister to guide the administration of Mr. Monroe, the last of our revolutionary Presidents. Our devotion to the civil over the military was sincere. We perceived no essential difference in their political principles. Their construction of the great charter of our rights and powers was the same; their great leading principles of policy were the same. We saw no difference then; we see none now. Washington had warned us against sectional jealousies, and we remembered that New England, the cradle of the Revolution, and the birth-place of American liberty, had given but four years' Presidency since the foundation of the republic! New England recommended her son, the friend of Washington and the guide of Monroe, to our suffrages, and honored him unanimously with her own. We sincerely believed that old Virginia and North Carolina, the mothers and grandmothers of so many of us in the West, with much of the South, would lead us in the same preference as soon as they found they could not succeed with their favorite candidate. The organ of Virginia politics had even placed General Jackson lower than we of the West could brook to see him placed. We confidently believed we beheld our venerated mothers pluck the fruit and taste it; heard them pronounce it good, and safe, and wholesome; and saw them offer it to their children. We took it and ate, never dreaming that it was afterwards to be pronounced forbidden or poison, or that we were to be

damned for tasting it. It is not Virginia, "magnanimous Virginia!" that proscribes us now. It is only what is called in the country "the little Jacksons." The class that follows the victor rather for the loaves and fishes than for the words of political life. The example of toleration of the difference of opinion in the exercise of the high and sacred elective franchise, which Virginia has set in the election of members to her late convention, is worthy of all imitation—of the imitation of every State in the Union, and particularly of the President of the United States and his board of rewards and punishments, called a cabinet! And if Virginia has seen, since the election of Mr. Adams, that new light mentioned in this debate, which causes the turning of a short angle, and we have kept on a straight course, in the direction she then pointed us, our apology is, we did not see the new light that led her around the corner; nor do we question her belief that she saw it, nor her motives in flying the track; still less do we accuse her of having misled us at first. For we are of the same opinion still as in 1824-5.

For myself, I should feel constrained to give my vote for Mr. Adams again, in like circumstances, were it practicable. Nor will I even deign to try the experiment what effect might be produced on a future election in Missouri, by a timely adhesion to the powers that be. I will not chaffer for office. I will join no indiscriminate opposition to this or any administration of the Government of my country. If this administration come up to the line of the great fundamental principles and constitutional liberties of the republic, and of the settled policy of the country, as pursued by the late administration, we will endeavor to travel together in that way; but whenever this administration go off the line at a tangent, as I believe they have glaringly done, by striking citizens from the roll of official existence for the exercise of the high and inalienable elective franchise, we must separate. I pursued a like course under the late administration—supporting where I could, dissenting where I must; each tolerating the honest difference of opinion.

Yes, sir, I am of the same opinion still; and believe I can give a rational account of the sad revolution in our affairs which has since befallen that minority, and placed it in high and honorable company, by driving one of the most elevated and upright spirits of the age [Judge McLean of Ohio] to lay down the General Post Office Department of the United States, as a sacrifice upon the altar of his country's good!—nobly preferring the constitutional liberties of his country, and his children's country, to the Post Office Department, with the party discipline and vote-auctioneering of these degenerate times!—nobly refusing to view the Presidential elections of his country, and his children's country, as the sacking of provinces by Tartar hordes, and the offices, and honors, and emoluments, of our Government, as the spoils of Scythian war! And woe to that minister who has advised the President to such an anti-republican course! It were better for him that he were fitted for Heaven, and a millstone tied around his neck and be thrown into the Potomac! The days of the present delusion will pass away, and the votaries of constitutional liberty be again seen in the high places.

In our cheap republican experimental form of government, with comparatively few offices, the vast throng of the people of the United States must, of necessity, be out of office. This vast throng, if agitated by office hunters, demagogues, aspirants, and Catilines of the day, may be abused, deceived, and led astray. So thought George Washington, the Father of his Country, when he pointed the solemn warning, with a father's care and a patriot's fear, in the following extract from his Farewell Address, with such a prophetic truth that one might think him personal, did he not recollect that Missouri was not admitted into the Union, the late Presidential contest had not

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happened, and this debate had not occurred, when the venerable hero penned the lines; and, consequently, he could not have intended such direct personality. These are his words:

"In contemplating the causes which may disturb our Union, it occurs as matter of serious concern, that any ground should have been furnished for characterizing parties by geographical discriminations—Northern and Southern, Atlantic and Western; whence designing men may endeavor to excite a belief that there is a real difference of local interests and views.

"One of the expedients of party to acquire influence in particular districts, is to misrepresent the opinions and aims of other districts. You cannot shield yourselves too much against the jealousies and heart-burnings which spring from these misrepresentations: they tend to render alien to each other those who ought to be bound together by fraternal affection."

Let me proceed, in accounting, rationally, for the sad adversity in which the great minority and the true principles of constitutional liberty now stand, without ascribing it to the traitorous infidelity of the "unlinal and bastards of the West."

Imagine, then, the throng of the people out of office, agitated by their demagogues, aspirants, and Catlines, and these suddenly grasping hand in hand, and linking arm in arm, in firm combination, from one extremity of the Union to the other—trampling Washington's Farewell Address under their feet, and, without regard to personal hostilities, fierce as fiends; or to difference of political principles, opposite as the poles—agreeing together to pull down any cheap, republican administration: and, calling to their standard who can swell their numbers or augment their physical force, do actually take "a long pull, a strong pull, and a pull altogether," until their shoulders are blistered with the collar, and their sides shaved with the traces, at least during one campaign; or, at the very least, until the prospects of plunder and promotion shall be dimmed and obscured. Cannot any cheap republican administration be pulled down, although it were pure as the angels of the third Heaven! In such a Government, are not the outs, if disposed to vex the State, always too strong for the ins? Is it not easier to pull down than to build up? Is it not easier to raise a mutiny, throw aside the oars, and float down the Missouri, than to preserve proper discipline, and tug a boat up that impetuous current, by plying the oars? Cannot the incendiary, in one dark night, burn down the temple of Ephesus—the work of ages and the pride of the world? Cannot the Tartar hordes, in one short day, illumine the Ganges and India with the flames of Persia?

Listen to the warning voice of Washington respecting such combinations:

"However combinations or associations of the above description may now and then answer popular ends, they are likely, in the course of time and things, to become potent engines, by which cunning, ambitious, and unprincipled men will be enabled to subvert the power of the people, and to usurp for themselves the reins of government, destroying afterwards the very engines which have lifted them to unjust dominion."

"The unlinal and bastard sons of the West!"

In my humiliation, I am willing to imagine myself an humble shrub, near the earth, not reached by this mid-heaven thunder and lightning. My associates are tall enough to be within its magnificent range. Was it aimed at the oak of Kentucky, towering among the clouds, and more within the range of the bolts of this modern Jupiter Tonant? It was an ungrateful bolt, and he who threw it is not of the West! He is no native of our magnificent Valley of the Mississippi. You say the Percy is down, prostrate and decapitated! It was a Falstaff thrust. There is a species of gallantry that always rises as its antagonist

falls—revives as the blood spouts from his jugular; and, *vice versa*, always sinks as he rises. This species is always blustering, bullying, and hectoring, in manner, mien, and tone. It is the true Falstaff order. It was an ungrateful thrust in the thigh *a la reare*; and he who gave it is no native of our Valley. He came to us unwinvited; complained of having been driven by tyranny and persecution; desired our hospitality and auspices, and a little room to lie down and repose. The Percy found him weak and distempered, politically; and nourished and medicined him—put on his own collar and inscription at large, with a special  $\text{C}$  pointing to the words "cousin to Percy's wife." These gave him currency and consideration, and introduced him to the grand hunt. Without the help of this collar and inscription, it would have been as impossible to have elevated him to his present rank, as it would be to drag up from the depth of the ditch, by a frail woollen thread, some ponderous and inert mass. Others thrust a finger under that collar and pulled, who have since had cause to regret it, and washed their hands of the whole affair. In what you call the fallen fortunes of the assailed, and in his acknowledged absence, it was an ungrateful thrust. And why was it made now, at the first session of the new and promising administration, and before such an audience, attracted by this partisan massacre and pillage? accompanied, too, by a full renunciation of the American System—like the shrewd animal in the fable, casting the lion's hide into the bushes, or Therstia pulling off Achilles' armor, and dashing it against the pavement—in which there has been so much roaring, and so much glittering in arms, on the Western plains, for near fourteen years.

Has it been observed that all the prominent dogs, most distinguished in your late grand hunt of the Kentucky bison—all who had first throttled the game, or sank their fangs deepest into his flanks or his sides, or hung heaviest at his tail—have been well fleshed, and raised to the peerage among dogs? Was it noted that "this is the road to Byzantium"? Or has the Palace Constable been on the rounds, and with his familiar tap on the shoulder, given intimation of an expectation that new bond and security for adhesion and fidelity would be sent up to the White House? I would bolt, rather than give the additional bonds of that stab, and that renunciation!

It was an ungrateful stab: for, but for the kindness of the assailed, there would have been no opportunity to have introduced the graduation bill! There would have been no opportunity—after riding the noble spirited Kentucky steed, until, surrounded and hamstringed by the Catlines of the day, he stumbled to the fall—of leaping, with a true circus somerset, upon the back of the parallel and winning horse, and going on and claiming the stakes? Are these paid, or are they still in prospect? The assailed adjudged fair riding, or gross jockeying? The assailed stands to the assailing in the relation of Aetcon to his dogs, that unfeelingly pulled down and devoured their master, who had kindly fed them with his hands. The minority in the West stand to the assailing in the relation of the husbandman to the adder found clutched at his door, which, when brought in and sufficiently warmed, suddenly threw itself into a coil, and stung the favorite son of his benefactor. We found the assailing of our characters and our motives a scrubby political acion; and thought it a fruit-bearing species. We nourished it, and it grew; when, lo! it proved a political bohem upas, and blighted and desolated all for miles around its stem. And, not content with the triumphs of the past, the assailing of our characters and motives has drawn upon his imagination, and exulted in anticipation over the triumphs of 1832, with a semi-barbarian insolence of joy, that might have suited the age of Suwarow; but which the modern Nicholas, or Diebitch, at Adrianople, would have repressed and punished, had it been indulged over a fallen Turk.

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He has amused his audience in this theatre with a description of the minority again defeated, discomfited, and flying—ay, flying, and measuring their double mileage o'er the earth: leaving their females far behind, to the magnanimity of the conquering hero! and even counsels our ladies not to go with us to the war, nor risk their "little feet" on such a route, with such protectors as we! I advise them not to risk their jewels to the magnanimity of such a conquering hero; they might be lost in the prairie grass, and never found. Whence this insolent idea, of our flying and leaving our ladies, who never fled either from public enemies or from domestic Catilines? But suppose our abandoned ladies overtaken by such a conquering hero; in his right hand he holds an old New England grand mother a prisoner, to be led to the stake—outaged in the feelings of her husband or son, her brother or father. Under his left arm he holds that beautiful, outre, and somewhat watery nymph, the river Rosanoke, whom, ever and anon, he caresses, and kisses, and hugs. Ladies are not much depressed with the loss of an election. They are said to be inquisitive, and much given to feeling their democracy stirring within them. They demand the reason of maltreating the New England grandmother prisoner: he tells them she is convicted before him, on the testimony of old musty journals and betrayed private correspondence, of a suspicion of having thought, some ninety-five years ago, that the range of the Alleghanies would be a good Western boundary—a neat little cis-Alleghanian, Yankee republic, on this Atlantic coast; and that the old political witch shall go to the stake! The ladies demand, if his beautiful nymph under his arm does not even now hold a similar opinion, and vote against the admission of any new State in the West? Oh, yes, ladies, but *omnia vincit amor*—I love my nymph so much! Then comes the scratching scene. The ladies fly in the face of the conquering hero, release the Yankee prisoner, and even let loose the outre nymph under his left arm, to go home, or run up a tree, at will and pleasure. And there will end the triumph of 1832; and there will commence the litigating scene of *Scratchee*, plaintiff, versus *Scratcher of usorum*, defendants, which I shall leave your imagination to report, simply affirming that, let the jury come of the females of either party, *Scratchee* will be cast in the costs, and a mark set on his front, for his inconsistency and disregard to Washington's Farewell Address.

Our Saviour has been introduced upon the boards, looking with composure upon the slavery of man! I will not enter the delicate ground of slavery. It is our supreme curse—how shall we avert it? It is the secret poison stealing its way to our vitals—how shall we be healed of the malady? Leaving to the Fathers of the Church the meaning of the Christian precept, "whatsoever you would that men should do to you, do ye even so to them; for this is the law and the prophets"—I pass on to remark, that Christ did not come as a temporal law-giver, to make statutes and civil regulations for the Roman empire; but advised his hearers to obey the laws; to pay their taxes to Cæsar, to peace and good will among themselves; and to all manner of charitableness in the imputation of motives—judging not, lest they should be judged. He was no Roman Catiline, to inflame sectional prejudices, and local hatred, and civil discord; and to array the provinces against each other, or against the imperial head, or the Supreme Court of the empire, that he might gain the illegitimate renown of being considered the champion of a deluded province. Christ was a better man! But however he might have looked upon the slaves of Rome, there is a class of mankind on whom even Christ himself, coming to forgive and to save, cannot look with composure; but rebukes them for coming about him! It is that class who follow after the flag of the victor, rather for the loaves and fishes than for the words of political life. We read that he gave a gratuitous and miraculous

feast to about five thousand of these gentry. He knew their motives and their objects when they praised his dinner; and, scorning their company, retired to a vessel on one of the interior lakes of Palestine. They wanted more fish, and, following after and praising him, crowded his little vessel as General Jackson's parlor was crowded, in this city, on the 4th day of March, 1829. He knew what they were after, told them to their faces what manner of men they were, and rebuked them for coming about him! And let the President of the United States follow this illustrious example! And if there be any such followers here, let them remember the examples of Christ, and the precepts of Washington, and cease their sectional strife, and conquer their relish for fish!

Before I advance to the discussion of the resolution under consideration, I wish to place the motives of the minority, with which I have the honor to be associated, above the reach of their assailant, by announcing the grounds, distinctly, upon which we do stand—in what the majority is pleased to call an opposition to the present administration; and to invite the majority to join us, and remove the appearance of opposition by the conjunction.

We shall endeavor to sustain these fundamental principles—

1. The Union, as established and bequeathed to us by the fathers of the republic; in opposition to sectional divisions—such as the Northern or Southern, the Eastern or the Western.
  2. The principles of Washington's Farewell Address to the people of the United States in opposition to sectional prejudices, local animosities, and civil discord.
  3. The supremacy of the Federal Judiciary, or Supreme Court of the United States, in all cases within its constitutional jurisdiction; in opposition to the anarchy consequent upon absolute State sovereignty over any such cases, and upon the power of a State to place her veto upon a law of the Union.
  4. The freedom and purity of elections, unawed by official punishments, and uncorrupted by official rewards; in opposition to removals from office for the exercise of the great elective franchise, or to make room for the reward of partisans in our Presidential elections, by the bestowal of public employments.
  5. That the provisional power of removal from office by a President, is a high legal trust, to be exercised for the public benefit, in sound discretion, for cause relating to the official conduct or fitness of the incumbent; in opposition to its perversion from its high purposes to those of partisan warfare or personal vengeance, in the corrupting spirit of "party discipline."
  6. The restraining powers of the Senate of the United States, as understood by the contemporary expounders of the Federal constitution, in matters of displacing as well as of appointing Federal officers; in opposition to arbitrary Executive power, and servility to Executive will.
  7. The freedom of inquiry into the exercise of Executive discretion and official trust; in opposition to Executive irresponsibility and unscrupulability, and to the suppression of free inquiry into our public affairs, as in the identical case now under consideration of the Senate.
- Our test of fitness for public employment is, "Is he honest? Is he capable? Is he faithful to the constitution?" If these principles denominate us Federalists, be it so. If they denominate us National Republicans, be it so. Names are nothing.
- We are neither in favor of separate absolute State sovereignty, nor in favor of the old confederation; nor for anarchy; nor for despotism under the forms of republicanism. We are in favor of these principles thus publicly announced. And if every Senator will renounce all hope of reward for himself and his friends, for his votes here—rewards so much deprecat in your long neglected report of May, 1826, to diminish Executive patronage, and

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put bounds to Executive will—and will meet us on these great fundamental principles, we can restore this Senate to what it was designed by its makers to be—a body elevated by its long term and comparatively independent tenure of office, entirely above the party politics of the day, and standing aloof, as the great barrier of public safety, against the rage of popular passion on the one side, and the encroachments of Executive will on the other. We can restore the Government to what it was represented to be by Hamilton, and Madison, and Jay, and understood by the public to be, when it was adopted by the people of the United States, and their liberties, and the liberties of their posterity, were fondly committed to its protection. But, if you will not meet us on these grounds, and continue your sectional and party strife, the public have a right to conclude, and will conclude, that your long neglected report of May, 1826, so extensively printed and circulated at public expense, and all your past professions of reform, were but hypocritical prostitutions of your Senatorial functions to the low and corrupt purposes of electioneering and combination, so much and so anxiously deprecated in the Farewell Address of Washington.

The fourth, fifth, and sixth of these great republican principles I shall not discuss upon this resolution. They belong to a much more interesting struggle for the very citadel of our liberties, which still lies before us. If, however, the dangerous and anti-republican principle of suppressing inquiry can be established here, it can be applied there too; and the label may be inscribed upon the very front of this administration—Light enters not here.

Let me take up the two first great fundamental principles of true republicanism here announced, as most interesting to this country, and in which, indeed, all the others may be included—the Union and the Farewell Address of Washington; and show that the whole spirit and scope of this sectional war of civil discord, and the whole plan of hunting popularity in the West for years past, by feeding the flames of sectional prejudices, jealousies, and animosities, are in open violation of their principles and injunctions; and that we have, in truth, a convention in the West, in opposition to both, more dangerous to our constitutional liberties than either the Hartford Convention of the North, or the projected convention of the South, and without any of their redeeming features or objects of local relief from real or imaginary oppressions, to soften its character, or to apologize for its existence!

Chief Justice Marshall, in his Life of Washington, (vol. 5, p. 685) speaking of the Farewell Address, says, "It contains precepts to which the American statesman cannot too frequently recur, and, long as it is, is thought too valuable to be omitted or abridged."

Upon the immense importance of cherishing our Union, permit me to read the following extract from that paternal address, in page 689:

"But, as it is easy to foresee that, from different causes, and from different quarters, much pains will be taken, many artifices employed, to weaken in your minds the conviction of this truth; as this is the point in your political fortress, against which the batteries of internal and external enemies will be most constantly and actively (though often covertly and insidiously) directed; it is of infinite moment that you should properly estimate the immense value of your national Union to your collective and individual happiness; that you should cherish a cordial, habitual, and immovable attachment to it; accustoming yourselves to think and speak of it as of the palladium of your political safety and prosperity; watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can, in any event, be abandoned and indignantly frowning upon the first dawning of every attempt to alienate any portion of our country from the rest, or to enfeeble the sacred ties which now link together the various parts."

Know, then, that we have a convention of internal enemies—of demagogues and aspirants—in the West! Its members, like our settlements and our towns, are scattered over a wide surface, "few and far between," and consequently cannot easily present the concentration of force, and unity of action, which your Northern or your Southern projects might have done, if so disposed; but they have concentration enough for effect, and unity enough for mischief. Its objects are personal aggrandizement, and the gratification of inordinate and unhalloved ambition. Its means of operation are to inflame sectional prejudices, local animosities, and the smoldering embers of civil discord, in one portion of our Union, against another; misrepresenting the objects, opinions, and views, of the other; assuming to be the champions and devoted friends of their own deluded sections, and thus gaining a species of illegitimate and matricidal renown, and erecting a kind of monument to their fame, based upon the ruins of the Farewell Address of the Father of his Country.

I pass over other points of comparison, and come to what I suppose, upon the charitable construction and the declaration of the parties, to have been the real ulterior objects of both the Northern and the Southern projects; presuming neither to have intended treason or disunion.

Each had an ulterior object which, *per se*, was both patriotic and laudable. It was merely relief from what both considered the ruinous influence of the prevailing policy and measures of the Federal Government upon their respective countries. The North considered their country blighted by the war measures of embargo and non-intercourse. The South thought theirs desolated by the prevailing doctrines of protection to American manufactures and Internal Improvement. Their *modus operandi* seems to have been, to make a strong expression and demonstration at home, to influence the measures of the Union at the metropolis, and thereby produce the resulting relief which was devised at home. To that extent, and confined to that extent, they both had ulterior objects, both patriotic and laudable in their views of their own situation. But our Western convention, composed of the like aspirants and Catlines against whom Washington warned us most, as being most likely to disturb our harmony, has no redeeming feature of patriotism about it. It is altogether hideous and deformed, as Lucifer himself is represented by Milton to have been, after his expulsion from Heaven, and his nine days' fall from the presence of God! It is the mere embodying of the fiends of local animosity and hatred. The mere incarnation of the spirits of civil discord, which has already roamed the world for so many centuries, and despoiled union and liberty in the greater part of Europe, in Asia, in Africa, in South America, in Mexico, in the Isles of the Ocean, and among the lingering remnants of the once powerful tribes of the aboriginal race of man on this continent; and driven union and liberty, as we are taught to believe, to their last retreat, upon that little green spot upon the map of the whole world, these United States.

And well might the Father of his Country, with his sage knowledge of the past, and his sagacious ken of the future, have dreaded this incarnation as the most insinuating and dangerous enemy that posterity would have to encounter. Well might he have bequeathed to us his Farewell Address. Had the Hartford Convention, contrary to its supposed design, been productive of war, it might, by possibility, have been confined to foreign war with a civilized nation, and the broad expanse of the Atlantic Ocean between, and to the frontier war with the expiring remnants of the aboriginal race. Should the project of the South be productive of war, it cannot come in a milder form than civil war, followed, almost of course, by all the horrors of a servile war. Should our Western convention of civil discord be productive of war, contrary to its supposed design, it could not be in a less hideous form than civil war, and probably following in its train a re-enactment, throughout the South,

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of the horrid scenes of San Domingo. If either of the projects had burst beyond its intended bounds, it might have happened that the Hartford Convention would have been the most harmless of the three.

There is one objection common to the three; the impossibility of those who raise such storms being always able to control the extent of their ravages. Like other revolutions, they generally prostrate their projectors in their early stages, and finally produce results, and throw up characters to the view of the world, which were not even imagined at the time of their commencement. Like tornadoes, they are uncontrollable, and admit of no fixed bounds. It has been well said, that a firebrand thrown by the hand of sport, or of a madman, will ignite a city as soon, and wrap it in flames as uncontrollable and consuming, as if it had been thrown by the hand of the designing incendiary. And so thought Washington when writing his Farewell Address.

But general descriptions of our Western convention, of dreadful demagogues, and dangerous Catilines, will not suffice. They often confuse our ideas, and fail of their intended effect. Specific instances concentrate our ideas, and show all at a glance: I will name several to the Senate. And first, I arraign "Americanus" at the bar of the Farewell Address of Washington. One principal object of my entering into this debate, was to rescue from forgetfulness and oblivion, by withdrawing from the musty files of this debate, the testimony of the Senators from Maryland and Maine, [Gen. SMITH and Mr. HOLMES] respecting the authorship of our Southwestern boundary between the United States and Mexico, running along the Sabine river and a zig-zag line to the Pacific coast in latitude forty-two degrees, as established in the Florida treaty. This fact would seem to be wholly immaterial. So it would have been, but for that description of demagogues to which I have been alluding.

The ex-President, Mr. Adams, has been charged, in a series of numbers lately published in the West, in the assumed name of "Americanus," and republished in this metropolis, and rendered as public as the party gazettes of the day can make them, with being the author of that line. Had that been all, those numbers would probably have produced no mischief in the unhallowed work of sectional prejudice, local animosity, and civil discord, in the Western country; but a long catalogue of the darkest and most unpatriotic motives were imputed to him in those numbers. It was represented as having been done from that aboriginal, never-dying hostility to the West, which has been imputed to New England in this debate. To have been done in concert with certain members of the Hartford Convention, then supposed to have been lurking about the city of Washington, to prevent the increase of slave-holding States in the Southwest to counterbalance the non-slave-holding States about to arise in the Northwest. To have been done to dismember the valley of the Mississippi. To have been done from motives of hostility to the principles of republicanism and the rights of man; and to prevent republicanism from migrating from the United States to the interior of Mexico, by the means of a vast desert spread between Missouri and the Mexican settlements on the Rio del Norte and the Colorado of the East.

The publication of those inflammatory and sectional essays at civil discord, stabbing Mr. Adams after it was boasted that he was down and helpless, and stabbing at the standing and character of his friends through him, placed me in a somewhat awkward dilemma. I had supported Mr. Adams's election and administration. It was no uncommon thing to be accosted with language such as this: "Look at your Yankee President, whom you have joined in preference to Old Hickory! The enemy of republican principles and the rights of man! The old and systematic enemy of the West! The dismemberer of the

valley of the Mississippi! The snake coiled around the infant West to strangle her in her cradle, and prevent her development and growth!" Sir, I was suspected of the petty treason of Yankeeism, and of infidelity to my country; ay, of being an "unlincal and bastard son of the West." In conversation, I attempted a defence of Mr. Adams's motives, suggesting that it was impossible any man in his elevated station could have been actuated by such motives—suggesting his peerless defence of the title of the United States to Texas in his negotiations with the Spanish minister, Don Onís; and even the impossibility of his having been able to control the President, Mr. Monroe, and all his cabinet, and the Senate of the United States, if he had been the first to suggest that line; but as to the fact of his being the author of the suggestion of that line, I was "dumb as a lamb before his shearers," for the truth is, I did not know how that fact was, until the disclosure of it in this unique debate.

Every good man and lover of the harmony of his country must rejoice at the disclosure; that the West has been thus disabused; that Mr. Adams, hunted even in his retirement, and the spirit of New England, have been thus rescued from the imputations of their calumniator; and that his fruitful source of sectional prejudice and jealousy has been thus effectually closed. The falsehood of the charge has been thus placed on high, a conspicuous object of the contempt of honorable men, by the concurring testimony of the Senator from Maryland, the star of whose Revolutionary fame alone high in the firmament before "Americanus" was born; and of the Senator from Maine, who, in the darkest periods of the late war, was considered no enemy of the Union, nor of the West; and who, at the darkest period of the unhappy Missouri question, was not considered an enemy to Missouri, when, taking his official life in his hand, he stood against the array of public opinion in New England, and voted for the admission of Missouri; and was forgiven by his constituents for the honesty and patriotism of his motives, although they did believe, and no doubt sincerely too, that his vote was wrong: for the whole mass of those States is opposed to the slavery of man.

It has been the fate of this Senator to receive an ungrateful thrust, in the relentless rage of party spirit, from the same hand that thrust the patriotic son of Kentucky, in this unhallowed debate of sectional prejudice. And when such a spirit rules the debate, let him rejoice with me that he has escaped praise. For who can doubt the party reasons for assailing the motives of the illustrious dead—the venerable fathers of New England—in charging them with a settled hostility to the West, on account of their votes of antiquity, and visiting their imputed sins upon their children; when we have witnessed the awkward attempt to go down to posterity as the defender of Jefferson's fame at the expense of Bayard's; when the fact is now notorious that Mr. Jefferson, in 1803, contemplated delivering up all the Louisiana purchase, except the mouth of the Mississippi, to the "dominion of the savages and wild beasts," for fifty years!

Who can doubt the party reason, which should never find place in this once elevated body, for embracing the Roanoke, whose well known opinions and votes would have prevented the settlement of the West, or its admission into the Union; and damning a New England man, in his person, his posterity, and his ancestry, upon suspicion of a like opinion?

I do not arraign the motives of Mr. Jefferson, in his philanthropical views in favor of the remnants of the once powerful owners of this continent; nor those of any whose opinions do not admit of their voting for the annexation of the West to the Union. I only arraign the glaringly inconsistent and sectional spirit of this debate, at the bar of the Farewell Address of Washington.

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If the acquisition of Florida must be tortured into a sectional measure, or if individuals be entitled to the praise or the censure of the measures of a Government, the treaty establishing the line between the United States and Mexico would seem to be rather a Southern measure. And what good and fair-minded man censures the motives or acts of the South, in acquiring Florida when it could be had, and risking the future extension of our South-western line, when the increase of our population shall require it? It is sufficient to know, for the present tranquillity and harmony of the Western country, that Mr. Adams was the last to abandon his justly renowned defence of our former title to Texas, and the last to recede from the line of the Colorado of the Gulf of Mexico. But if the fact had been otherwise, I am at a loss to know how the long list of anti-republican and diabolical motives ascribed to him, which now stand like Mahomet's coffin in the air, without any visible support, could have been discovered; unless it were upon the authority of the old author, who lays down the following rule for the discovery of hidden motives: "Mankind being incapable of penetrating the secrets of each other's hearts, as the Father of Life and Light can do, are naturally prone to judge each other's motives by their own hearts. Hence, you will usually see a fair-minded and honorable man disposed to attribute fair and honorable motives to others: but a man of a contrary character drags down all humanity to the level of his own heart, and, judging them by that standard, very naturally concludes that all mankind are villains too."

I arraign the attacks of this debate upon the sheet-anchor of the vessel of State, the Supreme Court of the United States—the great common tribunal of the States of this Union; and all attempts here, or elsewhere, to destroy its utility, by casting over it a cloud of suspicion, and bringing it into disrepute among the good people of the United States, by comparing it to the party tribunals of Great Britain, in that dark and unhappy period of her history, during the State trials, introduced by the Senator from Missouri, as great departures from the precepts of Washington. Every man of common sense knows that we must, necessarily, have some common tribunal to settle disputed questions among the States, as well as among individuals; otherwise disputation would never cease, nor any question become settled at rest; but confusion and anarchy, the element of demagogues, would reign forever. That great common tribunal is not a fit topic for party dispute or popular declamation, until the design be entertained of rendering it a party engine, or of making it odious among the people, and substituting a party engine in its place.

The Judiciary must, from necessity, and the nature of its functions, possess high-toned powers. Hence the ease with which it may be rendered odious, by making it a topic of party and electioneering discussion, and representing it to the people, who have the least means of judging of it, as a despotic department of the Government, changing the relative powers of the States and the Union, and harboring designs of consolidating the Government into one single empire. By depriving it of the confidence of the public, it loses its great utility in quieting, instead of inflaming, the public mind, when it decides any of the important questions and principles of our yet young Government of the Union, or those that may arise among the States. In such a state of the public mind, instead of calming, and quieting, and restoring tranquillity to society, the decision of any great and interesting question would but irritate and inflame the more, and in time become the signal for commotion and revolt. Look to the great and irritating events of our brief history as a republic, and pause in this hazardous course.

If our Judges misconduct themselves, let the lawful proceedings be had, and the appropriate remedy applied.

If the organization of our common tribunal be unfit for the purposes of its creation, let the proposed reform or substitution be presented and discussed before the competent department to apply the remedy. If it be within legislative competency, let the bill be introduced and discussed here. If it require an amendment to the constitution, let the proposed amendments be submitted and deliberated on, and, if passed by Congress, go to the people and States for consideration, discussion, and adoption; and if the decision be in favor of the present Judicial department of the Union, as it was at the formation of the Government, let us sustain its reputation and utility, for the good of our country. It should be the last object of party attack. Save us from ever beholding that tribunal, too, converted into a party engine, to be wielded in the work of party proscription!

The Senator from Missouri has entertained you with an account of his reading the State Trials of England, at a remarkably tender age, for his widowed mother, probably that she, as women are wont to do, might weep over the judicial murders which, he tells you, distinguished the reign of the house of Stuart. It was quite natural for a boy of seven or eight years of age to be horror-struck, and deeply impressed with those juridical tragedies, as he declares himself to have been; and it is to be hoped that he has profited by the examples.

His attempt, however, in his new born zeal against the American System, as it is harmlessly called, to draw a parallel between the party tribunals of that gloomy period in the history of England, cutting off minorities by the halter and gibbet, and the Supreme Court of the United States, as it yet exists, sustaining the beneficial powers of the Federal Government to make Internal Improvements, and perform other general duties, as means necessary to the accomplishment of objects expressly confided to this Government, and impracticable by the States, was equally unsuccessful and unpatriotic.

This attack upon the Supreme Court was made, too, after a night's sleep upon what still lay in advance; and was announced to us before the adjournment, as a new field to be entered the next morning. Verily, the new field has been unprofitably and unpatriotically occupied, although I did imagine I saw an apparition from Virginia, stalking across the vision of the orator, in the slumbers of the preceding night.

The corrupt state of the Judiciary of England, as described to us, so far from being the cause of the evils of that day, was but the effect of the greater evils of that gloomy epoch. Those evils had their source far beyond the Judiciary, in that same inordinate and unhalloved ambition, desire to rule, and lust of power, governed by that same party discipline and proscription, which I have feebly attempted to deprecate and to denounce in the United States; and which pulled down the last administration, and now makes the once proud Americans feel like slaves, and blush for the fallen state of their country—the humbled victim of petty Cabinet tyrannies and corruptions! Those evils had their sources there, and, like turbid and overwhelming torrents, prostrated the Executive, the Legislative, and even the Judiciary departments of England, in their desolating course! History warns us that it required the purifying fires of another revolution to restore England from her fallen greatness; and let us profit by the example, and avoid her errors, while we may. Man is the same, in similar circumstances, throughout the world; and no monitor is more safe than faithful history.

I enter my protest against making the Judiciary of the United States the topic of mere party denunciation and popular declamation. It would be much more patriotic employment to draw that report of 1826, to curtail Executive patronage, and put bounds to Executive will, from its long, four years' black-hole Calcutta imprisonment, in the cold vaults of this capitol, and thaw it into life, and

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put it into practical operation. I repeat to you that, unless you do so, its long imprisonment, without the benefit of the writ of *habeas corpus*, will be considered as conclusive testimony by the public, that it originated in the corrupt design of endowing a party press by its extensive printing and circulation, and of prostituting your Senatorial functions to pull down the late administration to get possession of their places, and not for the public good.

Your awkward affectation of looking out for the time "propitious to the enlargement of the powers of the people," as wistfully as a fanatic Jew looks out for the coming of his temporal Messiah, will not pass any longer: for that time is always present when you are sincere in a desire to avail yourself of it; and especially now, when the whole "ten talents" of power are committed to your charge.

The Senator from Kentucky [Mr. Rowan] usually argues a question like a Senator, rather than a belligerent; or, if he should occasionally become a little belligerent, his war never degenerates into the massacre of his prisoners. I will now take up his principal propositions in relation to the Supreme Court, submitted to us yesterday, and consider them. Using my own hasty notes, I shall not attempt to quote his very words, but to state his propositions.

One of his principal propositions, in refutation of the argument of the Senator from Massachusetts, [Mr. Wadsworth], is, that the Federal constitution was not adopted by the whole people of the United States, as a national act, but by the people of each several State, in their respective corporate characters, as States.

Without stopping to dispute about the difference in the powers of the Supreme Court, conferred upon them by the constitution, as the great common tribunal of the Union to decide questions arising between States, or between one of them and the whole Union, under the one construction or the other, I rely more upon the contemporaneous exposition and understanding of the Federal constitution and of our whole Government, by the founders of the Government, than upon the exposition of the Senator from Kentucky, and find their contemporaneous expositions to be the same with those of the Senator from Massachusetts. The constitution declares itself to be the adopted work of the people of the United States. Did not Washington and his venerable associates in the Federal convention know that, neither in the adoption of that constitution by the people, nor in the election of a President, would it be possible to convene all the people interested in the question in one collected mass, on any arena?

The founders of the republic did not expect to convene all the people of the late provinces of Britain on this arena, within that beautiful and picturesque circle of hills which surrounds this capital, with a diameter of some four or five miles, nor even on the more grand arena of some of the vast plains or prairies of the Western country, to act in mass; but, for convenience, and practicability of action, sent both questions to the people of the United States, at home, in their respective States, and in their subdivision of States into counties, and counties into districts or precincts. Yet, is not your Presidential election as much a national act as if it had been conducted in mass, on one of those vast arenas of the West, ample enough for all the purposes of collection and confusion? Besides, the Senator from Kentucky submits to the decision of the Supreme Court, backed by the instructions of Kentucky, that the Federal Government may exercise the power of internal improvement; and why will he not submit to the repeated decisions of the same tribunal in the United States Bank charter, and other cases, that the Federal constitution is the act of the people of the United States, as a whole? Can the instructions of a State make any difference in the cases, as to the obligatory force of the decisions? Can the decision of that great common tribunal be good to sustain the Senator from Kentucky in his

votes for internal improvement, and slide from under the Senator from Massachusetts, when he would rely upon it for another purpose? We see the Senator from Kentucky arrives at the same practical conclusion to which we come, as I shall show more fully presently. Why, then, these theoretical distinctions?

At present, I will take up another of his main propositions, into which several of his minor ones may be consolidated; such as these: "The framers of the Federal constitution never intended to give power to the Supreme Court to check the State sovereignty. A sovereignty cannot live on the will of another sovereignty. A State must decide when its sovereignty is infringed. How are disputes about State boundaries to be settled? Can the Supreme Court of the United States adjudicate such a question?" And something was said, by the Senator from Kentucky, about the *ultima ratio regum*.

Now, sir, if there be one distinct proposition to which all these are reducible, it is, that there is such a thing under our political institutions as State sovereignty (or power, which means the same thing) over the matters confided by the Federal constitution to the Supreme Court, or to the Government of the United States! And there lies all the supposed difficulty. We take the constitution, and the exposition of the fathers, in our hands, and deny that there is any such thing as absolute State sovereignty known to our institutions. They are all limited, having power over some things and no power over other things, as States. We affirm that the States, as such, have no power over any cases confided to this Government, or to the Supreme Court of this Government, exclusively—and there ends the whole imaginary difficulty.

If States can settle questions of boundary, arising under the charters of the British crown, or otherwise, amicably, by commission, as Tennessee and Kentucky attempted to do some years since, be it so, far as this debate is concerned; but the "Federalist," written principally, as you know, by Hamilton and Madison, two of the founders of this Government, (in pages 88, and seq. and 102) says, the settlement of such boundaries, when disputed, was one of the objects in establishing a great common tribunal.

When we contemplate absolute sovereignty, as it exists, say in the Autocrat of all the Russias, extending, in absolute power, over all cases and things, (if such be the present power of the Russian emperor) from the Baltic to Kamschatka, over the whole Eastern hemisphere, and then import that word sovereignty, of which we republicans seem so fond, we are apt to misconceive the import of the term, as applicable to our social compact, embracing both State and General Governments. There is no such thing as absolute State sovereignty in our political institutions.

Another proposition of the Senator from Kentucky, which I will take by itself, is, "a sovereignty cannot submit to its adversary sovereignty the point in dispute between them." Be it so. He instances the familiar case of school-boys falling out in the play-place, (about the hall, I suppose) and asks the United States' Senate if one boy will submit the disputed point to the arbitrament of his adversary? I suppose he would not: for then there would be as many tribunals and variant decisions as there are boys in the school. This matter should be submitted to the common tribunal, the schoolmaster, who, by the constitution of that school, was made the umpire in all such cases. And if the schoolmaster should make a law to govern those boys, in a matter of which he has jurisdiction, and promulgate it, and one of the boys violate the law, and then claim to put his veto upon it, on the ground that he, as a sovereign power, cannot submit the disputed point to his adversary sovereign, the schoolmaster, what is to be done in that dilemma?

And this brings me to the novel notion of modern



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times, of a State having the power to put her veto upon a law (for, unless the act be constitutional, it is no law) of the Union. The schoolmaster can decide that question. Should the veto, whether in the ordinary form of legislation, or of a constitutional provision, be carried into practical operation, it assumes the body and part of rebellion: for the constitution and laws of the Union are expressly made the supreme law over State acts of either character. This metaphysical and spiritual veto, disembodied from rebellion, seemed to me to defy the power and elude the grasp of the able Senator from Kentucky, as a gnat would annoy and sting an elephant, and still evade the touch of his proboscis; when, if a lion or a giant were to attack him, he would grasp the adversary, and throw him over the capitol. There is something in having a good cause, after all.

All that class of the Senator's arguments, intended to prove the unfitness of the present Supreme Court, as a conclusive common tribunal; and all his suggestions that Congress, or the Senate, or any other body, would be an advisable substitute, are matters of mere expediency, which have already been considered and determined against him, in the formation and adoption of the present Federal constitution. If it be thought proper to revive those questions, either here, or before the people of the United States, let him, as chairman of the Judiciary Committee, submit his project; his bill, if it be of legislative competency; or his resolution to amend the constitution, if that be the adequate remedy; and let the matter be fairly discussed, before the competent power, upon this project of reform; and let it not be drawn into this mere partisan debate which has been visited upon us.

We admit that we have not "angels in the form of men" to either legislate or adjudicate for us; no, nor to see that the laws be faithfully executed; but we cannot admit the propriety of this attack, as we consider it, upon our supreme common tribunal, in this sectional and party strife.

The Senator from Kentucky asks, why cannot the States execute the works of Internal Improvement necessary in this Union? We answer, because they have not the means, in the first place, having surrendered all the great and fruitful sources of indirect and voluntary revenue to the Union, for the public good; and because, in the second place, their powers of concerted action are not commensurate with the object. To make only two roads, of two several States, meet on their common confine, would require a kind of compact, or confederation, for the special object. To extend the plan to a third State would require an extension of the compact or understanding. Then a fourth, fifth, or sixth, must be embraced, and so on, until all the States on the route be embraced in this road-league. And why are you not content with the existing confederation or compact, the Federal Government, with a single will and action?

We consider a road, canal, or railway, only as the means of transporting the mail, the armies, arms, and munitions of war, and the like, of the Union; and strange, indeed, if, in times of peace, when we have nothing better to do, we cannot make those preparations, when we shall be too busy fighting when war comes; as we are now too busy in that way to legislate upon the internal or external improvement of our country. We admit the arguments of those who urge the propriety of a systematic plan for such improvements. They are right; but that is a question of expediency, and does not touch the disputed power. We admit the arguments of those who say the power ought not to be perverted to purposes of electioneering. So neither should the appointing or removing power, or any other power of this Government. The Senator from Kentucky suggests that, if we make roads to our frontiers, the enemy can come along them as

well as we can go. We prefer deciding such ultimate reasonings of kings on the frontier, or in the enemy's country; and therefore desire the obstructions removed out of our way. But this suggestion of the Senator proves too much, and therefore, according to the logicians, proves nothing. It would go the length of enveloping old Kentucky in the gloom of her original cane-brakes and forests, impenetrable to the rays of the sun, that the enemy might not see to find the inhabitants!

But the Senator comes, at length, up to our ground, and joins us; and we are glad of his aid and company. He has told you that his individual opinion is against the expediency of Internal Improvements by the Federal Government; but being under instructions of his State upon the subject, and, although he believes the original construction of the constitution, acknowledging this power in the Federal Government, to have been a "perverse construction," considering the question as "*res adjudicata*," a thing settled by the competent tribunal, he voted for the Louisville and Portland Canal project, and recognizes the power to be in this Government. And, in the fallen fortunes of the great minority, we rejoice to see this able Senator standing thus by the side of our respected ex-President, on the very summit level of his inaugural address to the nation, and his first message to Congress, upon this identical subject: for which he has been damned in his person, in his posterity, and in his ancestry, almost with the curses of poor Obadiah! And this admission of the *res adjudicata* goes the whole length of deciding the perplexing veto question, viz: when the Supreme Court decide a tariff or internal improvement act to be constitutional, a State has precisely the same right to impose her veto that she has to rebel or secede from the Union, and no more.

And, having thus followed the honorable Senator to the mountain top, I must leave him in the company of the venerable ex-President, until I can revisit him in the morning; and now acquiesce in a suggestion made near me to adjourn.

THURSDAY, FEBRUARY 11, 1850.

[Wednesday, the 10th February, was spent chiefly on Executive business.]

On Thursday, 11th February, Mr. BARTON continued as follows: Mr. Macon, of North Carolina, used to say, that any speech, or debate, or other thing, that prevented too much legislation by Congress, was an absolute benefit to the public. If Mr. Macon was right, this resolution of inquiry has already produced a richer crop of fruit than I have known gathered in this Senate for several years.

I have on Tuesday last specified "Americanism" and the attack on the Supreme Court, as departures from the precepts of Washington. At present I must leave the Senator from Kentucky high on the summit level of the ex-President's inaugural address and first message to Congress, and proceed with my specifications; promising, however, to call and take one affectionate farewell of the Supreme Court, before it too may be driven from its post, or rendered useless to the country, by the unsparing march of party discipline and vote auctioneering.

In the next place, I will instance a document of party discipline, issued during the late administration, to cheer the allies in pulling it down, more renowned, in its way, than the Declaration of American Independence; or the Mexican Declaration of Universal Emancipation; or the Panama Mission; or Cicero's arraignment of Catiline; and as notorious now as the late Presidential election—the East Room Letter! The object and effect of that production was to inflame the public mind, and particularly the more inflammable West, as new countries and young men are more excitable than old countries and grave seniors, against our New England President; to represent him as a

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spend Autocrat of a rapidly consolidating empire; and his east room as a gorgeous palace, more suitable to the Autocrat of all the Russias, than to a republican President; and offensive to the old fashioned republicans of the present day, who never fail to measure three inches of democratic fat upon the ribs, provided they can get their hands upon the means of fattening! The unknown author is of the very class of mischief doing demagogues, of whom Washington warned us. Do you say that letter was too notoriously false to do any harm? I answer, *non sequitur*, sir; that by no means follows. Did we not behold our country divided into two grand parties, of a personal or rather of a sectional character, without regard to political principles; and the impassable gulf of political animosity and prejudice, malice, hatred, uncharitableness, and civil discord, yawning between them? Neither party would read the refutations of the other; or, if they did, they affected to disbelieve them. We know the East Room Letter was false. The members of Congress went to the palace, and saw with their eyes it was false! The citizens of the District of Columbia and of the metropolis of the nation went to the President's, and saw it was false! The visitors from the extremities of the republic went to see the President, and saw it was false! The foreigners visiting our country, and the ambassadors and ministers of emperors, kings, and republics, of the Eastern and Western hemispheres, visited the President, and saw it was false! The naked walls and unfurnished interior of the east room itself, proclaimed it false! But what of all that? Can truth fly as fast as falsehood? or the antidote always keep pace with the bane?

"On eagles' wings immortal scandals fly;

"While noble actions are but born, and die!"

Will the pamphlet speech of the Senator from Massachusetts, with which I hope he will favor us, ever overtake that fleet little telegraphic despatch, giving a wilfully false statement of this debate, and of the principles and doctrines of that Senator, avowed on this floor? Never: and, for its own honor, it should not desire to overtake such company.

To see the Press, once the boasted palladium of liberty, sunk, subsidized, and corrupted, into a mere engine of party slander, is lamentable, indeed! To behold it wielded to misrepresent and destroy the characters of minorities—for whose protection written constitutions were invented—is alarming for the liberties of the country! But to see such an engine, endowed by the public treasury, shielded under the known popular jealousy of all that savors of muzzling the press, set up here under official authority, to falsify the debates of the United States' Senate, is intolerable to freemen! And for me, who never knew any political standard but that of constitutional democracy, under which I was born and educated, to behold the printer to the Senate, who, during the days of his honest private life, was known by me in Missouri, where we both resided, only as a federalist, now turned eleventh hour democrat to retrieve a broken fortune in the great lottery or raffish match of a modern presidential election, denouncing the supporters of the late administration as federalists, and attempting to damn them, politically, by such a charge! as if all those who were in favor of adopting the Federal constitution were not federalists!

Will the exclamation, on this floor, by the Senator from Missouri—"Heaven defend the West from such an alliance!"—to which so much eclat has been given in the party prints of the day, ever be overtaken by the simple truth of that matter?

The fact of an open and conspicuous wooing, billing, and cooing, on the part of this guardian of the West, who arrogantly presumes to speak for the whole West, towards the outre nymph, the river Rooncke, and all the South, has been notorious here for four or five years; ever since the combination to pull down the last administration; and

was just as conspicuous throughout this sectional and unhallowed debate; and has been at length consummated by the renunciation of the American System, and the wedding itself; which I shall duly celebrate when I arrive at the renunciation lying just ahead of me. This notorious courtship in the South, and attack in the East, drew from the Senator from Massachusetts the remark, that if the West desired new allies, let her go and seek them. So say I; and seek a new member too, as Missouri will probably do without any prompting, in my place, if that system is to be abandoned: for I shall adhere to it. And this remark of the Senator from Massachusetts drew from the Ajax Telemon of "the West" the awkward attempt to receive the palpable hit on the shield of that exclamation! "A prairie wolf was ambitious of being considered the rival, or, if possible, the conqueror, of a neighboring buffalo bull! One day the wolf walked over, uninvited, into the domains of the bull, and, in his own mode of warfare, snapped at his tail or flew at his throat! The buffalo took the assailant upon his horns, and tossed him sky high! The moment he touched the ground again, he limped off upon a broken limb, and exclaimed, 'Heaven defend me from such an alliance!'"

The St. Louis Enquirer—not then edited by the public printer—accused the ex-President Adams of attempting, at Ghent, to bargain the Mississippi for some fishing privilege at the Northeast; and after impressing and riveting the calumny upon the public mind, refused even to publish his triumphant refutation! No, sir. Truth has not yet even discovered the author of the East Room Letter! His place of residence became an object of as much curiosity and inquiry as the birth place of Homer! Some located him at Richmond, Virginia. Some elsewhere. Public curiosity was on the alert. Our frank huntsmen of the West, lovers of Washington, and of holy truth—that daughter of Heaven, sent on earth to cement and hold together civil society among men—say (to use their parlance, and draw my figures from my own country, and the scenes of my own country) that they tracked this prowler for human reputation and civil discord to a deep and dark recess, amidst the vast prairies of the magnificent valley of the Mississippi; that they fired the prairies, and ran their line of fire into his retreat, until it scorched his very nose, and enveloped him in smoke; and still he lay sullen, and silent, and concealed! And they had given up the hunt, until he walked forth again upon the prowl for human reputation and civil discord, in the darkness of night, under the mask of "Americanism," and committed an outrage more flagitious than the first! He will be hunted again. It is *pro bono publico* that such calumniators and Catilines should be known—ay, and impaled on high—high as a Roman cross or American pillory could place them, as a warning to our young men to beware of the fate of a convicted calumniator! Beware of the fate of an American Catiline!

Next, I specify the attempts to excite disaffection in the West, because of real or supposed inequalities of the public expenditures, in the various sections of the Union. It must be so, from the nature of things and the formation of the earth. The Great Father of the Universe thought proper to make the maritime frontier along the maritime coast of the continent, instead of in the interior. We have no formidable enemies in the interior, or along our Western frontier. The rapidly expiring remains of the aboriginal race are more fit subjects for philanthropical societies, or individuals, to meet and mourn over, than for expensive and powerful war measures of offence or defence; and our demagogues are not yet formidable enough to require interior fortifications. Hence all the expensive works, such as Fortress Monroe, Fortress Calhoun, Fort Adams, or Brenton's Point, whether for war or for commerce, must be where they are needed. As well might the demagogues and orators of Great Britain incite inter-

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nal disaffection, because her fortifications and expensive works of defence and commerce are around the coast of her island. Who would expect the public expenditures of a government to fall like a snow of equal depth over the whole surface of the ground throughout the extent of the snow storm? The people of the interior, and West, have surely more common sense and patriotism than to become disaffected from such causes.

But the most surprising extravagance of all this broad farce—the intoxicating victory over us, is the declaration made by the Senator from Missouri, that “roads, and canals, and railways, across the Alleghanies, are injurious to the West, and especially to the navigation of the West!” This is the consummation of the wedding with the Roanoke! This is tantamount to setting up the West for itself: and corresponds well with the known opinion in that quarter, that no new State should be admitted, nor the West be annexed to the Union! Washington laid special stress upon this very topic. He foretold that such views of the interests of those two great sections would, in time, be presented, and warned us against their influence. In his Farewell Address he entered at length into this identical subject; and showed how the cis-Alleghanian and the trans-Alleghanian countries would mutually aid each other—as agriculture, and manufactures, and commerce, mutually sustain each other; or as brethren of different occupations might mutually aid, enrich, and protect each other. But it would seem that a greater than Washington is here! The Senator from Maine [Mr. SPRAGUE] gave quite a laconic Yankee answer to all this, by saying, “a single maritime war would seal up the mouths of your magnificent Mississippi!” He also said, a man and his wife might as well quarrel because of their different organizations, as the different sections of the Union adopt such Missouri notions as these! And, like a long-sided Yankee, gathering fodder in September, the Penobscot began at the tassel, and, with one sweep, left not a green flag fluttering in the air. But it is not to the wedding itself that I object; let that go on. When young people fall in love, it is better to let them marry. If you oppose them, they will love the more; and even jump out of the window, and run away. *Omnia vincit amor, et nos cedamus amori*—let the lovers marry. But, jointly with others from the West, I enter my protest against this renunciation of our great fundamental principles of national policy: Internal Improvements, by the only power that can well make them; and the domestic arts, to make us independent of our enemies, and keep our backs warm. Let the bridegroom go, if he will; but let him not take with him our favorite national policy, and our magnificent valley of the Mississippi, as an appanage to please his bride. To that we shall not submit; but will follow the example of another hated and proscribed name—the example of Duncan McArthur, when, in a fit of patriotic indignation, he broke his sword, and refused to submit to the capitulation of Detroit: one of the many results of the want of preparation in peace for a state of war.

As matter of curiosity, I should be pleased to see the Prince Royal to be born of this marriage—the lineal and legitimate heir—poised across the back bone of our continent: his Eastern half squalling. No West! No West! No State in the West! And his Western half vociferating, The West! The West! My own imperial West! He must be an animal more rare than a black swan.

It has been objected, in this debate, that societies meet, deliberate, and petition, or remonstrate, respecting the present condition of the red and black races of men on our borders, or among us, as of schemes to consolidate the republic into a single empire! One would have thought the present condition of both races a fit subject for the philanthropy of Christendom; and especially that, under our institutions, citizens might do so without their motives, opinions and views, being misrepresented into designs hostile to the republic.

The last specification, of historical notoriety, of the prevailing violations of the injunctions of the Farewell Address, with which I shall now trouble the Senate, is the popular excitements and agitations in the West respecting our national domains. It has been but too common there to represent the Union as a hearted and grinding tyranny—a cruel step mother—subjecting citizens to fine and imprisonment for cutting a public twig! Some have gone the length of claiming all the lands in the new States by virtue of the acts of their admission. Others have accused the General Government of having usurped powers in relation to the public lead mines!

I do not stand alone among the Western members in denying both the charges and the claims thus preferred. The Government of the Union has been kind, parental, and indulgent to the West; rather gorging than starving her—rather surfeiting than stinting her. So far as migration has been checked or suspended, or the settlements of the wild lands and growth of the West have been injuriously retarded or prevented, they have been owing to our own acts, in holding up to public view the prospect of a kind of millennium about to be ushered in upon them, when lands may be had for nothing, and all the good things of life shall court their acceptance; and thus producing a suspension of purchase settlement, and growth.

The real fruits which such representations and schemes have borne, are a general alarm in the old States for the safety of their common property in the new; and a disposition to distribute the public lands, or their proceeds, among the States, according to their present representative numbers—a measure that we think would be very injurious to our young and sparsely populated States; and weaken the bonds of the Union. And “they who have wounded us are of our own household.”

The whole spirit of this debate, from the moment it abandoned the resolution before the Senate, and assumed a party character, is reprehensible. After ten minutes attention to the resolution, it suddenly abandoned the living, and taking the back line of the illustrious dead of New England, found the graves, and then the bones, of the fathers of New England, and called them from their graves to answer at the heated and sinister bar of party spirit for the deeds done in the body, and profanely drawing down their motives from the high chancery of Heaven, presumed to blacken them with the darkest hues!

I must approach that neglected resolution, should I even do no more than follow the examples before me, of stooping to it as an eagle to his prey, barely touching the feathers on the back, and then, ascending, fly all around the firmament until brought down again by mere fatigue and exhaustion!

But before I go there, let me shrive myself like a penitent sinner, and confess my real situation in relation to questions of the public lands. I stand here under the instructions of my Mæcenas and my Minerva—my instructor and my guides passed through the digestive organs of the Legislature of Missouri, without either decomposition or change! They look to the past, the present, and the future, and all around, to every point of the compass wherever land can be found belonging to the United States upon this terraqueous globe. They instruct me to vote for all such amendments as may be offered by my instructor, to one certain graduation bill, pending before the Senate! So that, if the label over the door be “an Almshouse,” and upon entering you find your mistake by a full display of smiling Cyprian beauty, it is an Almshouse still: for that is proved by the label! Or if the label be “Reform,” and you meet at the threshold a picket of the palace guard, and hear the reveillé beating for the whole guard to turn out, and put down your inquiry by dashing out all your lights around you, it is reform still, as proved by the label! Thus, you see, I

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am bound to the triple alternative—to follow the indicative leads of my Mentor, as an obedient Telemachus; or to show good cause, at home, why I cannot; or to be treated by my masters in Missouri, as Queen Elizabeth treated her Cardinal, when she exclaimed, "I frock'd you, sir! and by G—d I'll unfrock you!" Her Majesty must have been angry: for I learn that ladies never swear but when a little excited.

In these uncharitable times, the motives of myself, the Senator from Alabama, [Mr. McKINLEY] and others disposed to let this inquiry go on, have been questioned by the author of this debate. It has been alleged that this resolution has been impaled on high—held up to the indignation of the West! and that, taking the alarm, we are disposed to avail ourselves of the tact of our Captain General from Massachusetts, to extricate us from the dilemma, by his motion for indefinite postponement! It was even suggested that, if consulted at an earlier stage of the campaign, he might have saved us from the dilemma! We are above harboring prejudices against such a Captain General; but we decline the motives imputed to us, although not at all surprised at the imputation of them. Common charity might have suggested such motives as those avowed by the Senator from Maryland, [Gen. SMITH] who declared he would not, at the very commencement of the administration, set such a precedent of suppressing inquiry into Executive discretion: for, over these surveys and sales, we know, the President possesses absolute discretion, as the laws now are. But after what we have experienced of the organization, discipline, and power, of a late Opposition, we are not surprised to find these ideas of a Military Chieftain uppermost in the imagination on that side of the chamber: No, nor would we be, if the orator, in making this imputation, had even imagined he felt the wire of the "Great Magician" up yonder, twitching at his elbow—like the master of a puppet show setting Punch, and the others, in a true partisan dance!

Why did not the accuser remember that Magna Charta—not of Runny Mead, but of Goose Creek—of the 4th day of March, Anno Domini 1229, guaranteeing this right of reform to us? Are not the means of enjoying that right, such as free ingress, egress, and regress, of the great mansion of the public domains, included in the grant? Why was not the old common law, as it was before the great Goose Creek charter, thought of? or at least the report of May, 1826, saying "the uncontrollable exercise of Executive discretion makes a President a Monarch! Names are nothing!"

The Senator from Connecticut is known as a friend in Missouri. He now disavows all sectional hostility in proposing this inquiry. Let him have it. It will satisfy Connecticut, and do us no harm in the West. The Commissioner of the General Land Office, in his annual report, points out some reform, in this subject, as necessary. Then comes the Senator, with the modesty and economy of a true son of Connecticut, and asks only "a farthing rush light" to look beyond that point, to see if more be necessary; and if so, where to begin, how far to go, and where to stop. This inquiry he would make through the Committee on Public Lands, every man of whom comes from the new States, supposed to be most interested in the question—fresh with the clods of your public domain almost sticking around them! The President will be glad to see this unassuming son of the Pilgrims comparing his humble rush-light with the brilliant chandeliers that illuminate the President's way. There is no Yankee trick intended, to go back into some remote apartment of this mansion of the public lands, and draw thence your consul to Mexico, with all his trumpet-trick and faro-hank apparatus about him, to make you blush for your administration! No, he has been translated, after warring with the police officers and Judiciary of St. Louis for some years; he has been translated—not as Elijah, nor Ma-

homet, nor even as Judas Iscariot, Esquire, but reformed and transferred beyond the confines of Missouri—promoted to the Consulate! The President must have been imposed upon there, as well as in other cases; and might well exclaim, "save me from my friends, and I will guard against my enemies!"

But this resolution: No sooner was its birth heard of, than the Senator from Missouri, like a modern Herod or Pharaoh, breathed slaughter and destruction against it! He declared it to be "big with the fate of Cæsar and of Rome!"—"to be an occasion on which a son of the West (meaning a lineal one, I presume) ought to die with as much alacrity as on the field of battle, in defence of his country!" He even raised the war-cry of the Spanish General Palafox, and declared "war to the knife, and the knife to the hilt!" against that harmless Connecticut babe! And all this to prevent excitement at home! to keep the good people of Missouri quiet!

It seems to me a singular mode to keep the people quiet, to make them believe such a struggle is going on here by their valorous Senator against those aboriginal enemies, the Piets and Scots of the Northeast, who, from the accounts we have had of them, may be descended from King Philip, of Mount Hope, or Miantinimoh, or the Penobscots and Narragansetts!

Suppose my neighbors, the Royal Pawnees, should send a Pawnee minister to some pass of the Rocky Mountains, to see what the Red Skins are doing beyond; and he there beholds a solitary Red Stick applying his skinning knife upon the carcass of a dead deer! He sends back a report that a million of Red Skins, armed, painted, and feathered for the war, are passing the Cordilleras, to bear down, like a deluge, upon the Pawnee lodges! How calm it would make the Royal Pawnees, and especially the squaws and papooses! How very quiet they would rest! And then comes a bulletin announcing his victory, with his naked knife-blade to the hilt, and by the prowess of his own "red right arm," over the whole invading host! Every body knows, the moment that minister returns, the grateful Pawnees will make him principal War Chief. But the misfortune will be, that, when they discover the gross imposture of the stratagem, they will "unfrock him"—yes, unchief him!

I dislike to see religion brought into disrepute by hypocritical pretences to it, when we do not feel its influence. So I should dislike to see the true gravity and dignity of this Senate brought into disrespect, by affecting to feel them when such broad farce is reigning all around us.

Whenever I hear such extravagant declarations as those—witness such a gigantic overstriding of all the modesties of nature, and the propriety and fitness of the occasion—or see

"Old Ocean into tempest rous'd,"

"To waft a feather, or to drown a fly,"

I shall not affect much gravity. Such mock courage makes me smile.

If the Senator mean that he intends to die in neither the defence of this inquiry nor of his country, that is intelligible. If he mean that the West might spare as on without any of that tear-falling scene which he enacted across this chamber at the Senator from Maine, [Mr. HOLMES] in relation to the second Missouri question, then silence becomes my instructed condition, until after the funeral; when every good man would rejoice that matters were no worse. But if he mean that this resolution is a fit occasion to die on, without waiting to see if his country may not need him in case of actual invasion, and will die in spite of my dissuasions, then I hope he will die like a lineal son of the West, in imitation of the ancients! Let him take Palafox's naked knife-blade, drawn; go over those distant hills beyond the Potomac, (so as to die on Virginia ground) and there, in the vicinity of Wash-

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ington's relative, fall upon its point, and die like Cato! Or, if he dislike cold iron and steel in the middle of winter, let him not forget the illustrious exit of that illustrious ancient who betrayed his Lord!

I should like to see this question in mathematics figured out in the rule of three, and the quotient fairly stated. If the low water mark or zero line of the Senator's valor, when peace is in all our borders, and not a war speck in the sky, that I can see, be equal to that of Palafox in the passes of the Pyrenees, guarding his native Spain against the invading legions of Napoleon Bonaparte; or of Leonidas, with his three hundred Spartans, at the Straits of Thermopylae, guarding Sparta and all Greece against the million of myrmidons of Xerxes, the King of Persia and of Kings; what would be the spring flood height, or boiling degree of his rage, if placed in the Pine-spur-gap of our own Alleghanies, with his naked war knife drawn, to guard the magnificent valley of the Mississippi against the invasive Yankees; and upon lifting up his eyes and looking over the plains below, towards the Northeast, he should behold the universal Yankee nation, armed *cap-a-pie*, with drums beating and banners flying, coming to invade us, and lay our valley under one sheet of fire, from the Lake of the Woods to the Balize, and from the sources of the Missouri to the aforesaid Pine-spur-gap! and to carry away into captivity the brightest portion of our mulatto beauties! Figures cannot count it. Poets cannot sing it. Homer did his best in Achilles' wrath about the loss of his sweet-heart, and while chasing Hector around the walls of Troy; and that barely came up to the zero line of the Senator's valor! And Cervantes is dead! A propos! Cervantes was the man for this sort of valor! It all rushes on the mind "like a flood of coming light!" All is not right in the capital! There is more occasion, now, for Dr. Cutlash, or Dr. Cutscull, than for any military hero to guard us against the Yankees! Those mental illusions have afflicted the frail sons of Adam in other countries, and in climates better than our own! My honorable friend Don Quixotte de la Mancha, a countryman of Palafox, had a long spell of them! On one occasion he attacked, as he supposed, an army of steel-clad knights, which turned out to be a flock of harmless merinoes! Then a funeral procession, and wounded a friar! Again, a wind-mill and a fulling-mill, imagining them colossal, enchanted giants, more terrible than Aesop's buffalo bull! But why recount his freaks, when all these honorable Senators have read Cervantes' and they who hope for missions to Spain, South America, or Mexico, have, doubtless, read him in the original!

But if the legal right to this inquiry will not be admitted, I offer a compromise. Not a "coalition," gentlemen of the majority, for we know you loathe that; nor a "bargain, intrigue, and management," for that also you abhor; nor even a "combination," for that we believe you in possession of already, and upon it I have said all I intend to say at present; but a *bona fide* agreeing together on the way, before we enter the vortex of unprofitable litigation about legal rights. Here it is.

One of your best speeches [Mr. HARNEY'S] sufficiently proved that the "Federalists," of all countries and climes, languages and forms of Government, by whatever name called, are, and have been, the identical "few," to whom the motto on your banner (the Telegraph) says "power is always stealing from the many;" that they have always been the power-grasping gentry, who stand and pull on the power already stealing to them! In Europe they have been called Aristocrats and Ultras; in our old war, Tories, more recently National Republicans; but they are Federalists still. Now I propose that you transfer to us all the Federalists in your ranks. They cannot be many, or you would not proscribe them thus. With us, names are nothing, and if they practise our principles we shall be glad of their company and aid. Their passage to us,

we think, a down-stream business. They have only to embark on the bosom of the constitution and the fundamental principles of our liberties, and they will be with us in a moment. But for us to pass to you is, as we think, impossible. For going in that direction there lies between us the vast abyss that may be supposed to exist, if the whole constitution and liberties of the country were annihilated!

Another of your speeches [Mr. BAXTON'S] gave society the old horizontal cut, and threw all the gentlemen up into the garret or gallery! These gentlemen are the same spoken and written of by the elder Adams; and therefore they ought all to be d—d! Now transfer to us, also, all the gentlemen in your ranks, and they can't be many, or you would not proscribe them so. With these reinforcements from your ranks in this body, without disturbing your Executive departments, or other offices, we can, and will, make all proper inquiries into the exercise of Executive will, and especially into the causes of those removals that have made the free born sons of this republic feel like slaves! It is to be regretted that you, the majority, to whom the ten talents have been committed, with the power of doing so much good for our country, should not have attempted, by example, or otherwise, to fix some bounds beyond which sectional prejudice and strife should not be permitted to run. Moses established the term of fifty years as a jubilee, when the Jews might, at least for some purposes, rub out, and begin again. The modern politicians have established a much shorter term of jubilee. Some ten, twelve, or twenty-four hours, suffice to bring together personal enemies, hostile as the Kilkenny cats; and men of political principles, opposite as the poles; and to cause them to march together, at least so long as the bounty bag will jingle, or the prospects of "booty" remain pretty good!

But how long, how far beyond even the Jewish term of jubilee, sectional prejudices are to run, I can no more tell, than I can tell when the "time propitious to the enlargement of the powers of the people," and to the curtailment of Executive patronage, and putting bounds to Executive will, shall arrive; or how long, after a chase of a Northern buck has been cut in upon by a new pack, and the game taken and eaten, some unfortunate Ringwood of the original chase, with a bad olfactory and worse judgment, may continue to trail, and cry around the old hunting ground.

But we are told of exceptions in all these attacks upon New England. I will not go back to the dead, and disturb old differences about great principles of government, long since laid to rest. I will only turn around to my contemporaries, to the modern tribes of office hunters, of all political parties, who crowded around the President, of late, in ranks of some ten thousand deep—to that class who, after following "the Civil Lamb, singing eulogies and praises, hosannas and hallelujahs, to his name, so long as the prospects of immediate glory were bright; but who deserted suddenly to the Military Lion, so soon as those prospects were dimmed or obscured; or so soon as the thirty pieces of silver were heard jingling in the bag—even before the money was poured out and counted, or the eyes were blessed with the impress of the Roman emperors, the Spanish kings, or the American eagles." When such are mentioned as exceptions, I always think of the exceptions made by his Satanic majesty, when he anathematizes the twelve disciples—always excepting the bright and faithful Judas, whose virtues alone would be sufficient, in the opinion of his majesty, to redeem the twelve; or of such as the Duke of Wellington might be supposed to make, were he to take it into his gracious head to curse all the inhabitants of the peninsula of Spain—always excepting, of course, the faith-keeping Portugal!

I will not trample on the graves of the illustrious dead of New England, of either of the old parties. There

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sleep the remains of the fathers of New England! I will only remember them as the fathers of New England—the fathers of the Revolution—the compatriots of Washington, and the great Northern Light! Yes, sir, however unpalatable that may be in the uncharitableness of party times, they were the great Northern Light, whose beams penetrated the gloom of our Western and Southern forests, to the farthestmost verges of the republic! And if they did go there in the humble forms of pedagogues and school masters, preceptors of academies, and presidents of colleges, they were not the less beneficial to the country for that reason. I will hold up only their virtues and their patriotism to the view of Missouri; and if I can excite in her youths an emulation of such virtues and such patriotism, I shall have done much for the generation in which I live.

And if there be any here who can declare they owe them no debt of gratitude for those benefits, I shall not dispute the sincerity of their declarations. It is not my case, however humble my debt may be. And if there be any here surrounded with Egyptian darkness, except so far as illuminated by the glimmering lights of extracts from the works of those same fathers of New England, or other authors, compiled extract upon extract, and light upon light, until they rise up high as a modern "light house in the skies!" I have only to say, that "I admire the industry, although I may not emulate the labor of erecting such anti-republican and super royal structures!"

And as to all those early settlements, under Daniel Boone, or other pioneers, pushed forward, either north or south of the Ohio, beyond the pale of the law; and the physical and pecuniary means of this embryo republic to protect them, when it was struggling for existence on this Atlantic coast, under all the obstacles arising from war and consequent poverty and exhaustion; and as to all the administration of Washington, I will cast the same mantle of charity over these epochs, which I have extended over the graves of the fathers of New England; and this is the only answer I shall attempt to all that has been said by the Senator from Missouri about the battles of Blue-bell and Nicajack.

But, sir, I must conclude these remarks. To know when to stop, is among the most agreeable talents of a public speaker.

The downward tendency of our countrymen to a spirit of universal office hunting, servility, and corruption—the prelude to the downfall of nations—has been remarked, with patriotic regret, by such men as Leigh, and Mercer, and others, in the late Virginia convention, and by thousands of others in our country. I appeal to all our contemporaries for the truth of such remarks. And has not the adulterated state of our Presidential elections, within the last ten years, since the race of Revolutionary worthies was exhausted, had but too much to do in this sad fall of our countrymen from that high estate of virtue and patriotism in which the fathers of the Revolution left the last generation of our men!

In this view, contemplate the metamorphosis of the Secretary of State, since the year 1789. In contemplating this, we almost involuntarily fall into a recitation of our school-boy lessons: "*In nova fert animus mutatas dicere formas, corpora*"—and so on. The metamorphosis has been almost complete in only forty years! And the change has been from small harmless things, to things great and formidable. In July, 1789, that officer was created, a mere assistant to the President—a mere grey goose quill in his hands to write with—liable to be split, nibbed, pointed, broken, or thrown away by the President at will and pleasure; being not to perform separate duties of his own, but to facilitate the President in performing those duties devolved on him by the constitution, as a distinct department of the Government; subject to the personal orders of the President, and bound to write down just such words, sentences, and phrases, as he should dictate in all his negotia-

tions and other duties. And what has this Secretary become now? Some duties of detail have been imposed by statute occasionally; but this servant at will, like other servants deprived of liberty, has contrived to make his fortune rather out of the line of his original destination. Availing himself of the *faux pas* of Aaron Burr in the Vice Presidency, he has shuffled himself into the direct line of succession, and now ranks, in public estimation, in the United States, with the Prince Royal of Sweden—the Prince of Wales of England—or the Dauphin of France!—ex officio candidate for the Presidency. And were the mere pageantry of this new rank all, I would not notice the circumstance. But this is not all. Consequences of the deepest import to the permanency and purity of our liberties are involved in this great metamorphosis!

No sooner is the premier warm in his Department, than he begins to scent the gale all around him for votes to make himself President at some future day!

Custom has devolved the power and patronage of the Department upon him. Custom has made him prime minister of the cabinet council; and standing thus, with a foot on the first step of the throne, and an eye upon the highest seat in the nation, he immediately begins to play Absalom at the gate, before all Israel! to wield the power and patronage of his Department to repress, obscure, and diminish his opponents, and to raise, cherish, and multiply his adherents, with a view to reign President himself, some day!

You have only to imagine all the other Departments, including the General Post Office of the United States, subservient to the "party discipline" of the premier department, and all co-operating to one main end—whether that be the re-election of a President as a stepping stone, or the election of a prime minister himself; and the story of the loss of our liberties will be sad reality!

And is there no proof of this subservency in the other Departments? There is a volume of proof! and that volume consists in the simple announcement—"John McLean is no longer Postmaster General of the United States!" And why is he not? Because he would not prostitute himself, and the Department under his charge, to the low and corrupt party discipline and vote auctioneering of the new dynasty. The ouster of Judge McLean, to render the General Post Office subservient to the main design, and the almost indiscriminate removal of every high-minded and honorable man from office for the exercise of the elective franchise, or for a worse reason, was the declaration of war against our liberties!

And the Press! that once proud Palladium of Liberty, is subsidized and bought—sunk to a mere party engine, stationed on this floor, to misrepresent and destroy the minority! And that was the passage of the Pruth!

The United States' Senate! once the great barrier of public safety, is to be sunk to the mere corrupt and servile register of Executive edicts! And that will be the passage of the Danube!

The Supreme Court of the United States, as yet the sheet-anchor of the ship of constitutional liberty! that is to be destroyed, either by direct assault, as the Russians would advance upon Shumla, or by throwing a dark cloud of suspicion over it, and rendering it useless, and worse than useless, as a common tribunal of the States; and some other men, or some other tribunal established in its place, as a party engine, like the corrupt courts in the worst days of Great Britain, for the destruction of opponents!—a mere grand guillotine, to cut off the heads of the minorities! And that will be the passage of the Balkan!

And then "farewell! a long farewell! to all our greatness"—until some other revolution shall restore us to our pristine elevation, under the protection of Union and Liberty, and the guidance of the Farewell Address of the Father of his Country.

[Here the debate closed for this day.]

SENATE.]

*Mr. Foot's Resolution.*

[Feb. 12 to 19, 1830.]

[From Friday, Feb. 12, to Wednesday, the 17th, (Saturday and Sunday excepted) the Senate was chiefly occupied in the consideration of Executive business.]

THURSDAY, FEB. 18, 1830.

## MR. FOOT'S RESOLUTION.

The Senate resumed the consideration of the resolution of Mr. FOOT.

Mr. HOLMES addressed the Senate at considerable length; when he gave way for a motion for adjournment; which was carried.

FRIDAY, FEBRUARY 19, 1830.

The Senate resumed the consideration of the resolution of Mr. FOOT in relation to future surveys and sales of the public lands; when Mr. HOLMES again took the floor, and concluded his argument.

[His speech, as delivered on the two days, is here given.]

Mr. H. said that, by a liberal construction of the rules, he should not be out of order if now and then he should happen to allude to the resolution. But he hated, above all things, to be entangled in questions of order; and, admonished by so many splendid examples, he should approach the subject-matter as seldom as possible—and never without a suitable apology. His chief purpose would be to defend New England against the charges made against her. She was charged with high and aggravated crimes; of perpetual hostility to our brethren of the West. The accusation spread over a period of half a century; and the perpetual hostility consisted, 1st, in our preventing settlements by limiting the surveys and sales of the lands; 2d, in attempts to circumscribe territory and surrender privileges; 3d, withholding protection, in order to prevent migration, and thereby encouraging the savages to massacre with knife, sword, and conflagration!

The Senator from Missouri, [Mr. BENTON] after exchanging salutes with the Senator from South Carolina, [Mr. HAYNE] bore down upon New England, and poured into her this tremendous broadside. Now, from the great noise and great smoke, it was supposed that he had entirely crippled her, left her water-logged, and in a sinking condition; but the smoke was blown off, and she was seen all standing, pursuing her course, under easy sail, with her star-spangled banner floating in the breeze, unhurt and untouched; her crew gave three Yankee cheers, and returned the broadside. What was to be the issue was uncertain; but skilful judges were of opinion that the enemy was sheering off, and would be obliged to return into port to refit and repair damages.

If God gives me strength [said Mr. H.] I intend to bare my arm and lend my humble aid to defend my country from so foul a reproach, and to show, as I think I can, that the charges are not only groundless, but without the shadow of a foundation. I shall not boast, either in putting on my armor or in putting it off; but, in the impressive and expressive phrase of one of my gallant countrymen, "I'll try." I have witnessed in our opponents quite boasting enough to sicken me. The champion of the Philistines boasted and blustered much; he defied the armies of the God of Israel, and demanded an antagonist to decide the controversy; but the unassuming and humble shepherd, with his "five smooth stones from the brook, in his shepherd's bag, and his sling in his hand," being the servant of the God of Truth, went out and subdued his adversary. And I, sir, stripping as I am, armed with the panoply of truth, shall not fear to encounter any "man of Gath," though his stature be "six cubits and a span," and "the staff of his spear be like a weaver's beam." New England, my country! and though thy mountains may be bleak or barren, and thou art the region of hail stones and

snow storms, where stern winter had deposited his armory—still there is a sturdy, unyielding, inflexible patriotism in thy sons, which will not suffer in a comparison with any people on earth. Massachusetts, "the cradle of independence," the birth-place of the martyred Warren, and of the patriots Hancock and Adams—Plymouth, the asylum of the pilgrims, the land of my forefathers, in whose bosom is deposited the mouldering remains of my ancestors; if I ever forsake or forget thee, may this arm fall from the shoulder-blade!

But I meet at the threshold two embarrassments: Who is the accused, and who the accuser? Whom am I to defend? At one time it is all New England; at another the federal party; and then all of these are to be excepted who are "on our side," federalist or democrat, or no matter what, provided he will worship the idol yonder. This assault is against all those in New England who had the independence and integrity to act upon principle; and this persecution is against them for no earthly cause but that they honestly believed Mr. Adams better qualified for President than General Jackson. Persecute on; heat your furnace as intensely as you may; "but be it known unto thee, oh, King! we will not serve thy God, nor worship the golden image which thou hast set up!" Yours exclusively the republican party! There is not a people of the number on earth, who are so universally republican as that section of country denominated New England. Sir, every State is represented here by members not only professed but real republicans. Every one holds his place here by republican votes, without which he could not have been elected, and every one as friendly to the last administration. We are the twelve disciples of our master, the republicans of New England. Whether there may be a Judas among the twelve, or no, sure I am that there was not one Peter to deny his master in the period of proscription. No, we stood by "sorrowing." We saw the cross erected, and the friends we loved cruelly crucified, and were obliged to submit to what we could not prevent. We reasoned, we pleaded, but equally in vain; our tears and expostulations were alike disregarded. Sir, the facts attempted to be proved show clearly that no party discrimination was intended: for the accusation covers a period of nearly twenty years, when no party lines were drawn, and even the names were not known.

Again, sir, who is the accuser, the prosecutor of the indictment under which we are arraigned? Who is the West, and by whom is she represented here? Is the Senator from Missouri all the West? I had supposed that the West embraced Kentucky, part of Tennessee, Mississippi, Louisiana, Missouri, Ohio, Indiana, and Illinois. Now, if he prosecutes in her behalf, let us see his authority, the letter of attorney. The rest of this West is represented here, and ably too; and though two other gentlemen have opposed the resolution, neither, as I understood, has attempted to sustain this charge of perpetual hostility. Is Missouri, alone, this mighty West? Even here, while one of her Senators accuses, the other defends, the East. Missouri is equally divided, unless the accuser claims to be the majority. As to this, I don't know. If we calculate the number of words and repetitions, he leaves his colleague in a very slender minority; but, if we determine by the facts and argument, "your deponent saith not;" the public will decide, if they have not already decided. Now, that a State of yesterday should make these charges and excite these sectional jealousies in a vast region of country, in which the Senator and his State has, until just now, had no interest whatever, is prophetic of no good, but of much evil.

I was not, at first, able to perceive what the constitutional question of the relative powers of the Federal and State Governments had to do with this resolution. But, upon reflection, I perceive they are intimately connected, and I therefore beg pardon for touching upon the subject.

FEB. 19, 1850.]

Mr. Foote's Resolution.

[SENATE.]

You will recollect that the doctrine abroad (and it has found its way into the Senate too) is, that, by virtue of the admission of a State into the Union, the public lands revert to the State: any thing in the act of cession of those lands to us, or any stipulations of the State, as the condition of her admission, to the contrary notwithstanding. You are aware, too, that there is another doctrine of the day, that, in controversies between us and a State, the ultimate and effectual decision belongs to the State. Well now, with each of these principles in each land, the States in which our public lands are will have the power to take them in defiance of us, and they will take them. Then, until these dangerous heresies are abandoned, I would not give a feather for all your public lands within the States. And why should we survey lands which are not our own? If the State claims the lands, and has a right to decide its own case, what division are we to expect? We are to be only a claimant, a petitioner before the supreme State authority. We might, to be sure, recur to the cessions of Virginia and others, and to the object of them; we might urge the express stipulation of the ordinances for settling and governing the territories; we might appeal to the articles of admission into the Union, and insist upon their fulfilment; we might appeal to this constitution, which provides that all compacts entered into by the Confederacy were as binding under the constitution as under the Confederation, and ask what sort of a contract that was that held one party and released the other. We might, moreover, appeal to the article itself, which authorizes the admission of new States, and ask if the proviso there—which vests in Congress the exclusive management and disposal of these lands, and provides, emphatically, that nothing shall be construed to impair our claims to them—and ask triumphantly, if all this was not conclusive? And these, and a hundred other reasons equally strong, would not weigh a feather against the interest a State had in five or ten millions of acres. We should gain the argument, but we should lose the land. Until these momentous questions are finally settled, why then are we to incur the expense of surveying lands which may never belong to us? If a State expects that we must survey its lands at our expense, it is, I should think, taxing our generosity a little too far. It has an equal right to demand that we should also cultivate them.

The Senator from Kentucky [Mr. ROWAN] has discussed the question of the ultimate tribunal which is to decide a controversy that involves the powers of the United States and a particular State. His notions in regard to the social and the political compact are too refined, sublimated, and anti-constitutional for me. I shall seize upon his inferences, and, in my old-fashioned and clumsy way, take up the *argumentum ab inconvenientie*, and pursue his conclusions to their final results. I shall not stop to inquire whether some other tribunal than the Supreme Court might not have been devised more impartial and wise. Nor shall I insist that this Supreme Court may not have erred in extending the federal at the expense of the State rights. It is in the nature of man thus to err. And if any error has occurred in its decisions on constitutional questions, I readily admit that these errors have not very frequently been in favor of "State rights," against the federal powers. But I cannot well perceive what other tribunal could have been invented which would have done better. That Congress, according to his suggestion, should have been this Court of appellate jurisdiction in these cases, is to me a strange proposition. The small States would scarcely feel very safe in the hands of the popular branch; and how the judicial decision could be made, whether by a joint or a concurrent vote, he has not informed us.

It, however, is enough for me, that the constitution has vested the power here contended for, in express terms, in the Supreme Court. This constitution, and the laws made pursuant to its authority, are to be "the supreme law of

the land, any constitution or law of a State to the contrary notwithstanding." A Supreme Court is established, having original jurisdiction in few cases, appellate jurisdiction in all others arising under the constitution and laws made pursuant thereto. The laws of the United States are made supreme, and those of the States subordinate; and the court is to be the final tribunal in deciding upon these supreme laws. Now to suppose that the laws of the Union are supreme, and those of the States are subordinate, and that the State courts, in their decisions upon them, are supreme, and those of the United States are subordinate, is an utter absurdity. The very statement of the proposition proves that it is perfectly ridiculous. Allow a State, in a controversy of this kind, to decide ultimately and definitely, and to carry its decision into full effect, and you are re-translated into the old confederation, if nothing worse. The principal, and almost the only defect in that confederation was, that it was advisory or directory, but not coercive. This coercive power was almost all that was wanted. If we have not that, "all we have gained is naught but empty boast of old achievement, and despair of new."

But the Senator from Kentucky, as I understood him, takes another ground: that a sovereign State has no power to surrender any portion of its sovereignty. I confess, sir, that unless others very much misunderstood this word sovereignty, it is very much misunderstood by me. I had supposed that a sovereign was he who had a right to execute his own will without any legal restraint or control. This is absolute sovereignty, and in this sense scarcely a civilized nation on earth is absolutely sovereign, as there is no one which is not subject to the law of nations, either prescriptive or conventional.

Man, in a state of nature, is an absolute sovereign, being subject to no legal restraint, and having the right to execute his will in defiance of legal control. If, then, a State cannot renounce any portion of its sovereignty, neither can man; he cannot surrender any portion of his natural rights for the better security of the rest. If he can surrender no portion of them, much less can he surrender the whole. And as subjugation must be by force or surrender, and as force may always be resisted by force, why may not the slave, having more bodily strength than his master, rise up against him and subdue him? Remember that these are not my premises. I only take his, and follow them out in all their results. I forbear to pursue this train in the argument, lest I should disturb the terrific ghost of the "Missouri question," which has so much affected the nerves of the Senator from Missouri. Thus we see how dangerous it is to go back behind the constitutional enactments, to unsettle what has been already settled. But, sir, it is inexpedient that I should discuss this subject farther. The Senator from Massachusetts [Mr. WENDELL] has done it ample justice. It were vain for me to attempt to add any thing to what he has said. I do not aspire to do him even justice, much less to compliment him. But I will say, that, in my view, his argument on this point is unanswered and unanswerable. It was on this question, between that gentleman and the Senator from South Carolina, that the Senator from Missouri introduced his chaste, elegant, and classic figure of the "kick-up-horse and the monkey on his back." I did not readily perceive its application. I suppose by the "kick-up-horse, he intended the Senator from Massachusetts, but who was his "monkey?" If this was intended as another salute, it was a little uncourteous, to say the least.

The Senator from Kentucky considers the question of internal improvement as settled, and he yields to the doctrine as *res judicata*; and so do I. And if so in that case, why not in this? If there is any one principle in our constitution that has more than another been settled by legislation, adjudication, and general acquiescence, it is this: that, in a conflict of power between the United States and



SENATE.]

Mr. Foot's Resolution.

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a State, the final efficient tribunal is the Supreme Court. Virginia had pronounced the alien and sedition laws unconstitutional, and transmitted her resolutions to the Legislatures of other States. I will read you the answer of Massachusetts: "This Legislature are persuaded that the decision of all cases of law and equity arising under the constitution of the United States, and the construction of all laws made in pursuance thereof, are exclusively vested by the people in the judicial courts of the United States; that the people, in that solemn compact which is declared the supreme law of the land, have not constituted the State Legislatures the judges of the acts or measures of the Federal Government." At this time it will be remembered that Virginia was in a political minority, and Massachusetts in a majority, in the federal councils. After this, when the scales had shifted, and the balance was the other way, it seems there was great excitement in Pennsylvania on the decision of the federal court in *Olmstead's* case. So great was it, that the militia were ordered out to resist the marshal, and they actually took the field, under a General Bright. But this mighty army levied no war; the marshal executed his precept, and the peace was not at all disturbed; and the Legislature of that State adopted the constitutional mode of redress for the supposed grievance. They proposed to amend the constitution, and establish some other tribunal to determine such controversies, and transmitted their resolutions to the other States. Virginia was now in a political majority, and I will read you the unanimous opinion of her Senate on the subject. The committee who had the resolutions of Pennsylvania under consideration, were "of opinion that a tribunal is already provided by the constitution of the United States, viz: the Supreme Court, more eminently qualified, from their habits and duties, from the mode of their selection, and from the tenure of their offices, to decide the dispute aforesaid in an enlightened and impartial manner, than any other tribunal which could be created." The report gives the reasons for the opinion, and was unanimously accepted. Gentlemen will find it quoted in the case of *Cobens vs. Virginia*, 6 Wheaton, 358. The decisions of this tribunal have always been submitted to as the last resort in these questions, and I regret to hear its doctrines denounced at this day as damnable, and the court as a tyrannical "Star Chamber." But suppose a State to consider herself aggrieved in a case plain and palpable, there are three constitutional modes in which she can obtain redress: first, by the judiciary; second, by an appeal to the people at the polls and ballot boxes; third, by calling upon the States to amend the constitution. Now suppose all these fail, and the grievance is, in the opinion of the State, as plain and palpable as ever, one of two courses must be pursued: our own decisions must be enforced, and the State coerced; or, adopting the opinion of a late Senator from North Carolina, [Mr. Macon] if a State will not submit, let her go. Withdraw your power and protection, send home her Senators and Representatives, and let the State set up for itself, and, in a very short time, it will come back and supplicate you to receive it again.

And should either of the enterprising youths of the family of the West, the East, or the South, become discontented, and wish to leave his father's house, and ask for the portion which belongs to him, and we should deal it out to him and let him go, and he should take a journey into a far country, and there "waste his substance in riotous living," or some other way, (for waste it he surely would) and there should be "a famine in the land, and he should begin to be in want," and to "feed upon husks," and "no one should give unto him," he would then "come to himself," and begin to reflect, (for adversity is an excellent school for reflection) and would say, "how many hired servants in my father's house have bread enough and to spare," (and here the analogy is very close, for many of

our servants have enough and to spare) "and I perish with hunger; I will arise and go to my father, acknowledge my guilt and folly, and that I am unworthy to be his son, and beg to be received as a servant," and he should come: now, here too, "the father would see him while he was yet a great way off, have compassion on him, run out to meet him, fall upon his neck and kiss him, order a new robe to be put on him, and the fattest calf to be killed; and we should all be merry together. So that, instead of the "blood and carnage" which the Senator from Missouri seems so willing to predict, I am inclined to believe the whole affair would be settled in this good natured, affectionate, family way. I regret to hear disunion and civil discord so often predicted or threatened with so much apparent exultation, and I respond to the Senator from Massachusetts, the Union—the Union, in the exercise of all its legitimate powers—the Union forever!

I now will, as briefly as I can, examine the charges of hostility, with their specifications, passing swiftly over those which have been so repeatedly and so triumphantly refuted by the distinguished gentlemen who have gone before me. I should not again have noticed the charge so completely answered, that the first sales of our Western lands were limited to each single township in succession, had not the Senator from Missouri persisted in repeating it. But, though vanquished, he argues still. We have given reasons conclusive, that the safety of the frontier settlers required it; there was, from the close of the Revolution to 1791, a *quasi* war with Indians; the settlers were in a constant state of alarm and danger; it was the opinion of Washington that it would be impossible to defend the frontiers unless the settlements were compact. In 1791 was the flagrant disastrous war; which continued until Wayne's victory in 1794, or rather until the treaty of Greenville of the next year.

But as soon as it could be done with safety, the surveys and sales not only kept pace with, but were far in advance of the demand. The very next year after the treaty of Greenville, the act of 18th May, 1796, was passed, directing that, "without delay," the lands north of Kentucky river, and seven ranges of townships west of the Ohio, should be surveyed and brought into market. By this act, the credit system was established, and the price of the lands fixed. The act of 1800 gave further facilities; and this brings this branch of evidence of hostility down to the close of General Washington's administration. As this is an important epoch in our history, I will bring all the charges up to this period. New England is moreover charged with attempting to limit territory, and surrender privileges, in a spirit of hostility to the West. And how is this? In the summer of 1781, at a very gloomy period of the revolutionary war, when Cornwallis had marched triumphantly through the Southern States, and subdued them completely subdued, and was, with his victorious army, advancing upon Virginia, it was then that Congress thought of surrendering remote interests, to preserve those which were essential and vital; and well might the purest patriot have proposed it, in our then critical and perilous condition. But, sir, it is worthy of remark, that the proposition to surrender the navigation of the Mississippi to Spain, as the price of her alliance and aid, was defeated by New England. On the proposition to instruct Mr. Jay, our minister, to make this concession, Massachusetts, Connecticut, and North Carolina, were against it; New York was divided; and, one State being absent, there were not nine in the affirmative, and the proposition failed. If the Senator from Missouri did intend to turn this vote into hostility, I will turn it back. Here Mr. H. read from Chief Justice Marshall's *Life of Washington*, as follows:

"In the present inauspicious state of public affairs, Congress, for the first time, manifested a disposition to sacrifice remote interests, though of great future magni-

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tude, for immediate advantages; and directed their minister at Madrid to relinquish, if it should be absolutely necessary, the claims of the United States to navigate the Mississippi below the thirty-first degree of North latitude, and to a free port on the banks of that river, within the Spanish territory. It is remarkable that only Massachusetts, Connecticut, and North Carolina, dissented from this resolution; New York was divided."

Mr. H. proceeded. Afterwards, it seems to be admitted, that, when our prospects were brighter, and a similar proposition was made, it was unanimously rejected. The Senator has sought in vain to find what member offered the proposition, hoping, no doubt, it would turn out that he was an inveterate Yankee. Well, let us proceed. On the 7th March, 1792, the President sent to the Senate (as was the practice then) the instructions to be given to our minister to Spain, for their advice and consent. In these instructions, the thirty-first degree of latitude, and the free navigation of the Mississippi, were each of them made a *sine qua non*. These indispensable conditions were unanimously approved by the Senate. The negotiations were arduous and protracted. The West became uneasy and jealous, and demanded of the President the instructions. A French officer had been authorized, by the minister of the republic here, to raise a body of troops in Kentucky, to take and occupy New Orleans. The President had called upon the Governor of that State to aid, with his militia, the army of the United States in that quarter, to arrest any such expedition, if it should be attempted. The Governor thought he had no constitutional power, and General Wayne was ordered to Fort Massac, to arrest any enterprise moving down the river.

But, in 1796, the treaty arrived which secured these great objects, and, on the 3d of March, of that year, it was unanimously approved by the Senate. Here, sir, ends the second chapter of our hostility to the West—up to the close of Washington's administration. The Indians had been beaten into a peace, the lands had been surveyed and offered for sale, the Western posts had been surrendered to us, and the navigation of the Mississippi had been secured.

I will now go back once more, and bring up the most flagrant charge of all: that, for the purpose of preventing emigration, New England had constantly withheld protection from the frontiers, and thereby encouraged the savages to murder, with knife, sword, and conflagration. Sir, it is very true that New England has always been engaged in active and sanguinary hostility towards the West. Not against, but for her. New England blood has flowed copiously and profusely in defence of our brethren of the West.

Sir, I will repel this charge, and defend the insulted honor of my countrymen. You will find in the resolves of the old Congress, of the 1st and 12th of April, 1785, that seven hundred troops were raised "to protect the settlers on the frontiers"—from Connecticut, one hundred and sixty-five; New York, one hundred and sixty-five; New Jersey, one hundred and ten; and Pennsylvania, two hundred and sixty. It has been urged that, on the 22d June, 1786, Massachusetts voted against sending two companies to the Falls of the Ohio; but it should have been added that her reasons were, that she did not believe an Indian war was probable, and that she wished a different organization of the Indian Department. The same reasons influenced her to refuse to employ the thousand Virginia militia. But, in October of that same year, finding that an Indian war was inevitable, it was unanimously resolved to raise thirteen hundred and forty men, and that the quotas should be thus: New Hampshire, two hundred and sixty; Massachusetts, six hundred and sixty; Rhode Island, one hundred and twenty; Connecticut, one hundred and eighty; Maryland, sixty; and Virginia, sixty—twelve hundred and twenty of the thirteen hundred and

forty from New England! By a resolve of the 3d October, 1787, seven hundred troops were raised for the same purpose: Connecticut, one hundred and sixty-five; New York, one hundred and sixty-five; New Jersey, one hundred and ten; Pennsylvania, two hundred and sixty. By the act of the 29th September, 1789, Congress, under the new constitution, recognized this last force, and, in addition, authorized the President to call out the militia to protect the frontiers. The act of 7th October, 1790, increased the army to twelve hundred and sixteen effectives, to constitute a regiment of infantry, (the first regiment) and a battalion of artillery, of four companies. Of these, about four hundred were in Harmar's defeat, if it was a defeat. The act of 3d March, 1791, authorized the second regiment. These two regiments of infantry, and that battalion of artillery, were the whole regular force in the disastrous campaign of 1791. St. Clair's force engaged was about fifteen hundred, of which a little more than one-third were regular troops. The first regiment was not in the engagement, for the fugitives from that scene of slaughter met Major Hamtramck, with that regiment, at "Fort Jefferson." The second regiment, of twelve companies, was, with the exception of one company from Delaware, under the gallant Kirkwood, exclusively from New England. I infer it from my own recollections, and from the fact that two of the majors were from Massachusetts, and the other from Connecticut; that the captains and subalterns of six of the twelve companies were from Massachusetts, two from Connecticut, one from New Hampshire, and one from Rhode Island.

I well remember, though I was then but a child, that one of the companies of that regiment was raised in my own neighborhood, the old county of Plymouth. They were fine young men, the sons of independent yeomen, were easy and safe at home. But the cries of their suffering brethren of the West reached them, and their patriotic souls arose. They were led off (I shall never forget it) by an officer by the name of Warren, in whose veins circulated the blood which was kindred to that of another Warren, who had previously, at Bunker's Hill, poured out his as an offering to the infant liberties of his country. He was a brave and elegant officer. They marched; they joined St. Clair's army, and were in the fatal battle. They did not run at the first fire, as some of the troops in that engagement did. They fought, as New England troops always fight, arm to arm, and breast to breast. They fell—every man of them! Not one officer or soldier of that brave company ever returned to bring back the fatal tidings! Their bodies were left a prey to the wolf and the vulture; their bones are now bleaching in the forest and the fields. And it is well to blast the memory of such self-devoted patriots? And by whom? By Missouri. And pray, at this eventful crisis, where was Missouri? In the cradle of her existence? No, not even there. The province of a foreign despot. This is the unkindest cut of all; the most uncharitable.

This defeat was on the 4th of November, and the news of it arrived at the seat of government in December. The President immediately communicated it to Congress, and recommended an addition to the standing army. Mr. Madison, chairman of the Select Committee to whom the subject was referred, reported a bill which provided, in the first section, for filling the vacancies in the then existing forces, and in the second, for raising three additional regiments of infantry, and a corps of cavalry; making, in the whole, a regular army of about five thousand men. This second section was opposed. It was contended that, by one single regiment and battalion of artillery, the Government incurred an expense of more than one hundred thousand dollars a year; that the second regiment had increased to three hundred thousand; that this addition would require at least a million; that the funds were not equal to meet the expense; and that the border militia could

better defend the frontiers than a regular force. This last opinion had been urged upon the President by all the Representatives of the counties in Kentucky and Western Virginia. But the President had learnt from experience how little reliance, in great emergencies, was to be placed upon militia. He gave conciliatory answers to the memorials, but followed the dictates of his own judgment.

On a motion to strike out the second section, which provided for this additional force, the House of Representatives divided—eighteen for, and thirty-four against, striking out. In this division, if I recollect, a majority of Massachusetts and Rhode Island were against the section; New Hampshire a majority, and Connecticut unanimously for it; Virginia and South Carolina a majority for, and North Carolina and Georgia against it. Now, what inference would the Senator from Missouri draw from these facts, of Southern friendship or Eastern hostility? In the Senate the section was stricken out, by a majority of one, the late President Monroe voting with the majority. It was, however, restored by a Committee of Conference, and the bill passed. Still Congress knew very well that means must be provided, and by the act of the 2d May of the same year, entitled An act for the protection of the frontiers, but in reality a tariff, raised the supplies for the army, and anticipated the revenues by a loan of five hundred thousand dollars, for the payment of which these very revenues were pledged. Wayne achieved the victory of Miami in August, 1794, and it was followed by the treaty of Greenville, of 1795.

The British treaty was ratified in the same year, and in 1796 the Western posts were surrendered to the United States. At the time of Washington's Farewell Address, the West was in perfect security; the Indians had been subdued; the Northwestern posts acquired; the navigation of the Mississippi secured; and the lands were ready for sale to the settlers. Combine all these facts, and then say, is there to this time evidence of hostility of the East against the West? But to establish my proof beyond all cavil or doubt, I will introduce one witness, who, for general intelligence, knowledge of the facts, and character for veracity, will not suffer in a comparison even with the Senator from Missouri himself; nay, more, whose testimony is perfect verity; more still, which, for prophecy, as well as truth, stands next to Holy Writ. That witness is George Washington. His legacy was promulgated at the close of 1796. First, as to the prophecy:

"In contemplating the causes which may disturb our Union, it occurs as matter of serious concern, that any ground should have been furnished for characterizing parties by geographical discriminations—Northern and Southern, Atlantic and Western; whence designing men may endeavor to excite a belief that there is a real difference of local interests and views. One of the expedients of party to acquire influence, within particular districts, is to misrepresent the opinions and aims of other districts. You cannot shield yourselves too much against the jealousies and heart burnings which spring from these misrepresentations: they tend to render alien to each other those who ought to be bound together by fraternal affection."

Isaiah himself could not have predicted more accurately. We see it with our eyes: we hear it with our ears: it is fulfilling this moment. Now to the testimony:

"The inhabitants of our Western country have lately had a useful lesson on this head. They have seen in the negotiation by the Executive, and in the unanimous ratification by the Senate of the treaty with Spain, and in the universal satisfaction at the event throughout the United States, a decisive proof how unfounded were the suspicions propagated among them, of a policy in the General Government, and in the Atlantic States, unfriendly to their interests in regard to the Mississippi. They have been witnesses to the formation of two treaties—that with Great Britain, and that with Spain; which secure to them every

thing they could desire, in respect to our foreign relations, towards confirming their prosperity."

Having repelled and refuted the charges against my section of country, up to the close of Washington's administration, (at least to my own satisfaction) I will now take up my line of march, and bring them all down to the present period.

Since this period, the public lands have been the "sufferer child" of the Government. Including purchases by treaty, about four hundred public acts have been passed to encourage the sale and settlement of the public lands. I will not torture the Senate with a particular detail, but glance at some of our general principles, and give a few prominent examples; and it is astonishing what care and promptitude are here manifested. The cession of Georgia was in 1802; and on the 3d of March, 1803, we provided for confirming foreign titles, quieting settlers, and surveying the residue. The next year similar provisions were made for Indiana. The cession of Louisiana was in 1803; possession was delivered the next year, and by the act of the 2d March, 1805, the same measures were adopted in regard to the lands there.

By the act of the 24th April, 1820, the credit system was abolished, and the price reduced to one dollar and twenty-five cents per acre; and by that of the 2d March, 1821, "the relief" was given, by which about nine millions of dollars were released to the debtors. How very hostile all this to the suffering West!

But that the low price of lands in Maine should be urged as evidence of our hostility to the West, is of all things the most laughable. Suppose, sir, that we had graduated our prices with a view to compete with the United States; is this hostility? Competition is the soul of enterprise. If I offer to undersell you, am I therefore your enemy? No, sir; it is only when a man attempts to destroy his competitor, to get him out of his way, that the competition becomes wicked. This is that with which New England is now charged, and the charge is groundless. The Senator apprehends that his "graduation bill" induced Maine to reduce the price of her lands. Now, I doubt if those who have the management of our lands ever heard of his graduation bill in their lives. Even it is questionable if they ever heard of him; sure I am that they never understood the full scope of his talents. That Senator, begging his pardon, has not yet learnt our system of lands. It is, I regret to say, a very bad one. Massachusetts before, and Maine since the separation, have pursued a policy very injurious to settlements. They have sold in large quantities to speculators. A million of acres, nearly, in the centre of the State, is now in the hands of foreigners, so that it cannot be approached by settlers. The State in a measure still pursues the same policy. A single case will illustrate our whole system. Very lately the agent sold a half township for seventy-five cents per acre—the purchaser, the same day, sold one-half of his purchase for the whole consideration, and now the cultivator could not probably purchase for five dollars. Yet, it is not at all strange that this Senator should imagine that we have done all this in utter hostility to his graduation bill. Nothing is more natural than that we should think that others are speaking of, or acting upon, what is uppermost in our own minds. This graduation bill (and I never saw it in my life) is, no doubt, his darling object—one upon which he expects to erect a monument to his fame. Now, nothing is more true than that we are partial to our own offspring. Though it may be very ugly, yet the parent supposes it the prettiest little creature in the world. So here, whatever is done, any where, must have some allusion to "my graduation bill."

Sir, as to giving away the public lands, or selling them at a nominal price, which is the same thing, I may have occasion to say a word hereafter, and to inquire into the justice or policy of such liberality. My own opinion is, and I would venture to submit the point to the Senators

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from Ohio themselves, that that State now contains more population, wealth, intelligence, and moral worth, than it would if the lands from the first had been given them.

The opposition to the purchase of Louisiana has been triumphantly seized upon as conclusive evidence of New England hostility. Here, too, the Senator from Missouri will find that he has been most unlucky, and has cruelly mangled his friends. The first outcry against this came from "magnanimous Virginia." You recollect, sir, the pretended disclosure of the two millions sent out to Amsterdam to subsidize France—France wants money, and she must have it! and all that sort of thing: this came from a distinguished Virginian. Now I believe the whole of this affair was this: that the two millions was an intended deposit to facilitate the negotiation for Louisiana; but, however important the acquisition of Louisiana might be, (and I never doubted its importance) I think a statesman might very honestly oppose it without incurring the imputation of hostility to any one. The right of the United States to acquire a foreign territory and population was seriously questioned by some very honest politicians and distinguished Statesmen. And if this were now *res nova*, and presented as a mere constitutional point, disconnected with any great expediency, or important crisis, it would puzzle many of us to find the powers in the constitution which would authorize the purchase. At any rate, if men were then to be found who would not sacrifice their oaths to any expediency, it is most illiberal and unjust to impugn their motive, or imagine that they were sinister. I therefore demand the proof of this hostility in this case.

Mr. Monroe's nomination as minister to France was opposed in the Senate. Mr. Livingston and he were associated to accomplish the object. But Mr. Livingston was unanimously confirmed; and hence my colleague [Mr. SPRAGUE] has put the question, If this vote against Mr. Monroe were hostility to the measure, why was Livingston, who was to accomplish the object, unanimously confirmed? This question, until answered, throws this surmise to the winds. The treaty of cession was opposed; five from New England voting against it. Now, the very fact that a proposition was made to obtain the consent of the States to its ratification, is conclusive that the objection was a constitutional one. There were, moreover, serious doubts whether there were not contradictory stipulations in that treaty.

But there were other and stronger objections still to the admission of Louisiana into the Union. Though Mr. Adams and Mr. Jefferson both, and many others, believed that her admission was forbidden by the constitution, yet, at that time, 1812, it would be clearly an infraction of the treaty of cession to admit her. By the third article, the inhabitants were to become citizens, to have equal rights with our own, and to be admitted into the Union as soon as possible. By the seventh article, the subjects of France and Spain were, for twelve years, to trade there on the same footing as our own citizens. Now, when Louisiana applied, and was in fact admitted, three years of the twelve had yet to expire. As by the constitution no State can have any privilege of commerce not common to all, it was manifest that the admission of Louisiana at that time, was either a violation of the constitution, or of the treaty of cession. The question presented was, shall we place ourselves in this dilemma, or postpone Louisiana only three years longer? However partial I might have been to Louisiana, I should have voted to postpone her, and ventured to incur the imputation of hostility to the West, rather than the responsibility of the infraction of the treaty of cession. And France does complain of this act as an infraction of that treaty, and many of our merchants are now suffering—France refusing to indemnify them until we compensate her for the injury she has sustained by our admission of Louisiana into the Union before the expiration of the twelve years.

But Mississippi, "part of the old thirteen"—here could be no constitutional objection—and all opposition to its admission must be hostility to the West, and nothing else. Sir, I do not pretend to very great geographical accuracy, nor would I willingly intrude upon that Senator's dominions, but it is, I confess, the first time I have been informed that the State of Mississippi was at all embraced within the old thirteen. I did understand that the eastern side line of that State ran south into the Gulf of Mexico, and that the southern line included all islands within six leagues of the coast. Now, I never understood that the Gulf of Mexico there, or any of its islands, were to be found north of the thirty-first degree of latitude. If I am right in this, the same constitutional objection would arise here as in the case of Louisiana; and this was probably the reason why the minority voted against the bill authorizing that territory to form a constitution preparatory to its admission into the Union. But the objection having been twice overruled, it was probably considered as *res judicata*; hence, on the resolution of admission, there was no objection, nor was there any to Alabama, two years after, when that State was admitted. Sir, allow me to read the opinion of a distinguished statesman on this constitutional question:

"On further consideration as to the amendment to our constitution, respecting Louisiana, I have thought it better, instead of enumerating the powers which Congress may exercise, to give them the same powers they have, as to other portions of the Union generally, and to enumerate the special exceptions in some such form as the following:

"Louisiana, as ceded by France to the United States, is made a part of the United States; its white inhabitants shall be citizens, and stand, as to their rights and obligations, on the same footing with other citizens of the United States, in analogous situations: save only that, as to the portion thereof lying north of an east and west line drawn through the mouth of Arkansas river, no new State shall be established, nor any grants of land made, other than to Indians, in exchange for equivalent portions of land occupied by them, until an amendment of the constitution shall be made for these purposes."

"Florida, also, whensoever it may be rightfully obtained, shall become a part of the United States; its white inhabitants shall thereupon be citizens, and shall stand, as to their rights and obligations, on the same footing with other citizens of the United States, in analogous situations. I quote this for your consideration, observing that the less that is said about any constitutional difficulty, the better; and that it will be desirable for Congress to do what is necessary in silence."

This, to be sure, is a singular document. The proposition, if I understand it, is so to amend the constitution now, as to admit all south of the mouth of the Arkansas, about latitude thirty-four, and reserve all north, including the whole of Missouri, and nearly all the Arkansas Territory, for Indians and wild beasts, until the constitution should be amended again. Now, this must have been some inveterate Yanker, whose hostility was such, that he would even benefit the South at the expense of the West. No such thing, sir; he was a statesman of "the generous South," of "magnanimous Virginia!" the apostle of the republican party, the Mahomet of the faithful, the illustrious Jefferson!

Now, sir, were that patriot alive and here, he might, in five minutes, explain his motives to our perfect satisfaction. This single case proves the cruelty and injustice of quoting the opinions of men who cannot be here to explain, for the purpose of impugning their motives. And shall we, the Senate of the United States, once the most august assembly in the world, thus "dig up dead men from their graves, and set them at their dear friends' doors, when the grief is almost forgot, and on their skins (as on the bark of trees) carve, in Roman letters, 'let not your sorrows die, though I am dead!'" Sir, the public man

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here, can have very little inheritance, to transmit to his descendants, except the trifle of reputation which he may acquire—small indeed—from the frettings of party collision and private animosity. Suppose, then, that, in some half century hence, when you and the Senator from Missouri, and I, and all of us, shall be slumbering in our humble tombs, and mingling with our kindred earth; when even our children shall all have gone after us, and some little female orphan shall be groping her way through the path of this wilderness—the world, beset with thorns, and briars, and thistles, as we know; with few roses and flowers, as God knows; having nothing for her passport but the little fame her ancestor might have acquired here; and some malignant spirit, some ambitious demagogue, should rise up in this Senate, and, by ransacking the Journals, selecting detached votes, “here a little and there a little,” succeed in blasting his fame, and thus robbing her of her last pittance of inheritance; the very thought would prompt us to start from our seats, take our hats, make our bow, and bid an everlasting adieu to these walls; to retire to our native homes, where our fathers “toiled with their own hands, and all our frugal ancestors were blessed with humble virtue and a rural life—there live retired,” weep over the degradations of our degraded country, and “content ourselves to be obscurely good;” for whenever prevails and scandal holds the rule, “the post of honor is a private station.”

But the objections to the admission of Missouri into the Union have been summoned in aid of the proof of the hostility of New England to the West. If the votes here prove any thing, they prove the hostility of the West against itself: for I believe that every vote of the Representatives of the States northwest of the Ohio was against the admission of Missouri without the restriction against slavery. The inference is, therefore, irresistible, that no hostility was intended, but that a great moral and benevolent principle was the governing principle in that controversy.

The Senator from South Carolina, in speaking of the part which others from New England acted in that question, took care not to include the individual who now addresses you, unless it was in his general *et cetera*. I presume he intended nothing invidious: for generally, in the decorum in debate, and the deportment and dignity which belongs to the Senator, there are very few whose example I would follow sooner than the example of that gentleman. [Here the Senator from South Carolina rose, and stated that Mr. H. was mistaken; that he did not allude to this question, but to the conduct in New England during the war; and that he had no intention of making, in that, any discrimination invidious to Mr. H. and complimenting him for his conduct on that occasion.] I know [said Mr. H.] that he could have intended no such thing; but the Senator from Missouri went farther, and, as I thought, paid my friend from Connecticut a compliment at my expense. Now, sir, considering the condition in which I was placed on that appalling question, I cannot say that I feel entirely careless of this. Sir, I have learnt from my observation of men and things, that there is no rational human being to whose good opinion I would be indifferent, and consequently I would not feel entirely indifferent to this; although, of all the gentlemen with whom I have had any acquaintance, there are very few whose opinion I could better dispense with.

Sir, this discussion of this question of slavery was unnecessary. The Senator from Massachusetts, as I understood him, was discussing the merits of the ordinance of 1787, which excluded involuntary servitude; and, as an evidence of the wisdom of this provision, he noticed the relative prosperity of Ohio and Kentucky. He expressly disclaimed any intention to disparage or depreciate the highly respectable State of Kentucky. But it is unnecessary that I should become his justifier or apologist—be can

speak for himself—he has spoken. Be his views what they may, I utterly disclaim all intention to depreciate in the least that State. I know too well the courage and patriotism of her gallant sons. I have experienced here too much of the talents and eloquence of her statesmen to degrade myself in attempting to degrade her. One of her sons—her son did I say?—no! The son of the West!—no! His pure patriotism, sterling integrity, splendid eloquence, and incorruptible republican principles, are the treasure of the whole people. And although the arrows of calumny, dipped in poison, have been showered profusely at his bosom, they have fallen harmless at his feet; and should he ever be elevated to the highest honors in the gift of a free people, which are the highest on earth, the bosom of the West, and of Kentucky in particular, will swell with patriotic pride, that their favorite has met the reward of his patriotism. But should it be otherwise—for the ways of the Great Disposer of Events are, to us, mysterious—“clouds and darkness are round about him”—should this distinguished individual, like Brutus, become a victim of his own republican virtues; should he even share a similar fate; should his tomb be as humble as that of the humblest slave; the future republican of the West, if republicans there should be, will feel the big tear starting in his eye, when his infant shall lip the name of HART CLAY!

Sir, I saw no good reason to bring slavery into discussion here. It is not pretended that we have a right to interfere with the condition of the inhabitants of a State. I was against the proposed restriction upon Missouri, not for reasons given in this debate, but because I did not believe the constitution gave us the power to impose it; and I did hope that, by scattering those already here, we should better their condition. So strong are the feelings of my constituents on this subject, that, when it is touched, I feel myself on the brink of a precipice. It is one upon which they will scarcely stop to reason; and I feel myself bound to protest that the arguments urged here, in favor of slavery, are not, and never were mine, and I utterly disclaim them. In the Missouri question it was pretended by no one to justify slavery in the abstract; I did not vote upon the ground that slavery, as has been contended, was profit; I believed, and still believe, that it is very unprofitable; but, if otherwise, it can never be defended on that ground. Nor did I suppose that slavery was strength; but, on the contrary, that it was weakness. Nor that it refined, sublimated, and exalted, republican principles. New England would much prefer the old fashioned, ungarnished republicanism, extended to all, rather than that transcendent refinement produced by a contrast with slavery. Much less was it pretended that slavery was inculcated or countenanced by the Gospel. An opinion so apparently impious never was lisped by any one. That a religion which breathed peace on earth, and good will to men, whose invitation was, “come unto me, all ye that labor and are heavy laden, and I will give you rest; take my yoke upon you and learn of me, for my yoke is easy and my burden is light,” should be quoted to justify slavery, indicates to me a perversion of its spirit, without a parallel. No, sir, the plea then was, we have slaves, and we can't help it. “We have the wolf by the ear, and we cannot hold him nor safely let him go.” I have now before me an original letter from Mr. Jefferson, which holds the language on this subject which I have quoted. But if this line should be marked deeper and deeper, the sin will be at the door of the slave-holding States. Since the decision of the Missouri question, nine-tenths of the excitement has been produced from the South itself. It is by stirring the question, and by arguments such as have been urged in this debate, which will provoke discussion, and revive all the angry passions which once became so alarming.

I now come to the last branch of the charge, which was finished down to the close of Washington's administration;

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withholding protection, and encouraging the savages. Sir, after the treaty of Greenville, and the surrender of the Western posts, I recollect few instances in which the West needed protection, until just before the late war with Great Britain. During that Indian war, I would ask, in what instance did New England withhold her aid? At Tippecanoe the victory was achieved by the efficient aid of the brave fourth, commanded by the gallant and proscribed Harrison. The victory at Brownstown was achieved by the brave but unassuming Miller, and his Spartan band, from New England. And even during the late war, where is the evidence of our hostility to the West? My colleague has occupied the whole ground. Allowing that the ruling party in New England conducted as bad as had been described—and God forbid I should attempt to justify their measures—still, that the motive was hostility to the West, is not only an inconsequence, but the evidence adduced shows clearly that it was totally different, viz: hostility to the administration.

The Hartford Convention was a rash measure, and particularly objectionable at the time. It was opposed on the ground, too, of its sectional character—its tendency to excite local jealousies, against which we were so solemnly and affectionately warned by the Father of his Country in his Farewell Address. It was the same spirit which I have lately witnessed in the South, and which we now witness in this attack upon New England. I will condemn it at all times, and every where. I have little doubt that the madness referred to was as great, in many instances, as the specimens exhibited by the Senator from South Carolina indicated. The Osgoods, Parishs, and Gardiners, of that day, were madmen—maniacs. It is not improbable that some one of them would have consigned over any one who should loan money to the Government, to the three distinguished personages\* mentioned by that gentleman; and that, if he had thought of it, he would have put into the list your humble servant, not by striking out and inserting, but by adding him to the end of the list, immediately after His Infernal Majesty, in order to cap the climax. Sir, clergymen are bad politicians; they are generally ignorant of the subject, become enthusiasts, profane the pulpit, and thus injure the cause which they espouse. The clergymen of the Revolution, though generally Whigs, very often outraged all decency. I recollect this anecdote: One was praying in his pulpit, very fervently and appropriately, he came, at length, to ask a blessing on the season, that we might have alternate showers and sunshine, in order that we might have good crops, so that, at the close thereof, we might come with a meat offering and drink offering; but he superadded "more especially we pray for good crops of hemp, to make ropes to hang the Tories." This, to be sure, was profanation. But, politically, it looked forward to two important objects: to dispose of the Tories, who then were a very great annoyance; and to "domestic industry"—pointing out the object and the market. So that the Senator from South Carolina will perceive that Massachusetts was "tariff" at a very early period.

But New England is not to be charged with opposition; nor is even the party there exclusively culpable. Other politicians of high character, in other parts of the Union, were as intemperate as they were. As early as 1806, a distinguished statesman of Virginia was the leader of this New England party. He was known as such at home and abroad. I have before me a review of certain pamphlets, published in England, and reviewed in the Edinburgh Review of that period, entitled "War in Disguise;" "Concessions to America the Bane of Great Britain;" "Oil without Vinegar, and Honor without Pride," &c., in which

this same gentleman is honored as "the orator of a party confessedly hostile to the Government." Down to the close of the war, the same opposition to the Government continued elsewhere, as well as in New England; and we know that some of the most violent have been very lately rewarded for their adhesion to this administration.

But, notwithstanding the opposition of a party in New England, the blood of New England flowed copiously and profusely in that war—on the ocean, the land, and the lakes. Who were they who compelled "the mistress of the ocean" to "douse the cross of St. George" to "the star spangled banner?" New Englanders. Who fought at Lundy's Lane, at Niagara, and at Erie? New Englanders. Yes, sir, more New England blood was spilt, and more prowess displayed, from the hardy sons of New England, in that conflict, in proportion to her population, than from any other portion of the United States; and for the protection of the Western frontier, too, whose inveterate foe we have always been. Who composed the crews of the fleets on Erie, Ontario, and Champlain, under your Perry, your Chauncey, and Macdonough? The same hardy unyielding race, "the sons of the pilgrims." And this, sir, is the hostility for which we have been denounced and proscribed, and put "under the ban of the empire!"

The Senator from Missouri has introduced the dinner given in Boston to General Hull, at the close of the war, as evidence of this hostility. Yet he is professing to exempt the republicans who supported the war from the charge. In this case he has certainly been very unfortunate; and when scattering his "firebrands, arrows, and death," whether in sport or not, he dashes them indiscriminately at friends and foes. I happen to know a thing or two about that dinner. The truth is, it was gotten up by the republicans. A certain Mr. Green, (not Duff) a former editor of the Statesman, and lately translated to the post office there, worth about four thousand dollars per year, was, if not one of the committee of arrangements, a very active agent in the affair. A certain Mr. Simpson, said to be the minister plenipotentiary of the Boston Jackson party "near this court," was one of the Vice Presidents, and a certain Mr. Henshaw, lately promoted to the custom house there, an office worth six thousand dollars a year, was another of the Vice Presidents. Now, as the Federalists have sins enough of their own to answer for, I thought it right to do them this act of justice. I know, all along, that the charges were not, and, indeed, from the nature and extent of them, could not, be confined to any party in New England. Yet I scarcely thought that the Senator would thus fall to hacking and hewing the friends, and the prominent rewarded friends, of the administration. But this will be, I suppose, like lovers' quarrels—soon made up. They will pocket the abuse, if they can also pocket the money.

But still we have done nothing for the West. The fifteen millions paid for Louisiana was nothing. The millions expended upon the Cumberland road was nothing. The extinguishment of the Indian title to about two hundred and eighty millions of acres, and the survey of one hundred and forty millions, are nothing. The grants for schools and seminaries of learning are nothing. The alternate section system, to which the humble exertions of the individual who addresses you, contributed something, was nothing. The appropriations for improving the navigation of the Ohio and Mississippi, if any thing, were trifles. "The poor West!" The proscribed, persecuted, and afflicted West! O! New England, how many sins hast thou to atone for, for thy cruelty and tyranny to the suffering West!

But we have had more than the West. We have had appropriations for light houses! And appropriations for light houses are for the exclusive benefit of the Atlantic coast! This proposition has been so often repeated, and so often refuted, and is so utterly ridiculous in itself, that I sicken to mention it. My friend from Massachusetts, who

\*Mr. Hayne had read from some document that some one of these madmen had threatened that the man who should loan money to the Government to carry on the war, should be consigned over to James Madison, Felix Grundy, and the Devil.—Note by Mr. H.

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*Mr. Foot's Resolution.*

[FEB. 22, 1830.]

sits before me, [Mr. SILVER] knows full well that light houses are very far from being for the benefit of those where they are built—the language of at least one-half is not “come in,” but “stand off.” Pray, sir, is the light house on “Cape Florida,” and that on the “Dry Tortugas,” for the local benefit of those places? There are no inhabitants at either of those places. I cannot speak of this with any patience. Any one who has the least understanding of the subject knows it is a miserable pretext.

We have built ships. A ship of the line is built at the navy yard at Charlestown. Is this for the protection and defence of the harbor of Boston? No, sir; that harbor is defensible without it. But how is it with the grand outlet of the West? In case of war, one ship of the line would effectually blockade the mouth of the Mississippi, and thus shut up the whole West. Ay, sir, one single sloop did thus blockade it effectually.

But how is it with the grants of roads and canals in the West, and the improvement of the navigation of the rivers? What, for instance, is New England to gain in uniting the waters of Lake Erie with those of the Ohio, compared to the benefits to that State? The appropriations for these objects have not been viewed in their true light. There is an immense and immeasurable difference between the local and the general benefit. Let the West view these things dispassionately, and they will see and acknowledge that, while Congress is bestowing its bounty to the East, it is for the general good; but when it extends its appropriations to the West, the advantage is almost exclusively sectional.

The Senator from Missouri is, if I understand him, against all rail roads across, and all canals through, the mountains, from the West to the Atlantic; and his reasons are, that he prefers New Orleans for the exclusive market for the West. He seems to apprehend that the Mississippi is to be drained, and a rail road is to be constructed in its bed. This was probably a figure of speech, a flourish of rhetoric. But he is seriously alarmed, lest, by establishing different avenues to different markets, the grower and manufacturer will suffer in the price of their produce. Sir, if he believes he can by this disturb the repose of the West, he pays no compliment to their sagacity. Why, the brutes know better than this. If you have half a dozen pastures, and an avenue to each, the horse, when the grass becomes short in one, has sagacity enough to go to another, and will always select the best. It is the first time, I confess, I have ever heard it alleged that the facility of transportation to different markets was a public injury.

There seems, too, to be a mysterious change in the Senator's mind in regard to Internal Improvements. If I have hitherto understood him correctly, he has been quite liberal on these subjects. In grants for roads, rivers, and canals, I have never perceived, in him, any very serious constitutional scruples. Any man, I admit, may yield to expediency. Whether his recent attachment to “the generous South” has influenced his constitutional opinions, I am unable to determine.

“The tariff,” also. What does he mean here? “We have a tariff—thanks to the generous South!” This was in 1828. Now, sir, it is true that New England has been literally dragged into the tariff system, and by the West; and when it is found that her enterprise is equal to any exigency, tariff or not, and her capital has been largely invested in manufactures, she is to be driven out. In 1824, we were alarmed. But finding that “home industry” was raging like a house on fire, we concluded to make that tariff as palatable as possible, and take it rather than do worse. That bill was pruned in the Senate by practical men. It was suspended for several days on a controversy between the West and the South, of no ordinary animosity, upon the single article of “cotton bagging.” It was adjusted by the interposition of a New England-

man—the worthy predecessor of my worthy friend from Massachusetts. But it seemed a little strange that the South, who went shoulder to shoulder against that tariff, should, so soon as 1828, have been so “generous” as to have voted to impose such heavy burthens upon the people, for the gratification of the West, unless they were influenced by an expectation of this reward for their generosity, which they since experienced in full fruition—I mean the high eulogium of the Senator from Missouri.

But the truth is, the South voted to retain the obnoxious features in the tariff of 1828, not so much from generosity to the West, as from a determination to defeat the bill, by making it as odious as possible. I admit that this is parliamentary, but not always safe. By this mode of legislation there is some danger of making a bitter pill, which we may be obliged to swallow, not much to our taste. It happened so in this case; the South scorched her own fingers. But, nevertheless, “thanks to the generous South!”

Now, sir, it is vain that I have proved the charges against New England untrue and utterly groundless. They have gone forth. Such is human depravity in these days, that the scandal is greedily seized, and the refutation is disregarded. If a Senator here, in this high and exalted station, will make such accusations, how many will be predisposed to believe them, and how many more will, without inquiry, take them upon trust? If these things are seen in the green tree, what may we expect in the dry? If the golden vessels of your political sanctuary are thus marred, how is it to fare with the earthen pitchers? If the sturdy oak thus bends his majestic branches to the blast, what is to become of the hyssop upon the wall? If, in fine, these things are said by a Senator here, in the spirit of charity, what may we not expect of others, in the spirit of malignity?

Have you not proscribed us enough? This administration has glutted its vengeance upon the purest patriots on earth, for no other reason than that they have exercised the rights of freemen. No age, condition, sect, or sex, has escaped. This sin of the fathers has been, and is to be, visited upon the children, even to the third and fourth generations. Innocence, virtue, patriotism, all, all swept, with a rude and ruthless hand, into the gulf of misery. And still is not all this enough? Must we yet be arraigned as felons, and charged as parricides and fratricides? You had better let us alone. Take care not to push us further. I repeat, let us alone. Leave us but our industry, our enterprise, our churches, our colleges, our academies, and last, though not least, our primary schools, and shower down your polluted and polluting honors upon those heads which are aching for them.

[The Senate adjourned over to Monday.]

MONDAY, FEBRUARY 22, 1830.

The Senate resumed the consideration of the resolution heretofore offered by Mr. FOOT.

Mr. NOBLE rose, and said that the subject now before the Senate had afforded a field for argument, and a topic for general conversation. The opportunity had been fully embraced by those who had addressed the Senate, only being confined to the subject now and then. It was not to be understood that any complaint was made by him for the course that the argument had taken: for he should indulge in the same latitude of debate. The birth day of Washington [said Mr. N.] was a happy day to the people of this continent, as subsequent events have proved. From his early manhood, he was the protector of the civil and religious rights of his countrymen. In war he had conducted and courage, and conquered to save, and not murder. In peace, and during his administration, he esteemed freedom of thought a blessing to man—one of his absolute rights; and he looked with disdain on any that attempted foul pro-

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scription, and overawing of electors at the polls. He offered no reward, nor held out any punishment, nor did he add bounty for the purpose of becoming the Chief Magistrate of the United States, that he might glut his vengeance upon those who had independence to vote as they pleased. His mind was more enlarged, moral, generous, brave; and as a statesman, while President of the United States, his constant object was to co-operate with the Congress of the United States as to the best plan to have the Western lands settled, and to improve the internal and foreign condition of the Union.

Hireling presses have spoken of a second Washington. Without intending to give any offence, and with great respect for the opinions of all, however they may differ from me, I must be permitted to say, if "the hero of two wars" be called the second Washington, it is no more than a mere mockery at the door of the tomb of Washington.

Providence, in his wisdom, a few years ago, on the 4th of July, called to rest two of the distinguished signers of the Declaration of Independence—the elder Adams and the venerable Jefferson. The former was the father of the navy—the right arm of defence to the interest of the United States. Since which time, we flaming republicans on the improvement of the navy have been compelled to walk in his footsteps, and not sail in gun boats. Once more, and respectfully for the opinions of others, if we have a second Washington, he is not in office.

The resolution now under consideration, I shall vote to postpone, on the motion made by the honorable member from Massachusetts, (Mr. WESTAR) for the reason that the resolution is uncalled for, which I will show before I close my remarks.

The honorable member from South Carolina (Mr. HAYNE) has amused the Senate with his own thoughts in reference to the eloquent Roanoke orator administering sweet morsels. For my part, I am willing to leave the orator where the honorable member found him. No one would have a right to interrupt him in so harmless an undertaking as administering sweet morsels to Towser, Sweetlips, Tray, Blanche, or Sweetheart. I am content to which of them he administers; it creates no envy in me, nor will the Government tremble if it was administered to Sweetheart: for I strongly suspect it was the first sweet morsel he ever administered.

[Here Mr. TAZEWELL called Mr. NOBLE to order, who took his seat, when the President of the Senate decided that Mr. NOBLE was not out of order, and directed him to proceed.]

Mr. NOBLE resumed, and stated that, if the gentleman from Virginia (Mr. TAZEWELL) considered truth severe, he might prepare his mind for it, throughout his observations. He had said, he would leave the Roanoke orator where the honorable member from South Carolina found him. I have concluded, however, to make the history of the orator full as to sweet morsels, and remind the Senate, from newspaper publications, of his voyage from this continent to England, and while on his voyage his quarrel with the captain about his dog; whether it was on account of Towser or any other, or the cause which led to the quarrel was, that the captain would not let his dog sit at the table, or lie on it, is unimportant for my purpose now to inquire.

The Senate and the people of the United States may rest assured, that this celebrated Roanoke orator never was nor never will be, considered orthodox in the West. He is considered in that country as being an aristocrat, wrapped up in British policy, and a tyrant if he had the power. I will not give myself more trouble on this point, than to quote one sentence, to strip him of his aristocracy. He did say, in this chamber, that he would sooner be seen conversing with his shoe black about his vote than he could control, than to be seen conversing with a man who had no land for his vote; and that the principles and people of

the West were abhorrent to the genius and liberty of the country. What freeman will ever forget the tyrant's remark? Not one, sir. Shortly after the election of Mr. Adams to be the President of the United States, every unusual method was resorted to, with a determination to cripple his administration and render it ridiculous, having little or no regard to the public weal.

It is well known that the people, in the electoral colleges, failed to make choice of a President, and that the people, by the constitution of the United States, long ago declared that, if they failed to choose a President, their Representatives should elect one.

The Representatives did make a choice; and, because all could not be satisfied, to affect the administration, steps immediately were taken to destroy it. The hireling presses began. Terms of bargain, intrigue, corruption, and coalition, were charged upon Messrs. Adams and Clay; although an investigation was promptly demanded by Mr. Clay, in the House of Representatives, when and where all were present, and his accusers, instead of investigating, hid their faces, and dreaded truth.

It has been considered by all, and especially those most skilled in construing the constitution, that the Senate has power to reject, or confirm any nomination made to them by the President. The Senate is not, nor ever should be, the creature of the Executive, merely to register his decrees. The framers of the constitution designed that the Senate should resist corrupt acts and encroachments made by the President against the constitution or rights of the people.

If my view of the duty of the Senate be true, let me examine into the conduct of the present prime minister, Mr. Van Buren, who was a Senator at the time that Mr. Adams nominated Mr. Clay to be Secretary of State. He was acting as Senator in the presence of the present Chief Magistrate, both of whom had to pass on Mr. Clay's nomination. Not one word was said in the Senate by the present Secretary of State, nor by the present Chief Magistrate, relative to bargain, sale, &c. but, on the contrary, Mr. Van Buren voted to confirm the nomination of Mr. Clay. [See Executive Journal, March 7, 1825.]

Can any rational man believe that, if any bargain, sale, &c. existed between Mr. Clay and Mr. Adams, or any of the Representatives, that the present Chief Magistrate would not have been advised, and that it would not certainly have reached Mr. Van Buren? All who know Mr. Van Buren truly, believe that he thinks that he has the affairs of the whole community on his hands. If Mr. Van Buren knew of any intrigue or bargain in his vote for the confirmation of the nomination of Mr. Clay, the skirts of his honesty are scorched, and he stood god-father at the font for the child of bargain, sale, and corruption.

Since so much has been said about bargain and sale, let me examine and draw rational inferences from another supposed bargain and sale, more recent. I have said that the President and Mr. Van Buren were in the Senate together, and voted upon Mr. Clay's nomination differently. It was evidently to be seen that the former was disesteemed with passion, at least to my mind. Mr. Van Buren continued to serve in the Senate, or hold his seat, till shortly after or before he was elected Governor of New York, during the time Mr. Adams administered the Government. The election of General Jackson being announced, and pending his election, the Secretary of State, full of political intrigue, caused his newspapers to blend the election of Governor and President together, denouncing the then administration. The Commonwealth of New York was not so extensive as to induce the prime minister to warm the Executive chair: for it seems he preferred raising his flag of defiance against the suffrages of the voters of New York, which he had obtained. He sold them, as so many cattle, to gratify his own ambition. His acts prove to me, that a wider range than the United States was necessary for his



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early congenial capacity for bargain and intrigue to operate upon. Look at the natural inferences. Governor of a highly honorable and wealthy State, escaping from the people, he is found ascending from New York, whether by a circuitous route or otherwise, and found again descending in the city of Washington, upon the line of descents, to become the prime intriguer for others, and make himself the heir apparent to the throne. May kind Providence avert the affliction of ever having him for President. If intrigue will accomplish his object, he will say, "Dearest friends in the South, my policy is yours;" and to the North, "Dear friends, my policy is yours; make me President." Will not every man believe that Gen. Jackson and Mr. Van Buren knew, that if the General was elected President, the letter was to be Secretary of State, months, if not years, before Gen. Jackson's election?

It would seem that I should comply with my promise, to show that the resolution now under consideration is uncalled for, which will afford an additional reason for my voting in favor of the motion to postpone it. On the 16th February, 1827, John Quincy Adams, President of the United States, transmitted to the Senate a report from the Secretary of the Treasury, with statements prepared at the Register's and General Land Office, in compliance with a resolution of the Senate, of the 16th May, 1826, in relation to the purchases and sales of the public lands since the Declaration of Independence. The report is numbered 63. With the exception of abolishing the office of Surveyor General, and the inquiry as to restricting the surveys of the public lands, the report affords ample information up to the 1st of January, 1826. For fifty years past, we have the following statement, exhibiting the quantity of public land purchased by the United States in each State and Territory; the quantity actually surveyed, surveys of which have been received at the General Land Office, and the estimated quantity remaining unsold on the 1st of January, 1826. In Ohio, Indiana, Illinois, Michigan, Missouri, Arkansas, Louisiana, Mississippi, Alabama, and Florida, the quantity of public land purchased by the United States is two hundred and sixty-one millions six hundred and ninety-five thousand four hundred and twenty-seven acres and eighty-four hundredths. The amount of public land surveyed to January 1st, 1826, is one hundred and thirty-eight millions nine hundred and eighty-eight thousand two hundred and twenty-four acres and thirty-eight hundredths. The quantity of public land remaining unsold, January 1st, 1826, is two hundred and sixteen millions five hundred and ninety-one thousand and sixty acres, and nine hundredths. To abolish the office of Surveyor General is idle, unless you intend to cede the public lands to the States in which they are situate; and, for one, I am ready to receive them upon such terms as the States or State may agree with the Federal Government. To inquire into the expediency of restricting the surveys of the public lands is folly: for without appropriations, the lands cannot be surveyed. To do justice to my own constituents, the quantity of land purchased by the United States, (from the date of the Declaration of Independence) in Indiana, is sixteen millions sixty thousand and thirty-six acres and seventy hundredths, to January 1st, 1826; the quantity of public land surveyed, sixteen millions five hundred and forty-six thousand five hundred and thirty-eight acres and seventy-six hundredths. Public land remaining unsold, Jan. 1, 1826, twelve millions one hundred and thirty-one thousand four hundred and sixty-one acres and ninety hundredths.

Through the progress of this debate, I can discover symptoms that, on this resolution, merely for inquiry, the West are to be whipped into the ranks of partisans, and to be ordered to the South or elsewhere. I do not know of any accredited organ at Washington to accomplish the object, nor do I know of any agent in or out of the House, that has the necessary credentials to give the

order. For one, I will neither be whipped, nor whip, if I can help it, for any such object, till the people of the West act in their sovereign capacity, and inform me.

One thing is certain: the vital interest of the West is Internal Improvements; and from the past, I have a right to judge of the future. From Virginia, Georgia, North Carolina, South Carolina, and Tennessee, the West has never derived but one vote, in the general, in favor of Internal Improvements, in the Senate, out of ten. There was once a time, in relation to the Dismal Swamp Canal, we had another vote. Take the New England States, and the Middle States, and from them the West has had a majority of the votes in the Senate for many years past; and the motion to postpone the resolution under consideration will be received friendly by the Western people.

One cause of difficulty in the West, on the subject of a part of the American System, is, that we have had wavering politicians, who believed the constitution was clear as to the power of Congress to make Internal Improvements, one day, and the next, differed as to the power, because of the place where the work was to be executed. During the last canvass for President, the vulgar, that spoke without reason, said that John Q. Adams had fitted out a ship of seventy-four guns to aid the British Government. How little did those persons who traduced Mr. Adams know his character and his hard-earned fame. To quiet the vulgar, not the thinking part of society, on either side, and to arm them with an opportunity to repent and tell the truth, I call upon them to discredit their own witness in relation to Mr. Adams. Gen. Jackson is the witness, and proves from his letter to James Monroe, President of the United States, dated Nashville, March 18, 1817, who knew the character of Mr. Adams, and his worth.

Gen. Jackson certainly could not, from his opportunities in life, if he chose to embrace them, ever utter the following words, unless he knew he was speaking truth: "I have no hesitation in saying, you have made the best selection to fill the Department of State that could be made. Mr. Adams, in the hour of difficulty, will be an able helpmate, and I am convinced his appointment will afford general satisfaction." General Jackson, in thus testifying, proves that Mr. Adams is the true republican and American: for, says he, "Mr. Adams, in the hour of difficulty, will be an able helpmate, and I am convinced his appointment will afford general satisfaction."

Why and wherefore has Mr. Adams been called the federalist—the alarming epithet applied to him? If Mr. Adams be the federalist, so is Gen. Jackson. He hails the appointment of Mr. Adams as Secretary of State with joy, and says that he "will be an able helpmate." Well might he have said so, from the events which had transpired in the United States before Mr. Adams was appointed. It was well known to Gen. Jackson, that the head, heart, and pen of Mr. Adams, upon international law, were required to relieve this nation from all blots, and place her, as she had stood deservedly, in the first rank of nations known to the civilized world.

I call upon the Senate, or any one member, to deny that Gen. Jackson did not write the letter above referred to; I will pause to give an opportunity to deny, as I will do at any stage of my remarks. Truth should be told from this chamber to the people, if we mean to preserve our liberties: for their intelligence will correct the pending evils. I challenge and demand of the Senate, if they deny the letter of Gen. Jackson, to send for persons and papers.

Gen. Jackson, in his communication to the Tennessee Legislature, resigning his seat in the Senate of the United States, made Sept. 14, 1825, among other things says, in substance, that he neither seeks an office nor declines one. If not in that letter, he says so in another. We all know the letter to be true. A more adroit letter for electioneering could not have been written. It suited the times. Subsequent events have stripped his veil, and marked his

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insincerity. In the letter alluded to, this language is found: "With a view to sustain more effectually, in practice, the axiom which divides the three great classes of power into independent constitutional checks, I would impose a provision, rendering any member of Congress ineligible to office under the General Government, during the term for which he was elected, and for two years thereafter, except in cases of judicial office."

It is supposed that the General means that which he has since forgotten.

If he was sincere in stating "I would impose a provision (I suppose he means a provision in the constitution) rendering any member of Congress ineligible to office during the term for which he was elected, and for two years thereafter;" and if his views were sound, as he declares, it was completely in his power to have lived up to his principles. Unless from the lips only he professed to the Tennessee Legislature, from his transcendent influence in the United States his principles could have been kept alive, and probably be might have been instrumental in producing an amendment to the constitution to answer the evil of which he speaks.

He had it in his power to conform to his principles, for the second article of the second section of the constitution gives to the President the sole power of making nominations to the Senate, of officers, and Congress cannot take the power out of his hands. The clause of the constitution reads thus: "and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint, ambassadors, other public ministers, and consuls, and all other officers of the United States," &c. What has he done, since he declared he would impose a provision, &c. to prevent members of Congress from being officers, except judicial officers, when he had the power to prevent? He has broken down his own standard; he has deviated from his own assertions to the people. He has extended his own patronage further than his predecessors. If I had asserted a fact to the people, I would have lived up to it. He has, as an evidence of his adroitness and artifice, to seek an office, imposed upon the Legislature of Tennessee. His words may now be disregarded. Turpitude lurks, and is now seen. His acts must speak. He nominated Mr. Eaton to be Secretary of War, Mr. Branch Secretary of the Navy, Mr. Van Buren (half Senator) to be Secretary of State, (but not until he had sold the votes of the people of New York as so many cattle) Mr. Berrien to be Attorney General, and Mr. McLane, of Delaware, to be minister to the British Government, all Senators, except the half one, who, in all probability, was kept out intriguing. The people of the United States should feel themselves gratified to mark the footsteps of the Jackson republican, and his depression of Executive patronage. I have said his acts must speak. Mr. Ingham, nominated to be Secretary of the Treasury, (whose uniform intrigue is well known in Pennsylvania) was a member of Congress, and a fit adjunct of the Secretary of State in any mischief. Mr. Rives, of Virginia, appointed to be minister to France, was also a member of Congress. The people of the United States should rejoice at the up-rearing of the standard of truth. Gen. Jackson would impose a provision, and let members of Congress serve out their time, and receive the approbation or disapprobation of their constituents; and as an evidence of despising Executive patronage, and preventing the intervention of members of Congress with their constituents, he sends them to foreign countries, thus paying up the bounties for services rendered! This mode of proceeding is harmless; it is reform to the people's pocket. I have said the letter was written with adroitness, and its object was to reflect upon all who did not follow in his wake, and as a cover to hide from the world that he was seeking an office. At the same time, among others, he was reflecting upon the course pursued by Mr. Adams, the

distinguished civilian, who, as he says, "will be an able helpmate." Many handsome productions were issued from the Hermitage during the canvass preceding the election of the President. Who wrote them? For the character of the United States, let the mantle of forgetfulness be cast over the productions. One bounty, however, has been realized, by way of reward, though it has been since checked.

When the tariff bill was passed, under Mr. Adams' administration, it was stated in the prints that the colors of some of the ships in the seaports of the United States were hung at half-mast, by way of mourning. It is my opinion that, if it be true that the colors of ships in the seaports were hung at half-mast on account of the tariff, the colors of the same ships should be nailed to the mast for the attack of the President, in his late message to Congress, upon the charter of the Bank of the United States. The President states in his message to Congress, or his prime scrivener for him, "The charter of the Bank of the United States expires in 1836, and its stockholders will most probably apply for a renewal of their privileges. In order to avoid the evils resulting from precipitancy, in a measure involving such important principles, and such deep pecuniary interests, I feel that I cannot, in justice to the parties interested, too soon present it to the deliberate consideration of the Legislature and the people. Both the constitutionality and the expediency of the law creating this bank, are well questioned by a large portion of our fellow-citizens; and it must be admitted by all, that it has failed in the great end of establishing a uniform and sound currency."

"Under these circumstances, if such an institution is deemed essential to the fiscal operations of the Government, I submit to the wisdom of the Legislature whether a national one, founded upon the credit of the Government and its revenues, might not be devised, which would avoid all constitutional difficulties, and at the same time secure all the advantages to the Government and country that were expected to result from the present bank."

It is well known, sir, that you and Mr. Clay were both favorable to the grant of the charter in question. The scrivener was not then in Congress. From some secret cause, it is found convenient, for love of country, but more particularly love of self, to make the attack upon the bank and the vested rights of individuals concerned, as well as the whole revenue of the United States, and indirectly to assist Mr. Van Buren to hug the South, kiss the West, and ride into the Presidential chair upon his intrigue and love of self, over you and Mr. Clay. I wish the facts in the foregoing sentence were the worst of this attack upon the bank; but the injurious effects to be dreaded from it upon the interests of the agriculturists, manufacturers, and merchants, are plain. I hope that I am mistaken. The President might as well have said the bank was unconstitutional, and not to be relied on. What he has said, is in the presence of all the grades of ministers now in the city of Washington from foreign countries. The message of the President will shortly be before the nations of all the world, and they will view his message as true, as to the constitutionality of the bank, and that it has failed in the great end of its establishing a uniform and sound currency. Our merchants trade in foreign countries largely, and we shall bear the difference of exchange against them; and if against them, the farmers, mechanics, manufacturers, and all other classes, out of twelve millions of souls who consume articles and labor from abroad, that afforded the products, will feel the effect of the President's attack upon the only safe moneyed institution of the people. Let the ministers from abroad, of all classes, know that Gen. Jackson possesses limited powers, and that, in the opinion of some, from the want of a proper understanding of the true charter, and

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of the honesty of the directors of the bank, his second in command will, for himself, seek the destruction of the people's bank to climb the Presidential chair.

Since the granting of the charter, though its officers had much to encounter, its friends have not been disappointed. All has been realized that its friends expected. Through the efforts of the bank, it has not failed to establish a uniform sound currency, the opinion of Mr. Van Buren to the contrary notwithstanding. Out of his shell he shall recede or advance. He would disgrace a coward's grave to refuse, as an honest politician, to aver his sentiments, and speak of the charter and constitutionality of the bank.

The bank has thus far been faithful to the United States in transmitting their revenues to the most distant part of the Union, clear of expense to the people, and always ready to pay in gold, or silver, any just claim upon them. Why, then, has the message of the President, attacking the legality of the bank, been made to Congress? Was it to preserve the "axiom which divides the three great classes of power into constitutional checks, and sustain more effectually in practice" the rights of the people? He should have recollected, if "axioms" ever struck his mind, he has violated them, and, to recede, let him retract, so far as he wishes to favor the few. He states that "both the constitutionality and the expediency of the law creating the bank, are well questioned by a large portion of our fellow-citizens." It is not the case. He has interfered with one class of power—the Judiciary. The only class of power that had a right to decide on the unconstitutionality of the charter of the United States Bank, known to our laws, was, and is, the Supreme Court of the United States, as the demer resort. The "constitutionality and the law creating the bank are well questioned," says the General; but I assert that the decision of the Supreme Court in the matter is final, and forms a part of the supreme law of the land. It was questioned by legal talents of the first order in the United States, and such as would grace any Bench in the known world. They settled the question of the constitutionality of the law creating the charter of the bank, and by that decision the country was satisfied and prosperous, till the outward rite, one from the North, the other from the South, visited Washington. The decision of the court was, that the charter was constitutional.

Gen. Jackson now wants a National Bank. Like the tariff, that he knew would be up for discussion under Mr. Adams's administration, and dreading more difficulty, he thought it prudent neither to "seek an office nor to decline one;" but his usual modesty invited him to resign, and cling to the willows and foliage of a "judicious" tariff.

What detail has he given to Congress for the National Bank? None. It is conjectured that, by a "judicious" one is meant the sword and purse combined. Farewell State rights, when the day comes that a National Bank is established under the arm of a tyrant! Farewell to religious and civil liberties, when crowned with a king and a consolidated government!

I shall have occasion to examine (or I may not) into some of the Departments, hereafter, to know who are in office, by affinity and consanguinity, to be more fully informed what is meant by reform. For the present, I have done.

TUESDAY, FEBRUARY 23, 1830.

#### ABOLITION OF DUTIES, TAXES, &c.

Mr. BENTON said he rose to ask the leave for which he gave notice on Friday last; and in doing so, he meant to avail himself of the parliamentary rule, seldom followed here, but familiar in the place from whence we drew our rules—the British Parliament—and strictly right and pro-

per, when any thing new is to be proposed, to state the clauses, and make up an exposition of the principles of his bill, before he submitted the formal motion for leave to bring it in. And, before I do this, [said Mr. B.] I will make a single remark, to justify myself for presuming to propose a bill upon a subject which is already reported upon, by the able and experienced Committee of Finance. My justification is, that the bill of that committee does not present the best mode of accomplishing its own object; that a better one can be devised; and being myself the first mover of the great plan of abolishing unnecessary duties, on the extinguishment of the public debt, it is a natural effect of the meditation which I have bestowed on the question, that something should have occurred to me, which has not presented itself to the minds of others. This seems to be the case. Several bills have been reported for the abolition of duties; one in this chamber, some in the other end of the House; and no one has presented the subject under my point of view. Good or bad, my plan is at least new, a bill of its own sort; a bill without precedent in the legislation of the country; and, in bringing it forward, I discharge a duty to the Union, and to the public councils of which I am a member; and have no other wish but that the wisdom and patriotism of the Senate, from all that is presented, may select and prefer that which is best for the people of these States.

The title of my bill is adapted to its contents, and discloses its object as distinctly as the compendious nature of a title will admit. I will read it:

#### The Title.

"A bill to provide for the abolition of unnecessary duties; to relieve the people from sixteen millions of taxes; and to improve the condition of the agriculture, manufactures, commerce, and navigation, of the United States."

The tenor of it is, not to abolish, but to provide for the abolition of the duties. This phraseology announces, that something in addition to the statute—some power in addition to that of the Legislature, is to be concerned in accomplishing the abolition. Then the duties for abolition are described as unnecessary ones; and under this idea is included the two-fold conception, that they are useless, either for the protection of domestic industry, or for supplying the treasury with revenue. The relief of the people from sixteen millions of taxes is based upon the idea of an abolition of twelve millions of duties; the additional four millions being the merchant's profit upon the duty he advances; which profit the people pay as a part of the tax, though the Government never receives it. It is the merchant's compensation for advancing the duty, and is the same as his profit upon the goods. The improved condition of the four great branches of national industry is presented as the third object of the bill; and their relative importance, in my estimation, classes itself according to the order of my arrangement. Agriculture, as furnishing the means of subsistence to man, and as the foundation of every thing else, is put foremost; manufactures, as preparing and fitting things for our use, stands second; commerce, as exchanging the superfluities of different countries, comes next; and navigation, as furnishing the chief means of carrying on commerce, closes the list of the four great branches of national industry. Though classed according to their respective importance, neither branch is disparaged. They are all great interests—all connected—all dependent upon each other—friends in their nature—for a long time friends in fact, under the operations of our Government; and only made enemies to each other, as they now are by a course of legislation, which the approaching extinguishment of the public debt presents a fit opportunity for reforming and ameliorating. The title of my bill declares the intention of the bill to improve the condition of each of them. The abolition of sixteen millions of taxes would itself

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operate a great improvement in the condition of each; but the intention of the bill is not limited to that incidental and consequential improvement, great as it may be; it proposes a positive, direct, visible, tangible, and countable benefit to each; and this I shall prove and demonstrate, not in this brief illustration of the title of my bill, but at the proper places, in the course of the examination into its provisions and exposition of its principles.

I will now proceed with the bill, reading each section in its order; and making the remarks upon it which are necessary to explain its object and to illustrate its operation.

#### The First Section.

"That, for the term of ten years, from and after the first day of January, in the year 1832, or, as soon thereafter as may be agreed upon between the United States and any foreign Power, the duties now payable on the importation of the following articles, or such of them as may be agreed upon, shall cease and determine, or be reduced, in favor of such countries as shall, by treaty, grant equivalent advantages to the agriculture, manufactures, commerce, and navigation, of the United States, viz: coffee, cocons, olives, olive oil, figs, raisins, prunes, almonds, currants, camphor, alum, opium, quicksilver, Spanish brown, copperas, tin and brass, in sheets and plates for manufacturers' use, black bottles and demijohns, silks, wines, linens, cambrics, lawns, Canton crapes, cashmere shawls, gauze, ribbons, straw mats, bolting cloths, thread and silk lace, bombazine and worsted stuff goods, spirits not made of grain, nor coming in competition with domestic spirits; on the following description of cotton goods not manufactured in the United States, viz: chintzes, muslins, cambrics, velvet cords, china and porcelain, and Brussels carpeting, Peruvian bark, chronometers, sextants, parts of watches, amber, pine apples, juniper berries and oil of juniper, Italian and French crapes, gall nuts, essence of bergamot and other essences used as perfumes, madder, turtle shell, and ox horn tips.

Also, on the following description of woollen goods, not manufactured in the United States, and necessary in carrying on the Indian trade, to wit:

#### SLANKETS.

Points.	Length.		Width.		Weight.
	Feet.	Inches.	Feet.	Inches.	lbs.
4	7	6	6	—	6 or more.
3½	6	8	5	6	5½ do.
3	6	—	5	—	4½ do.
2½	5	—	4	2	3½ do.
2	4	3	3	6	2½ do.
1½	3	6	3	—	1½ do.

#### CLOTHS.

	Width.	Length.	Weight.
	Inches.	Yards.	
Blue Stroud,	54	20	29 or more.
Scarlet do.	54	20	22 do.
Molten,	26	30	20 do.
Swanskin,	29	46	22 do.

Also, Indian gartering, vermilion, taffets, ribbons, pocket looking glasses, beads, Indian awls, brass inlaid knives, scarlet milled caps, sturgeon twine."

This section contains the principle which I consider as new—that of abolishing duties by the joint act of the Legislative and Executive Departments. The idea of equivalents, which the section also presents, is not new, but has for its sanction high and venerated authority, of which I shall not fail to avail myself. That we ought to have equivalents for abolishing ten or twelve millions of duties on foreign merchandise is most clear. Such an abolition will be an advantage to foreign Powers, for which they ought to compensate us, by reducing duties to an

equal amount upon our productions. This is what no law, or separate act of our own, can command. Amicable arrangements alone, with foreign Powers, can effect it; and to free such arrangements from serious, perhaps insuperable difficulties, it would be necessary first to lay a foundation for them in an act of Congress. This is what my bill proposes to do. It proposes that Congress shall select the articles for abolition of duty, and then leave it to the Executive to extend the provisions of the act to such Powers as will grant us equivalent advantages. The articles enumerated for abolition of duty are of kinds not made in the United States, so that my bill presents no ground of alarm or uneasiness to any branch of domestic industry.

The acquisition of equivalents is a striking feature in the plan which I propose, and for that I have the authority of him whose opinions will never be invoked in vain, while republican principles have root in our soil. I speak of Mr. Jefferson, and of his report on the commerce and navigation of the United States, in the year '93, an extract from which I will read.

#### The Extract.

"Such being the restrictions on the commerce and navigation of the United States, the question is, in what way they may best be removed, modified, or counteracted?"

"As to commerce, two methods occur. 1. By friendly arrangements with the several nations with whom these restrictions exist: or, 2. By the separate act of our own Legislatures, for countervailing their effects.

"There can be no doubt but that, of these two, friendly arrangements is the most eligible. Instead of embarrassing commerce under piles of regulating laws, duties, and prohibitions, could it be relieved from all its shackles, in all parts of the world—could every country be employed in producing that which nature has best fitted it to produce, and each be free to exchange with others mutual surplusses, for mutual wants, the greatest mass possible would then be produced, of those things which contribute to human life, and human happiness; the numbers of mankind would be increased, and their condition bettered.

"Would even a single nation begin with the United States this system of free commerce, it would be advisable to begin it with that nation; since it is one by one only that it can be extended to all. Where the circumstances of either party render it expedient to levy a revenue, by way of impost on commerce, its freedom might be modified in that particular, by mutual and equivalent measures, preserving it entire in all others.

"Some nations, not yet ripe for free commerce, in all its extent, might be willing to mollify its restrictions and regulations, for us, in proportion to the advantages which an intercourse with us might offer. Particularly they may concur with us in reciprocating the duties to be levied on each side, or in compensating any excess of duty, by equivalent advantages of another nature. Our commerce is certainly of a character to entitle it to favor in most countries. The commodities we offer are either necessities of life, or materials for manufacture, or convenient subjects of revenue; and we take in exchange either manufactures, when they have received the last finish of art and industry, or mere luxuries. Such customers may reasonably expect welcome and friendly treatment at every market—customers, too, whose demands, increasing with their wealth and population, must very shortly give full employment to the whole industry of any nation whatever, in any line of supply they may get into the habit of calling for from it.

"But, should any nation, contrary to our wishes, suppose it may better find its advantage by continuing its system of prohibitions, duties, and regulations, it behooves us to protect our citizens, their commerce and navigation, by counter prohibitions, duties, and regulations, also.

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Free commerce and navigation are not to be given in exchange for restrictions and vexations; are they likely to produce a relaxation of them."

The plan which I now propose adopts the idea of equivalents and retaliation to the whole extent recommended by Mr. Jefferson. It differs from his plan in two features: first, in the mode of proceeding, by founding the treaties abroad upon a legislative act at home; secondly, in combining protection with revenue, in selecting articles of exception to the system of free trade. This degree of protection he admitted himself, at a later period of his life. It corresponds with the recommendation of President Washington to Congress, in the year '90, and with that of our present Chief Magistrate, to ourselves, at the commencement of the present session of Congress. I will read them, to sustain and support the principles on which my bill is founded.

*President Washington, in 1790.*

"Our safety and interest require that we should promote such manufactures as tend to render us independent on others for essential, particularly for military supplies."

*President Jackson, in 1829.*

"It may be regretted that the complicated restrictions which now embarrass the intercourse of nations could not, by common consent, be abolished, and commerce allowed to flow in those channels to which individual enterprise—always its surest guide—might direct it. But we must ever expect selfish legislation in other nations; and are, therefore, compelled to adapt our own to their regulations, in the manner best calculated to avoid serious injury, and to harmonize the conflicting interests of our agriculture, our commerce, and our manufactures. \* \* \* The general rule to be applied in graduating the duties upon articles of foreign growth or manufacture is that which will place our own in fair competition with those of other countries; and the inducements to advance even a step beyond this point are controlling in regard to those articles which are of primary necessity in time of war."

These extracts from the Presidents Washington, Jefferson, and Jackson, cover all the principles which are contained in my bill; the mode of action, the means of putting them into operation, is the only part that is new and original. To this part I can see no objection but to its novelty: for it is free from all difficulty on the score of constitutionality or expediency, and combines the advantages of equivalents with those of retaliation: for, if any nation refuses to reciprocate an abolition or reduction of duties with us, our heavy duties remain in force against her, and she pays the penalty of her refusal in the loss of some essential branch of her trade with us.

I will not now stop to dilate upon the benefit which will result to every family from an abolition of duties which will enable them to get all the articles enumerated in my bill for about one-third, or one-half less, than is now paid for them. Let any one read over the list of articles, and then look to the sum total which he now pays out annually for them, and from that sum deduct near fifty per cent. which is about the average of the duties and merchant's profit included, with which they now come charged to him. This deduction will be his saving under one branch of my plan—the abolition clause. To this must be added the gain under the clause to secure equivalents in foreign markets, and the two being added together, the saving in purchases at home being added to the gain in sales abroad, will give the true measure of the advantages which my plan presents.

Let us now see whether the agriculture and manufactures of the United States do not require better markets abroad than they possess at this time. What is the state of these markets? Let facts reply. England imposes a duty of three shillings sterling a pound upon our tobacco, which is ten times its value. She imposes duties equivalent

to prohibition on our grain and provisions; and either totally excludes, or enormously taxes, every article, except cotton, that we send to her ports. In France, our tobacco is subject to a royal monopoly, which makes the king the sole purchaser, and subjects the seller to the necessity of taking the price which his agents will give. In Germany, our tobacco, and other articles, are heavily taxed, and liable to a transit duty, in addition, when they have to ascend the Rhine, or other rivers, to penetrate the interior. In the West Indies, which is our great provision market, our beef, pork, and flour, usually pay from eight to ten dollars a barrel; our bacon, from ten to twenty-five cents a pound; live hogs, eight dollars each; corn, corn-meal, lumber, whiskey, fruit, vegetables, and every thing else, in proportion; the duties in the different islands, on an average, equalling or exceeding the value of the article in the United States. We export about forty-five millions of domestic productions, exclusive of manufactures, annually; and it may be safely assumed that we have to pay near that sum in the shape of duties, for the privilege of selling these exports in foreign markets. So much for agriculture. Our manufactures are in the same condition. In many branches they have met the home demand, and are going abroad in search of foreign markets. They meet with vexatious restrictions, peremptory exclusions, or oppressive duties, wherever they go. The quantity already exported entitles them to national consideration, in the list of exports. Their aggregate value for 1828 was about five millions of dollars, comprising domestic cottons, to the amount of a million of dollars; soap and candles, to the value of nine hundred thousand dollars; boots, shoes, and saddlery, five hundred thousand dollars; hats, three hundred thousand dollars; cabinet, coach, and other wooden work, six hundred thousand dollars; glass and iron, three hundred thousand dollars; and numerous smaller items. This large amount of manufactures pays their value, in some instances more, for the privilege of being sold abroad; and, what is worse, they are totally excluded from several countries from which we buy largely. Such restrictions and impositions are highly injurious to our manufactures; and it is incontestably true, the amount of exports prove it, that what most of them now need is, not more protection at home, but a better market abroad; and it is one of the objects of this bill to obtain such a market for them.

It appears to me, [said Mr. B.] to be a fair and practicable plan, combining the advantages of legislation and negotiation, and avoiding the objections to each. It consults the sense of the people, in leaving it to their Representatives to say on what articles duties shall be abolished for their relief; on what they shall be retained for protection and revenue; it then secures the advantage of obtaining equivalents, by referring it to the Executive to extend the benefit of the abolition to such nations as shall reciprocate the favor. To such as will not reciprocate, it leaves every thing as it now stands. The success of his plan can hardly be doubted. It addresses itself to the two most powerful passions of the human heart—interest and fear; it applies itself to the strongest principles of human action—profit and loss. For, there is no nation with whom we trade but will be benefited by the increased trade of her staple productions, which will result from a free trade in such productions; none that would not be crippled by the loss of such a trade, which loss would be the immediate effect of rejecting our system. Our position enables us to command the commercial system of the globe; to mould it to our own plan, for the benefit of the world and ourselves. The approaching extinction of the public debt puts it into our power to abolish twelve millions of duties, and to set free more than one-half of our entire commerce. We should not forego, nor lose the advantages of such a position. It occurs but seldom in the life of a nation, and once missed, is irre-

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trivially gone, to the generation at least, that saw and neglected the golden opportunity. We have complained, and justly, of the burthens upon our exports in foreign countries; a part of our tariff system rests upon the principle of retaliation for the injury thus done us. Retaliation, heretofore, has been our only resource: but reciprocity of injuries is not the way to enrich nations any more than individuals. It is an "unprofitable contest," under every aspect. But the present conjuncture, payment of the public debt, in itself a rare and almost unprecedented occurrence in the history of nations, enables us to enlarge our system; to present a choice of alternatives: one fraught with good, the other charged with evil, to foreign nations. The participation, or exclusion, from forty millions of free trade, annually increasing, would not admit of a second thought, in the head of any nation with which we trade. To say nothing of her gains in the participation in such a commerce, what would be her loss in the exclusion from it? How would England, France, or Germany, bear the loss of their linen, silk, or wine trade, with the United States? How could Cuba, St. Domingo, or Brazil, bear the loss of their coffee trade with us? They could not bear it at all. Deep and essential injury, ruin of industry, seditions, and bloodshed, and the overthrow of administrations, would be the consequence of such loss. Yet such loss would be inevitable, (and not to the few nations, or in the articles only which I have mentioned, for I have put a few instances only by way of example) but to every nation with whom we trade, that would not fall into our system, and throughout the whole list of essential articles to which our abolition extends. Our present heavy duties would continue in force against such nations; they would be abolished in favor of their rivals. We would say to them, in the language of Mr. Jefferson, free trade and navigation is not to be given in exchange for restrictions and vexations! But I feel entire confidence that it would not be necessary to use the language of menace or coercion. Amicable representations, addressed to their sense of self-interest, would be more agreeable, and not less effectual. The plan cannot fail! It is scarcely within the limits of possibility that it should fail! And if it did, what then? We have lost nothing. We remain as we were. Our present duties are still in force, and Congress can act upon them one or two years hence, in any way they please.

Here, then, is the peculiar recommendation to my plan, that, while it secures a chance, little short of absolute certainty, of procuring an abolition of twelve millions of duties upon our exports in foreign countries, in return for an abolition of twelve millions of duties upon imports from them, it exposes nothing to risk; the abolition of duty upon the foreign article here being contingent upon the acquisition of the equivalent advantage abroad.

I close this exposition of the principles of the first section of my bill with the single remark, that these treaties for the mutual abolition of duties should be for limited terms, say for seven or ten years, to give room for the modifications which time, and the varying pursuits of industry, may show to be necessary. Upon this idea, the bill is framed, and the period of ten years inserted by way of suggestion and exemplification of the plan. Another feature is too obvious to need a remark, that the time for the commencement of the abolition of duties is left to the Executive, who can accommodate it to the state of the revenue and the extinction of the public debt.

#### Second Section.

"That, from and after the 31st day of December, in the year 1831, the duties now payable on the following articles, imported from countries with which the United States have no diplomatic relations, shall be reduced one-half; and, after the 31st of December, 1833, shall cease and determine entirely, to wit: teas, mace, cloves, cinna-

mon, nutmegs, cassia, ginger, ivory, Turkey carpets, Cashmere shawls."

This section presents an exception to the principle of the bill; it dispenses with the idea of obtaining equivalents in the enumerated articles. The exception is the effect of necessity; the articles excepted being desirable to, and obtained from Powers with whom we have no treaties. The exception is unavoidable, but it is not wholly disadvantageous. We shall get the articles for one-third and one-half less than we now pay for them; and if two or three millions of revenue should be suddenly wanted, they present the ready means of raising it. The abolition being by law alone, the duty may be laid again by law whenever needed.

#### Third Section.

"That, from and after the 31st day of December, in the year 1831, a duty of thirty-three and a third per cent. on the value, shall be levied on all furs and raw hides imported into the United States, from countries which shall not have secured their free admission by granting equivalent advantages to the like productions of the United States."

This section, to a superficial observer, may seem to militate against the plan of the bill; but the inconsistency is in appearance only. It harmonizes completely with the spirit of the bill. It provides for a future, eventual, and contingent duty, upon two articles now introduced, free of duty, to a great amount. The terms in which the section is drawn show that its object is to obtain equivalents for their future free importation; and the following table of their annual imports, for the last nine years, will show the great value of the argument which they will put into the hands of the Executive, in the negotiations to which the section may give rise.

The Table.

Years ending 30th Sept.	Value of Furs.	Raw Hides and Skins.	Total Value.
1821	224,193	892,530	1,116,722
1822	296,339	2,041,463	2,337,802
1823	273,088	2,084,082	2,357,170
1824	323,580	2,142,168	2,465,748
1825	347,163	2,221,868	2,569,031
1826	338,955	2,825,526	3,164,481
1827	347,347	1,480,349	1,827,696
1828	488,536	1,804,202	2,292,738
1829	330,633	2,251,809	2,582,442
	2,989,833	17,153,997	20,093,730

The aggregate exceeds twenty millions of dollars for the short period of the last nine years. And these free importations, so injurious to the fur trader, and the farmers who raise cattle and want a market for their skins, are derived from countries who exclude, or heavily tax, our furs and raw hides, and the articles manufactured out of them. They come, chiefly, from the Southern republics and Great Britain. If such large importations are to continue free, let those who enjoy the benefit reciprocate the favor. Let them abolish duties on American furs and American hats. Let them abolish duties on our raw hides; and where the privilege of sending hides would not be beneficial to us, as in the Southern republics, let something else be substituted for the abolition; as distilled spirits, manufactures of leather, cotton, glass, wood, &c. If they do not reciprocate advantages, thus offered, the penalty of their own election falls upon them. They incur the consequence denounced by Mr. Jefferson in the patriotic declaration, that free trade is not to be given in exchange for restrictions and vexations.

Here, sir, I make a single remark to illustrate the neglect with which the West has been treated in the progress

of the tariff policy. The West produces furs and raw hides; they are leading articles of Western industry; yet no protection has been extended to them; the protective policy has never reached them; the country has been filled with foreign hides and foreign furs, free of duty, while the furs and hides of the United States, and the articles manufactured from them, are met by prohibitions, or heavy duties, in all quarters of the globe.

#### Fourth Section.

"That, from and after the 31st day of December, in the year —, the amount levied on foreign tonnage for 'light money,' shall cease and determine, in favor of the ships of such nations as shall grant the like or an equivalent favor to the merchant ships of the United States."

The object of this section is to gain some little relief for our navigating interest in foreign ports. The amount now paid by foreigners for "light money," that is to say, as a tribute to our light houses, is about fifteen thousand dollars per annum. Such a sum is no object to the treasury of the United States, yet it is something to our ship owners, for whose benefit the abolition of this small tax is intended. Nominally, it is a relief to foreigners; in reality, to our own navigators. The foreigners cannot be relieved here until the corresponding relief is secured abroad; and, as our shipping is most numerous, we may gain much more than we relinquish.

#### Fifth Section.

"That, from and after the 31st day of December, in the year —, the duties now payable on tonnage, passports, and clearances, and on the re-exportation of imported articles, shall cease and determine."

The amount of these little taxes and duties is about two hundred and fifty thousand dollars per annum. The treasury will have no occasion for that sum after the extinguishment of the public debt; and being left in the pockets of the ship owners and merchants, will be felt as an advantage by them, and not missed as a loss by the Government.

#### Sixth Section.

"That, from and after the 31st day of December next, the duty now payable on the importation of alum salt, coarse or ground, shall cease and determine; and from and after the same day, all laws authorizing allowances to fishing vessels, and bounties on the exportation of pickled fish, shall be, and the same hereby are, repealed."

This section stands out as a clear exception to the peculiar policy of the bill—that of obtaining equivalents by treaty stipulation. The section proposes a speedy repeal of the duty on this description of salt, and by operation of law alone. The reasons for this exception, are—*first*, in the prime necessity and universality of the use of the article; *secondly*, in the small object it would present for negotiation, the number of Powers from which we get salt being above a dozen, which would render abolition by negotiation tedious and dilatory, and the amount of duty relinquished to each, too inconsiderable to affect her policy, while the aggregate to us is great; *thirdly*, in the necessity of repealing the fishing bounties and allowances, which are dependent upon the duty on this description of foreign salt, and must stand or fall with that duty.

I have now finished the exposition of the features and principles of my bill; but justice to my plan and to myself will not permit me to stop here. The plan is new; and whatever is new has the prejudices of time and age to encounter, and the fears of timidity and caution to overcome. Its novelty will excite many enemies; the reasons which I may give, and which are the fruit of much research and meditation, may satisfy some and convert them into friends.

It certainly presents the tariff question under a new point of view to the American people.

That question has heretofore rested upon two great principles:

#### 1. PROTECTION; 2. RETALIATION.

Under the first principle we sought a home supply of articles essential to our general independence, and to our safety in time of war.

Under the second principle we retaliate upon other nations the evils of their own policy in piling duties upon our productions.

It is not to be dissembled that the tariff policy, on both principles, has powerfully appealed to the sympathies and the patriotism of the American people, and while kept within reasonable limits had the general approbation of all quarters of the Union; North, South, West, and Centre. The tariff policy has been in force in these States forty years, and has only excited discontent within the last ten or fifteen years, and since it has been pushed beyond its own principles. The results are, increased duties at home and abroad; imports burthened, and exports burthened—the candle lit at both ends.

Under the plan which I propose, the tariff question will present itself to the people in this point of view:

1. Protection to every essential branch of industry.
2. Retaliation, as an alternative, where equivalents are refused.
3. Reciprocity of benefits instead of reciprocity of injuries.
4. The abolition of twelve millions of duties, at home, on imports.
5. The abolition of an equal amount of duties, abroad, on exports.
6. Discrimination between the articles which a wise policy requires, or does not require, to be made at home, and between the nations which grant or refuse us equivalents.
7. Increased importations of gold and silver.
8. Increased value of the internal trade with Mexico.

The results of the new plan, according to this view of its advantages, would be overwhelming in its favor. Let us verify these results, and justify these views.

In the first place, under the protecting principle which it contains, duties will remain on foreign articles, rivals of our own industry, to the amount of about ten millions of dollars. The support of the Government will require this sum, and the raising of this sum will give protection to our domestic industry; it will give it as an incident to the collection of revenue, and to this there will be no objection in any part of the Union.

In the second place, we shall terminate the unprofitable contest which we are now carrying on with foreign nations—a contest in which the only question is, which shall do most harm to the commerce of the other—and substitute for it a beneficial rivalry in the walks of free trade, based upon the unfettered exchange of surplus productions, to the amount of forty millions at the start, to increase annually with the rapid growth and expansion of these young athletic States.

In the third place, the abolition of twelve millions of duties will be the repeal of sixteen millions of taxes, counting the merchant's profit at 33 1/3 per cent; and this repeal will be felt in every family in the purchase of its necessities, its comforts, and its luxuries. Linen for the person, the table, and the bed, would be one-third cheaper. Coffee would be seven cents cheaper in the pound; tea, one-third; wines and silks, one-third; and so of all the articles enumerated in the bill. Every family would save one-third, or upwards, of its annual store account; every State would retain, within its limits, its proportion of these sixteen millions; and all the shame and mischief of plotting and combining, and wrangling, here, about the division of so much spoil, would be avoided.

In the fourth and fifth places, the principle of equivalents would gain an abolition of duties on our productions in foreign ports, equal to the abolition made here upon

Feb. 23, 1830.]

Abolition of Duties, Taxes, &amp;c.

[SENATE.]

foreign productions. We would buy cheaper, and sell higher. Instead of paying the value, and, in some instances, ten times the value of our products, for the privilege of selling them in a foreign market, we would get these foreign duties reduced to a reasonable amount. Our productions are chiefly dutied in foreign countries, not for protection, but for revenue; and the experience of all nations, and especially of Great Britain, proves that revenue is productive in proportion to its moderation and fairness; smuggling and non-consumption always disappointing the calculations of short sighted cupidity in the imposition of enormous duties. But these will be arguments for our ministers abroad, which they will handle with more ability than I can pretend to.

In the sixth place, the principle of discrimination which my plan, for the first time in the progress of the tariff policy, introduces and establishes, will admit of a salutary distinction in the selection of articles for protection, and in the application of retaliatory measures to impracticable nations. Thus far there has been no discrimination, either in articles at home or nations abroad, in our tariff policy. To protect articles which can, and ought to be, made at home, we have dutied, and that most heavily, not only the cherished article, but all others belonging to the same branch, though of kinds not made, nor necessary to be made, in the United States. Blankets and strouds for the Indian trade, fine cottons, alum salt—I mention a few articles by way of example—are evidences of this want of discrimination. Among nations, this want of discrimination has been equally palpable. Great Britain has been severe upon our tobacco, grain, and provisions; to retaliate upon her we have been severe, not only upon her productions, but upon the productions of France, Germany, and all the nations with whom we trade. This want of discrimination among nations may be the necessary effect of regulating our tariff by law alone. If so, the argument becomes still stronger in favor of my plan by law and negotiation combined, which admits of discrimination; which offers the same advantageous terms to all nations, and leaves retaliatory duties in force against those only which justly incur our resentment, by refusing to receive our productions upon the terms that we offer to receive theirs. To them I say, in the thrice repeated language of the great Jefferson, "Free trade is not to be given in exchange for vexations and restrictions!"

Seventhly, in obtaining increased importations of gold and silver. The United States have no silver or gold mines, except those in my native State, (North Carolina.) They are dependent upon foreign countries for their supply of these metals. To the amount of one or two millions they are obtained from the West Indies, and other neighboring countries, in return for domestic productions, chiefly provisions. But the main supply is obtained by the circuitous operation of sending our tobacco, cotton, and rice, to Europe, exchanging them for fine goods, and selling these goods in the Southern republics. Our trade with Mexico is a complete illustration of this process. We obtained from her, in 1828—taking the last year to which the returns are made up and printed—four millions of dollars in gold and silver, and seven hundred thousand dollars' worth of other products; we exported to her about seven hundred thousand dollars' worth of our domestic products, just enough to balance hers, leaving the whole amount of gold and silver to have been acquired by other exchanges. What were these exchanges? They were the fine cloths and cassimeres, the linens, silks, cambrics, muslins, rich carpets, wines, and porcelain, which our cotton and tobacco had bought in Europe, and which were either carried direct to Mexico, or re-exported from this country under the system of drawbacks. This makes it clear that whatever will facilitate the exchange of our cotton and tobacco for the fine goods of Europe, will enhance the importation of the precious metals into the

United States; and nothing can facilitate this exchange so much as reductions of duty upon the articles which compose it. The cotton plantations and tobacco fields of the South and West are thus the gold and silver mines of the United States; and blind, stupid, and suicidal is the policy which would destroy these fields and plantations!

Eighthly: In promoting the internal trade with Mexico. This trade is carried on partly in domestic, partly in European goods. Its present returns are about a quarter of a million of dollars. So far as foreign goods enter into its amount, there is a loss to the trader of the whole amount of the duty paid; the want of custom houses on the frontiers rendering the application of the drawback system difficult and objectionable. The abolition of duties on the foreign articles used in that trade, chiefly fine goods, would put the inland trader on a footing with the shipper from the sea-port, and probably enhance the returns of the trade, in a brief period, from a quarter of a million, to one or two millions of dollars.

These are the results of my plan, verified, as fully as established facts, fair inductions, and probabilities approaching to certainty, can verify any untried experiment. They are the results of free trade, qualified by the policy of protection and the necessities of revenue; two qualifications which, in my view, reduce themselves to one: for they are convertible propositions—the revenue resulting from the protection, and the protection from the revenue. Anti-tariff citizens can have no objection to it, for they admit the protection which springs from a fair exercise of the revenue raising power; the supporters of the tariff policy, and especially the real manufacturers—not the political ones—but the actual owners and workers, can have no objection to it, for it leaves them all their present protection, procures them better markets abroad, gives them comforts and necessities, as tea, coffee, &c. cheaper than they now get them, and facilitates the acquisition of the material to several branches of manufacture, as the umbrella, the hat, the lady's shoe, bonnet, &c. in which silk is an essential part; and which will be got one-third cheaper when the duty on that article is abolished.

This being the case, the "crowning mercy" of my plan would be the speedy death and burial of the tariff question, and, with its interment, a restoration of that harmony of the Union which all true patriots desire, and which the progress of this question has so greatly impaired.

The last section of my bill still remains to be considered. It is the one which proposes to abolish the duty upon alum salt, and to repeal the laws which authorize the fishing bounties and allowances.

To spare to any gentleman (said Mr. B.) the supposed necessity of rehearsing to me a lecture upon the importance of the fisheries, I will premise that I have some acquaintance with the subject; that I know the fisheries to be valuable, for the food they produce, the commerce they create, the mariners they perfect, the employment they give to artisans in the building of vessels, and the consumption of wood, hemp, and iron. I also know that the fishermen applied for the bounties, at the commencement of our present form of Government, which the British give to their fisheries, and that it was denied them upon the report of the Secretary of State, (Mr. Jefferson;) and I have lately read the six dozen acts of Congress, general and particular, passed in the last forty years, from 1789 to 1829, inclusive, giving the bounties and allowances, which it is my present purpose to abolish, with the duty on alum salt, which is the foundation upon which all this superstructure of legislative enactments has been reared.

I say the salt tax, and especially the tax on alum salt, which is the link required for the fisheries, is the foundation of all these bounties and allowances; and that, as they grew up together, it is fair and regular that they should sink and fall together.

To prove this, let the laws speak.



*The Laws.*

1. Act of Congress, 1789, grants five cents a barrel on pickled fish and salted provisions, and five cents a quintal on dried fish, exported from the United States, in lieu of a drawback of the duties imposed on the importation of the salt used in curing such fish and provisions.

N. B. Duty on salt, at that time, six cents a bushel.

2. Act of 1790 increases the bounty in lieu of drawback to ten cents a barrel on pickled fish and salted provisions, and ten cents a quintal on dried fish. The duty on salt being then raised to twelve cents a bushel.

3. Act of 1792 repeals the bounty in lieu of drawback on dried fish, and in lieu of that, and as a commutation and equivalent thereof, authorizes an allowance to be paid to vessels in the cod fishery (dried fish) at the rate of one dollar and fifty cents a ton on vessels of twenty to thirty tons; two dollars and fifty cents on tonnage of vessels above thirty tons; with a limitation of one hundred and seventy dollars for the highest allowance to any vessel.

4. A supplementary act, of the same year, adds twenty per cent. to each head of these allowances.

5. Act of 1797 increases the bounty on salted provisions to eighteen cents a barrel; on pickled fish to twenty-two cents a barrel; and adds thirty-three and a third per cent. to the allowance in favor of the cod fishing vessels. Duty on salt, at the same time, being raised to twenty cents a bushel.

6. Act of 1799 increases the bounty on pickled fish to thirty cents a barrel, on salted provisions to twenty-five.

7. Act of 1800 continues all previous acts (for bounties and allowances) for ten years, and makes this proviso: That these allowances shall not be understood to be continued for a longer time than the correspondent duties on salt, respectively, for which the said additional allowances were granted, shall be payable.

8. Act of 1807 repeals all laws laying a duty on imported salt, and for paying bounties on the exportation of pickled fish and salted provisions, and making allowances to fishing vessels.—Mr. Jefferson being then President.

9. Act of 1813 gives a bounty of twenty cents a barrel on pickled fish exported, and allows to the cod fishing vessels at the rate of two dollars and forty cents the ton for vessels between twenty and thirty tons, four dollars a ton for vessels above thirty, with a limitation of two hundred and seventy-two dollars for the highest allowance; and a proviso, that no bounty or allowance should be paid unless it was proved to the satisfaction of the collector that the fish was wholly cured with foreign salt, and the duty on it secured or paid. The salt duty, at the rate of twenty cents a bushel, was revived as a war tax, at the same time. Bounties on salted provisions were omitted.

10. Act of 1816 continued the act of 1813 in force, which, being for the war only, would otherwise have expired.

11. Act of 1819 increases the allowance to vessels in the cod fishery to three dollars and fifty cents a ton on vessels from five to thirty; to four dollars a ton vessels above thirty tons; with a limitation of three hundred and sixty dollars for the maximum allowance.

12. Act of 1828 authorizes the mackerel fishing vessels to take out licences like the cod fishing vessels, under which it is reported by the vigilant Secretary of the Treasury that money is illegally drawn by the mackerel vessels—the newspapers say to the amount of thirty to fifty thousand dollars per annum.

These recitals of legislative enactments are sufficient to prove that the fishing bounties and allowances are bottomed upon the salt duty, and must stand or fall with that duty. I will now give my reasons for proposing to abolish the duty on alum salt, and will do it in the simplest form of narrative statement; the reasons themselves being of a nature too weighty and obvious to need, or even to admit, of coloring or exaggeration from arts of speech.

1. Because it is an article of indispensable necessity in the provision trade of the United States. No beef or pork for the army or navy, or for consumption in the South, or for exportation abroad, can be put up except in this kind of salt. If put up in common salt, it is rejected absolutely by the commissaries of the army and navy, and if taken to the South must be repacked in alum salt, at an expense of one dollar and twelve and a half cents a barrel, before it is exported, or sold for domestic consumption. The quantity of provisions which require this salt, and must have it, is prodigious, and annually increasing. The exports of 1828 were, of beef sixty-six thousand barrels, of pork fifty-four thousand barrels, of bacon one million nine hundred thousand pounds weight, butter and cheese two million pounds weight. The value of these articles was two millions and a quarter of dollars. To this amount must be added the supply for the army and navy, and all that was sent to the South for home consumption, every pound of which had to be cured in this kind of salt, for common salt will not cure it. The Western country is the great producer of provisions; and there is scarcely a farmer in the whole extent of that vast region whose interest does not require a prompt repeal of the duty on this description of salt.

2. Because no salt of this kind is made in the United States, nor any rival to it, or substitute for it. It is a foreign importation, brought from various islands in the West Indies, belonging to England, France, Spain, and Denmark; and from Lisbon, St. Ubes, Gibraltar, the Bay of Biscay, and Liverpool. The principles of the protecting system do not extend to it: for no quantity of protection can produce a home supply. The present duty, which is far beyond the rational limit of protection, has been in force near thirty years, and has not produced a pound. We are still thrown exclusively upon the foreign supply. The principles of the protecting system can only apply to common salt, the product of which is considerable in the United States; and upon that kind, the present duty is proposed to be left in full force.

3. Because the duty is enormous, and quadruples the price of the salt to the farmer. The original value of salt is about fifteen cents the measured bushel of eighty-four pounds. But the tariff substitutes weight for measure, and fixes that weight at fifty-six pounds, instead of eighty-four. Upon that fifty-six pounds, a duty of twenty cents is laid. Upon this duty, the retail merchant has his profit of eight or ten cents, and then reduces his bushel from fifty-six to fifty pounds. The consequence of all these operations is, that the farmer pays about three times as much for a weighed bushel of fifty pounds, as he would have paid for a measured bushel of eighty-four pounds, if this duty had never been imposed.

4. Because the duty is unequal in its operation, and falls heavily on some parts of the community, and produces profit to others. It is a heavy tax on the farmers of the West, who export provisions; and no tax at all, but rather a source of profit, to that branch of the fisheries to which the allowances of the vessels apply. Exporters of provisions have the same claim to these allowances that exporters of fish have. Both claims rest upon the same principle, and upon the principle of all drawbacks, that of refunding the duty paid on the imported salt, which is re-exported on salted fish and provisions. The same principle covers the beef and pork of the farmer which covers the fish of the fisherman; and such was the law, as I have shown, for the first eighteen years that these bounties and allowances were authorized. Fish and provisions sailed alike from 1789 to 1807. Bounties and allowances began upon them together, and fell together, on the repeal of the salt tax, in the second term of Mr. Jefferson's administration. At the renewal of the salt tax, in 1813, at the commencement of the late war, they parted company, and the law, in the exact sense of the proverb, has made

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*Mr. Foot's Resolution.*

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fish of one and flesh of the other ever since. The fishing interest is now drawing about two hundred and fifty thousand dollars annually from the treasury; the provision raisers draw not a cent, while they export more than double as much, and ought, upon the same principle, to draw more than double as much money from the treasury.

5. Because it is the means of drawing an undue amount of money from the public treasury, under the idea of an equivalent for the drawback of duty on the salts used in the curing of fish. The amount of money actually drawn in that way is about four millions seven hundred and fifty thousand dollars, and is now going on at the rate of two hundred and fifty thousand dollars per annum, and constantly augmenting. That this amount is more than the legal idea recognizes, or contemplates, is proved in various ways. 1. By comparing the quantity of salt supposed to have been used, with the quantity of fish known to have been exported, within a given year. This test, for the year 1828, would exhibit about seventy millions of pounds weight of salt on about forty millions of pounds weight of fish. This would suppose about a pound and three quarters of salt upon each pound of fish. 2. By comparing the value of the salt supposed to have been used, with the value of the fish known to have been exported. This test would give two hundred and forty-eight thousand dollars for the salt duty on about one million of dollars' worth of fish, making the duty one-fourth of its value. On this basis, the amount of the duty on the salt used on exported provisions would be near six hundred thousand dollars. 3. By comparing the increasing allowances for salt with the decreasing exportation of fish. This test, for two given periods, the rate of allowance being the same, would produce this result: In the year 1820, three hundred and twenty-one thousand four hundred and nineteen quintals of dried fish exported, and one hundred and ninety-eight thousand seven hundred and twenty-four dollars paid for the commutation of the salt drawback: 1828, two hundred and sixty-five thousand two hundred and seventeen quintals of dried fish exported, and two hundred and thirty-nine thousand one hundred and forty-five dollars paid for the commutation. These comparisons establish the fact that money is unlawfully drawn from the treasury by means of these fishing allowances, bottomed on the salt duty, and that fact is expressly stated by the Secretary of the Treasury, [Mr. Ingham] in his report upon the finances, at the commencement of the present session of Congress. [See page eight of the report.]

6. Because it has become a practical violation of one of the most equitable clauses in the constitution of the United States—the clause which declares that duties, taxes, and excises, shall be uniform throughout the Union. There is no uniformity in the operation of this tax. Far from it. It empties the pockets of some, and fills the pockets of others. It returns to some five times as much as they pay, and to others it returns not a cent. It gives to the fishing interest two hundred and fifty thousand dollars per annum, and not a cent to the farming interest, which, upon the same principle, would be entitled to six hundred thousand dollars per annum.

7. Because this duty now rests upon a false basis—a basis which makes it the interest of one part of the Union to keep it up, while it is the interest of other parts to get rid of it. It is the interest of the West to abolish this duty; it is the interest of the Northeast to perpetuate it. The former loses money by it; the latter makes money by it; and a tax that becomes a money making business is a solecism of the highest order of absurdity. Yet such is the fact. The treasury records prove it, and it will afford the Northeast a brilliant opportunity to manifest their disinterested affection to the West, by giving up their own profit in this tax, to relieve the West from the burthen it imposes upon her.

8. Because the repeal of the duty will not materially

diminish the revenue, nor delay the extinguishment of the public debt. It is a tax carrying money out of the treasury, as well as bringing it in. The issue is two hundred and fifty thousand dollars, perhaps the full amount which accrues on the kind of salt to which the abolition extends. The duty, and the fishing allowances bottomed upon it, falling together as they did when Mr. Jefferson was President, would probably leave the amount of revenue unaffected.

9. Because it belongs to an unhappy period in the history of our Government, and came to us, in its present magnitude, in company with an odious and repudiated set of measures. The maximum of twenty cents a bushel on salt was fixed in the year '98, and was the fruit of the same system which produced the alien and sedition laws, the eight per cent. loans, the stamp act, the black cockade, and the standing army in time of peace. It was one of the contrivances of that disastrous period for extorting money from the people, for the support of that strong and splendid Government which was then the cherished vision of so many exalted heads. The reforming hand of Jefferson overthrew it, and all the superstructure of fishing allowances which was erected upon it. The exigencies of the late war caused it to be revived for the term of the war, and the interest of some, and the neglect of others, have permitted it to continue ever since. It is now our duty to sink it a second time. We profess to be disciples of the Jeffersonian school; let us act up to our profession, and complete the task which our master set us.

This concludes what I have to say on the present occasion. I flatter myself that I have vindicated the title of my bill; that I have shown it to be a bill to provide for the abolition of unnecessary duties; to relieve the people from sixteen millions of taxes; and to improve the condition of the agriculture, manufactures, commerce, and navigation, of the United States. I now submit my motion, in form, for leave to bring it in.

[The leave was thereupon granted, and the bill read the first time.]

#### MR. FOOT'S RESOLUTION.

The Senate resumed the consideration of the resolution heretofore offered by Mr. FOOT.

Mr. WOODBURY addressed the Senate till three o'clock, when he yielded to a motion to adjourn.

WEDNESDAY, FEBRUARY 24, 1830.

Mr. WOODBURY resumed and concluded his remarks upon the great subjects of debate. They were to the following effect:

Perhaps [said Mr. W.] I could best repay the kind indulgence of the Senate yesterday, in adjourning so early to accommodate me, by an entire silence to-day. But it was my lot, possibly my misfortune, to offer an amendment to the resolution, which has occasioned such a long, and, in some respects, unpleasant debate. The amendment was offered in that spirit of kindness towards the West, which I had rather practice, than merely profess; and, after opinions on the subject had become controverted, it was offered with a view to elicit fully the real disposition felt in this body concerning the surveys and sales of the public lands. The unexpected motion to postpone both the resolution and the amendment, evidently tends to defeat a distinct expression of opinion upon either, and has opened the door to a course of argument, and a latitude of discussion, I believe, somewhat unprecedented. It seems to have metamorphosed the Senate, not only into a committee of the whole on the state of the Union, but on the state of the Union in all time past, present, and to come. So be it, if gentlemen please. This is not alluded to in the spirit of rebuke against either side, as every Senator in such cases is doubtless at liberty to pursue the dictates of

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his own judgment, and is doubtless able to vindicate his own course to his constituents and his country.

But, in one view, this wide range of discussion has proved a subject of deep regret to me individually, as it has led gentlemen into remarks on the amendment, and on matters and things in general, some of which bore personally on myself, and on that portion of my constituents with whom I had the pleasure to act in the late Presidential election. Those remarks, if unnoticed, may lead to a misapprehension of our real opinions on questions of public moment—which opinions I disclaim to conceal, so far as regards myself; and to imputations on those constituents, utterly derogatory, and utterly unmerited—imputations, about which I cared little, if flung in the scavenge slaug of the day on myself alone, because I have long been injured to them from certain quarters, like all other men in the East, who refuse to bow the knee there to certain political Dragons; but imputations, against which, when gravely made by conscript fathers, and extended to a large body of my constituents, I feel it my duty to defend them, here and elsewhere—now and henceforth, while I have power left to defend any thing.

But let us first advert a moment to the amendment offered by me to this resolution, and my opinions on its subject matter. The amendment has been considered by some in debate, and roundly asserted in the numerous libels that issue from the epistolary mints in this city—those manufactures so exorbitantly protected—to be, substantially, a proposition to give away the whole public domain of the Union. Whereas, in truth, it contemplates nothing beyond an inquiry for that light and information so earnestly urged by others; a mere inquiry in a less exceptional, less questionable shape, into the expediency of making a more rapid survey and sale of the public lands.

The reasons for that inquiry have before been stated, and need not be repeated, except to observe, that they rest on the facts of increasing competition in the sales of land by other governments on our Northern and Southwestern frontier, the vast quantities yet to be surveyed and sold by ourselves, and on our duties to the new States equally, in respect to the survey, sale, and settlement, of our untaxed domain within their respective boundaries. To discharge such duties; to give a wider sphere for choice to the enterprising yeomanry from the East and the Middle States, as well as the West; to obtain sooner the means for extinguishing the public debt, that great millstone on the neck of every popular government; all will admit to be legitimate objects; and an amendment seeking these objects could not but tend to fulfil, promptly and justly, the condition on which most of these lands were originally and generously ceded to the Union. This is the whole length, breadth, and depth, of the amendment; but when we travel beyond the amendment and the resolution, to speculate on what has been done, and what shall be done, with these lands in future time, after paying the public debt, then these lands become the apple of discord—then we open a Pandora's box of fears, jealousies, and fierce collisions. On this point, I have heretofore said nothing in this discussion, and should say nothing now, had not my views on the disposition of these lands been misrepresented, and some of my votes at former sessions perhaps misunderstood.

By the terms of the grants, I had always supposed that, as all lands north of the Ohio were expressly obtained "for the common benefit and support of the Union;" as Congress had resolved they "shall be disposed of for the common benefit of the United States;" and as the residue of our lands were purchased by our common funds, no doubt could exist that they must be used and granted only in a way to be beneficial to the whole. All sales of them, even at reduced prices, and whether to States or individuals, would always, in my opinion, be thus beneficial if competition was open to all; because all would participate

in the purchase money obtained, and all could embark in the purchase itself. The hardy and enterprising yeomanry of the East and the Middle States, who seem almost entirely to have been forgotten in this debate, would then find constantly opened to the ambition of themselves and their sons, the benefit of lands at prices within their frugal means, and under democratic institutions of their own choice; and every valley and river of the West would, in part become, as many of them are now, vocal with New England tongues, and would, in part, be improved and gladdened by New England industry. So a division of the lands among all the States, who are as joint proprietors, whether divided for specified or general objects, would seem to me a disposition of them for the "common benefit;" but whether it would ever, in other respects, be a judicious disposition of them, considering the new relations and dependency it might create between the General Government and the States, is a grave question, not now material to me to discuss. On our claim and title to these lands, the State I partly represent has expressed a similar and decisive opinion, and one from which I have yet seen no sufficient reason to dissent.

June 22, 1821. "Forasmuch, therefore, as the property and jurisdiction of the soil were acquired by the common means of all, it is contended that the public lands, whether acquired by purchase, by force, or by acts or deeds of cession from individual States, are the common property of the Union, and ought to enure to the common use and benefit of all the States, in just proportions, and not to the use and benefit of any particular State or States, to the exclusion of the others; and that any partial appropriation of them, for State purposes, 'is a violation of the spirit of our national compact, as well as the principles of justice and sound policy.'"

And further, "that each of the United States has an equal right to participate in the benefit of the public lands, as the common property of the Union."—[Niles's Reg. p. 391, Res. of N. H. Leg.]

Those who passed that resolution seek no injustice or inequality towards the new States. The democracy of New Hampshire, neither then nor now, any more than in the last war, would refuse any aid or relief to the West, within the permission of the constitution; they would, neither in peace nor hostility, taunt her when distressed, or mock when her calamity cometh. Grateful for the sympathies and kindnesses shown them in this debate, from some of the West, as well as the South, I presume they stand ready now, as ever, to make any modification in the system of the public lands, or in the prices, the surveys, or sales, which can prove useful to the new States, and, at the same time, not prove unequal or unjust to the old States, nor conflict with the condition of the original cessions or the specific powers of the General Government over the common property of the Union. They stand ready to do this, also, because it is right; and not to form new, or perfect old alliances, since they seek no alliances with the South, the West, or the Centre, but those of mutual respect, mutual courtesy, and mutual benefits, according to the provisions of the constitution.

Such a division of the lands as the New Hampshire resolution approves, without reference to other notions concerning what has before been granted for education and to the other consideration before named, would, to every unjaundiced eye, seem to keep up the symmetry of our political system as a confederation, and not a consolidation of States; and hence would keep up an adherence to their mutual rights as States in the whole public property. Any such disposition of them, if effected speedily, would likewise relieve Congress from a subject of legislation most burthensome, invidious, and vexatious. Whether our bills be four hundred or four thousand on that subject, they certainly engross much time, and subject us to vast expenditures. Either a sale or division would bring relief.

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The West would be double gainers by either, as they would get an equal share in the division, and a speedy power of taxation over the whole.

But the contrary course, of a yearly scramble for scraps of these lands, sometimes for roads, sometimes for canals, sometimes for asylums, and sometimes for colleges, seems to me any thing but a disposition for the "common benefit," and seems likely to prove an endless source of favoritism, jealousies, and corrupt combinations. If the lands do not all, in time, become thus wasted and frittered away for little of good to any quarter, they surely will be disposed of very unequally; they will excite dissatisfaction in the States not made donees, rather than tend to the "support of the Union," and they will be appropriated to objects, not, in my opinion, specified in the constitution as within the cognizance of the Government of the Union.

The test adopted by some gentlemen, in voting for a grant to a road, canal, or college, that, if it be a good to the place where located, it is a good to a part of the whole, and thus a good to the whole, seems to me a very convenient argument to support a donation in any place, to any object, however limited, if the object be only beneficial in any degree; and the whole domain certainly might thus be taken off our hands in a single week. To contend, also, that the lands may be given to such objects in small quantities, and may not at once be given to one, or a few, or all the States, in large quantities, seems to me a suicidal position, and to make a distinction without a difference.

Without reference to that kind of sales the Government can make for the common benefit, such as grants to the new States for schools, and receive a virtual compensation therefor, by having the rest of the land freed from taxation, we merely lay down what we suppose to be the general principle.

No reasoning has been offered which convinces me that lands can be legally appropriated to any object for which we might not legally appropriate money. The lands are as much the property of the Union as its money in the treasury. The cessions and purchases of them were as much for the benefit of all as the collection of the money. The constitution, as well as common sense, seems to me to recognize no difference; and if the money can only be appropriated to specified objects, it follows that the land can only be so appropriated. Within those specified objects, I have ever been, and ever shall be, as ready to give lands or money to the West as the East; but, beyond them, I never have been ready to give either to either. Towards certain enumerated objects, Congress have authority to devote the common funds—the land or the money; because those objects were supposed to be better managed under their control than under that of the States; but the care of the other objects is reserved to the States themselves, and can only be promoted by the common funds, in a return or division of those funds to the proprietors, to be expended as they may deem judicious.

The whole debate on these points goes to satisfy my mind of the correctness of that construction of the constitution which holds no grants of money or lands valid, unless to advance some of the enumerated objects entrusted to Congress. When we once depart from that great land mark on the appropriations of lands or money, and wander into indefinite notions of the "common good," or of the "general welfare," we are, in my opinion, at sea without compass or rudder; and in a Government of acknowledged limitations, we put every thing at the caprice of a fluctuating majority here; pronouncing that to be for the general welfare to-day, which to-morrow may be denounced as a general curse. Were the Government not limited, this broad discretion would, of course, be necessary and right. But here every grant of power is defined. Many powers are not ceded to the General Government, but are expressly withheld to the States and peo-

ple; and no right is, in my opinion, given to promote the "general welfare" by granting money or lands, but in the exercise of the specific powers thus granted, and in the modes prescribed by the constitution.

Such limitations of power are admitted by all to be the great glory of a written constitution, and, since the Magna Charta at Runny Mead, can never be long violated with impunity among any of Saxon descent.

The General Government is well known to have been created chiefly for limited objects, connected with commerce and foreign intercourse: and so far from being unlimited in its jurisdiction, extent, or means, was based on express and jealous specifications; and designed not for the prostration, but the preservation of State rights and State governments, for most of the great purposes of political society. Without going further at this time, and on this occasion, into the argument, legal or constitutional, upon the broad and the strict constructions, I shall content myself with some references to the political bearing of these constructions on the public lands, and on the great topics of controversy introduced into this debate, and to some signal authorities in favor of my views, found in the records of the General Government, and of the State in which I have the honor in part to represent—a State whose instructions I shall not, like the Senator from Maine, refuse to obey, nor deny to be my only earthly "lord and master," rather than the individual "idol or image" of which he spoke so reverently.

We all know that, early as the year 1794, the division commenced in Congress between the advocates of extended constructive powers in the General Government, and especially in its Executive department, and the advocates of State rights, and of restricted views on constitutional powers.

In relation to Jay's treaty, and the questions connected with it, the lines began to be distinctly marked, and the head of the present administration was found, as the author of the Declaration of our Independence was found, among the firm opposers of indefinite constructive powers; and the vote of the former, on the retirement of the first President, so often appealed to and misrepresented in the late canvass by his opposers, appears to have been predicated entirely upon part of the policy and measures then pursued under these views of the constitution. He has repeated his former opinions in his message at the opening of this Congress, by warning us not "to undermine the whole system by a resort to overstrained constructions," and by warning us against "all encroachments upon the legitimate sphere of State sovereignty." The same course of division among our leading statesmen was evinced in the debate on the foreign intercourse bill, in 1798; and the distinguished agent on the Northeastern boundary, now in this country, then, as since, bent the whole force of his acute and profound mind to show the evil tendency of such an administration of the General Government. The alien and sedition laws soon after brought the hostile parties to a crisis; and then the strong reasoning of Mr. Madison, in the Virginia resolutions of 1798, and the acute mind of Mr. Jefferson, in those of Kentucky, and the whole influence of their democratic coadjutors throughout the Union, were concentrated against those alarming doctrines, and their fatal, practical consequences. One of the Virginia resolutions was in these words: (Virg. Res. p. 4.)

"That this Assembly doth explicitly and peremptorily declare, that it views the powers of the Federal Government, as resulting from the compact to which the States are parties, as limited by the plain sense and intention of the instrument constituting that compact, as no farther valid than they are authorized by the grants enumerated in that compact; and that, in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the States who are parties thereto

have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties, appertaining to them."

Another resolution is in these words: (Virg. Res. p. 9.) "That the General Assembly doth also express its deep regret that a spirit has, in sundry instances, been manifested by the Federal Government to enlarge its power, by the forced constructions of the constitutional charter which defines them; and that indications have appeared of a design to expound certain general phrases, which, having been copied from the very limited grant of powers in the former articles of confederation, were the less liable to be misconstrued, so as to destroy the meaning and effect of the particular enumeration, which necessarily explains and limits the general phrases, and so as to consolidate the States by degrees into one sovereignty; the obvious tendency and inevitable result of which would be, to transform the present republican system of the United States into an absolute, or, at best, a mixed monarchy."

Mr. Jefferson, in his letters, has followed up the same ideas, and never parted, till he parted with life itself, from this democratic view of the constitutional compact.

"You will have learned that an act for internal improvement, after passing both Houses, was negatived by the President. The act was founded, avowedly, on the principle that the phrase in the constitution, which authorizes Congress 'to lay taxes, to pay debts, and provide for the general welfare,' was an extension of the powers specifically enumerated to whatever would promote the general welfare; and this, you know, was the federal doctrine. Whereas, our tenet ever was, (and indeed it is almost the only land mark which now divides the federalists from the republicans) that Congress had not unlimited powers to provide for the general welfare, but were restrained to those specifically enumerated; and that, as it was never meant they should provide for that welfare but by the exercise of the enumerated powers, so it could not have been meant they should raise money for purposes which the enumeration did not place under their action; consequently, that the specification of powers is a limitation of the purposes for which they may raise money."—4 Jeff. Works, 306.

Other remarks of his, in like terms, have been before cited, and need not be repeated.

They were opinions which then endeared him to a majority of the Union, and, in 1800, effected the first great political revolution in the administration of our General Government. They were the views of his talented successor, in after times, as well as in 1798, as evinced in numberless of his public acts; and they, in substance, remained the views of his second successor, at least during his first term of office. They long continued every where the watchword of democracy. With many they always have remained the strongest test of political orthodoxy. Such was Mr. Jefferson's own remark, as late as the year 1819. [4 Jeff. 306.] And though, in after and more recent days, some departures may have been witnessed in our ranks from these doctrines, yet they have in general been apparent and local, rather than real and general departures from the doctrines themselves, and have existed rather in a difference of opinion, in particular applications of those doctrines, and in a difference about details, than about fundamental views on the true mode of construing the constitution. Some have been misrepresented on this head, and none I believe, sir, more than yourself. These differences have been rather "the clouds that hang on freedom's jealous brow," than any palpable darkness, or any desertion of the great principles contended for the democracy of the Union, in the great revolution of 1798. Some differences, and honest differences, may, and doubtless do, exist on this point, in all parties: but I am now speaking of this as one basis of

the change in administration at that era, and as one of the doctrines of the party at large, as a party, which effected the change. That the opinions of New Hampshire have coincided with these views, whenever her politics have been democratic; and that I, on them, as on the subject of the public lands, am representing truly these sentiments of her democracy, and not as a Judas, so courteously insinuated more than once, is easily demonstrable by a reference, not to pamphlets or newspapers, forgotten or fresh, but to her legislative records. While that State continued under the control of men opposed to Mr. Jefferson, and of principles so fatal to his predecessor; while her Representatives here were voting for Aaron Burr, she, as would naturally be expected, voted against the doctrines of the Virginia resolutions.

But when, politically, she became regenerate, and moved harmoniously, with a majority of her sister planets in the democratic system; when the tendencies and progress of the opposite doctrines, urged so often and so strenuously by that gentleman's (Mr. HOLMES's) "matchless spirit of the West," and under his lead; when those tendencies began to alarm the watchful, and call forth deliberate and decisive expressions of State opinions on questions so dear to the purity of the constitution; New Hampshire came out, in both her Executive and Legislative Departments, against the favorite views of that "matchless spirit." She came out with directness and independence, as sovereign States ought to come out, on all great emergencies. She showed her disregard, as a State, of men, whether Southern or Eastern—whether politicians or judges—in high places or low—who, in her opinion, had attempted to seduce the people of the Union, by gradual and stealthy attacks, into the same enlarged and constructive views of the constitution which the revolution of 1800 had openly exposed and defeated.

The Executive, in June, 1822, declared [see 21 Niles's Register] that

"The measures of the National Government are justly regarded as subjects of great interest to the people, but they become more peculiarly of this character when believed to be founded on doubtful or erroneous constructions of the constitution, tending to an extension of their own powers. When a case of this kind occurs, or even if it appears probable that it is about to happen, it becomes the duty of the Legislatures of the individual States to adopt such constitutional measures as may tend to correct the error or avert the evil.

"The constitution gives to Congress the power 'to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare, of the United States,' and immediately proceeds to define and vest the specific powers which were deemed necessary to effect these objects. Amongst these it is thought no more can be found, which, on any known principles of construction, can authorize Congress to expend the public resources in mere objects of Internal Improvement. The power to impose taxes to pay the debts, and provide for the common defence and general welfare, seems to have been construed as a specific grant of power to Congress to do any act, or adopt or carry into effect any and every measure, without restriction, which it might suppose would conduce to the general welfare. This construction is believed to be wholly unwarranted.

"When we advert to the great caution with which the powers vested by the constitution were defined and guarded by that distinguished body of men by whom it was framed, we find it impossible to believe that the indefinite phrase 'to provide for the common defence and general welfare,' in the connexion in which it is, is susceptible of that broad and sweeping construction, which must, of necessity, merge in it, and render utterly superfluous, every special grant of power in that instru-

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ment. A power to provide for the general welfare, without restriction or limitation, is, in fact, a power to do whatever those who are invested with it choose to consider promotive of those objects. This is, in truth, the power of a despotism, and can have no place in a free Government, the first principle of which is, that the powers delegated to rulers shall be distinctly and clearly defined and limited.

"At times this is so obvious, that they are seen to possess the effrontery to endeavor to influence public opinion, by boldly affecting to hold up to scorn every measure, having for its object the correction of a wasteful misuse of the public resources, as unbecoming national dignity; as if it were possible that real national dignity and respectability could acknowledge any connexion with profusion and extravagance."

For expressing such opinions, that Executive was then rebuked by the worshippers of enlarged powers, as the same class of persons now taunt any principles or measures leading to reform, or any men who advocate reform. Here, in the capital of the Union, it was sneeringly said: "The Hercules approaches who is to cleanse the Augean stable." [National Intelligencer, June, 1822.] The advocates of reform were then, as now, a theme of daily ridicule, and held up for the "slow unmoving finger of scorn to point at." But the Legislature of New Hampshire responded to the Executive in an able report, and concluded with the following memorable resolutions, with scarcely a dissenting vote:

"1. *Resolved*, That, in the opinion of this House, the constitution of the United States has not vested in Congress the right to adopt and execute, at the national expense, a system of Internal Improvements.

"2. *Resolved*, That, in the opinion of this House, it is not essential so to amend the constitution of the United States, as to give the power to Congress to make roads, bridges, and canals."

She thus evinced, on this point, her democracy, and her jealous attachment to State rights; and this, not only by a decision against the enlarged powers being already reposed in the General Government, but declaring it "not essential" they should be placed there. She believed it dangerous to the welfare and independence of the States either to give these powers to the General Government by construction or express grant; and the former mode was only the more alarming, as it united usurpation and encroachment on State rights with the exercise of a power that she believed tended directly to a consolidation of the Government.

Gentlemen may describe the exercise of such powers as beneficent and splendid; and picture a government with them as having all the "pomp, pride, and circumstance" of Russian or Assyrian greatness. The gentleman from Maine [Mr. Holmes] may again, as in the Panama debate, picture his present martyr, then his "matchless spirit of the West," sighing for such "gorgeous kingdom;" "all the natives of this vast continent to be arrayed" together for "the great occasion;" and the whole "the magnificent scheme of the favorite—the genius—the master spirit of the West." [2d Reg. Deb. 270.] Others may reverse the picture, and describe a government without these powers as too much trammelled in its movements; as "palsied by the will of its constituents;" as too "rigid in its expenditures;" and certainly as too plain and republican in its institutions for those who talk of their political "lord and master" in the person of their Presidents. But nothing seems clearer to me, than that one is the only true government to preserve and perpetuate a mere confederacy of independent and democratic sovereignties; and the other, by whatever name baptised, is a government tending to consolidation—to consolidation, not of the Union, but of all political powers in the Union. The difference does not consist so much in words as in

things; not in professions, but in effects: the one tending to a republican confederation; the other, in the language of the Virginia resolutions, to a "practical monarchy."

The Virginia Resolutions, p. 13, say further:

"Whether the exposition of the general phrases here combated, would not, by degrees, consolidate the States into one sovereignty, is a question concerning which the committee can perceive little room for difference of opinion. To consolidate the States into one sovereignty, nothing more can be wanted than to supersede their respective sovereignties in the cases reserved to them, by extending the sovereignty of the United States to all cases of the 'general welfare,' that is to say, to 'all cases whatever.'"

Grant that a different opinion on this construction has now, and ever has had, from Hamilton, Ames, and the elder Adams, honest and able advocates; yet the tendencies of it, whether to consolidation and monarchy, or not, have been, and are still, matter of fair argument and just criticism. In that view, and in the importance of this construction to the present mode of making donations of the public lands, and to a just judgment on the imputations cast on myself and my constituents, as having little claims to real democracy, I have attempted to vindicate my own notions, and those of my own State, without a detailed collection of the reasoning on the abstract question, and without any strictures on the motives of those who differ from me. A word more, and I dismiss this consideration.

Who is so blind as not to see, in the approaching condition of our Government, on the extinguishment of the national debt, and with our present enormous duties retained, creating a vast surplus revenue of ten or fifteen millions of dollars; who does not see a cause of new and most fearful apprehension to the States, if all that surplus, as well as all the public lands, can, and shall be employed under the General Government, in objects that Government may think conducive to the "common good," or "general welfare?" Who does not see a door opened to favoritism and corruption, which may let in irretrievable ruin to sound political justice and equality, and overwhelm every vestige of State independence? Who does not see—I care not by whose hands administered—I say the same in a majority as when in a minority—I say the same under this as under the last administration—who does not see a power never contemplated at the formation of the constitution, and which can never be exercised under our present political system, without tainting to the core, both those who exercise and those who feel it? Do I say this because hostile to Internal Improvements? No! But because hostile to the degeneracy, if not the ruin of our confederacy; and because I would advance Internal Improvements at the expense of the States and individuals, and not at the expense of the Union. I would do it the only way they ever can be advanced, with safety and usefulness—according to the resolution of New Hampshire, before read; and in those cases only in which individuals and States can see their private and local interest to be so much promoted by these improvements, as to warrant the undertakings by themselves.

Has it then come to this, under such a Government, that one of the parties cannot, in any way, interpose and correct its ruinous tendencies, and its insidious constructions, when the great exigencies of the country demand it? I think there has been more apparent than real difference on this point, in the present debate. Most must admit that they can interfere in some way; so said the fathers of democracy in '98; so said the Virginia and Kentucky resolutions; and so do those say whom I represent. They can interpose in various ways. My theory on this subject may vary more in form than substance from other gentlemen's, but as each speaks for himself on this floor, I may be per-

mitted to state briefly it is this: that the parties to the constitution are the agents of the people and the States, placed in the General Government on the one hand, and the agents of the people placed in their State Governments on the other hand; and that the people, separated from their agents, are the great primary power and foundation of the whole, never acting as one whole upon or about the constitution, either legislatively, executive, or judicially; but acting on it in those forms, or any others, only by their agents in the States and in the General Government. But the people themselves are still a power behind the throne greater than the throne itself; and, encroach yourselves as you may, to the teeth, in parchments and constructions, they, by their agents, in convention in the States, can abolish every institution, political or civil, of the Union or of the respective States.

The parties, then, in collision as to the extent of the powers given by the constitution of the Union, are seldom the people with their agents of either class, and never so any length of time without a sufficient redress; but the opposing parties are generally, on the one hand, the agents of the people and the States, under that constitution, and, on the other hand, their agents under the State constitutions. I say the agents of the people and States in the General Government, as the States are technically represented here, in the Senate, and may always technically and solely choose all the electors of the executive branch. The former, acting in the administration of the General Government, causes the former, properly enough in common parlance, to be called the General Government, and the latter the States. The people, as such, unless in a revolutionary condition, cannot cast a single vote, hold a single town meeting, or lay out a road of ordinary highway, except through State power and State agency. I shall not repeat what reasoning and illustration the gentlemen from Kentucky [Mr. ROWAN] and South Carolina [Mr. HAYNE] have adduced, in proof of these views, but merely cite a clause, in the Virginia resolutions of '98, to show, that these views, whether right or wrong, were the views of the fathers of the democratic party, and if I err, I err with the Plato and Socrates of my political faith. [Virg. Res. p. 8.]

"The other position involved in this branch of the resolution, namely, 'that the States are not parties to the constitution or compact,' is, in the judgment of the committee, equally free from objection. It is indeed true that the term 'States' is sometimes used in a vague sense, and sometimes in different senses, according to the subject to which it is applied. Thus it sometimes means the separate sections occupied by the political societies within each; sometimes the particular governments established by those societies; sometimes those societies as organized into those particular governments; and lastly, it means the people composing those political societies in their highest political sovereign capacity. Although it might be wished that the perfection of language admitted less diversity in the signification of the same words, yet little inconvenience is produced by it, where the true sense can be collected with certainty from the different applications. In the present instance, whatever different constructions of the term 'States,' in the resolution, may have been entertained, all will at least concur in that last mentioned; because in that sense the constitution was submitted to the 'States;' in that sense the 'States' ratified it; and in that sense of the term 'States,' they are consequently parties to the compact from which the powers of the Federal Government result."

The States, then, being one party, is it to be contended that still the other party, the General Government, may adopt any extended construction of the powers granted under the constitution, without any efficient right on the part of the States to murmur, remonstrate, alter, or resist? Certainly not, I should think, on either side of the debate.

But how far can they go, and "where shall their proud waves be staid?" The opinion of the Supreme Court of the United States, a tribunal appointed, organized, and accountable only to one party to the Government, and one party to the decision, is urged on us to be the great final balance wheel of the whole machinery. But if the States be another party to the compact, it is manifest that, on ordinary principles of compact, they have the same right as the opposite party, or its agents, to decide on the extent of the compact. This is conceded between two parties, in the case of treaties, and in the case of ordinary bargains and conventions; and it cannot be denied here, admitting we have shown the States to be one party, unless both the parties have expressly agreed upon some tribunal intermediate, as an umpire or judge, to decide, irrevocably, this kind of differences between the parties to the constitution. On the other hand, I understand it to be argued that the Supreme Court has been agreed on as such a tribunal. But, the Supreme Court of the United States would not be likely to be so agreed on, reasoning *a priori*, because its members are all appointed by, and answerable to, only one of the parties, and indeed go to form a portion of one of the parties, being mere agents of the General Government. The amendments of the constitution, reserving rights and powers to the States or People, would be nugatory—a mere mockery, if the suicidal grant was made to the Supreme Court, to the mere agents of one party, to decide finally and forever on the extent of all their own powers. The reasoning for this grant, therefore, seems to me *argumentum ad absurdum*, as clear as any axiom in Euclid. But on this head I am anxious not to be misapprehended, and am willing to resort to the words of the charter itself to see what the legitimate powers of that court purport to be, in deciding such controversies.

From the very fact of there being two parties in the Federal Government, it would seem a necessary inference that the agents of each party, on proper occasions, must be allowed, and are required, by an official oath, to conform to the constitution, and to decide on the extent of its provisions, so far as is necessary for the expression of their own views, and for the performance of their own duties. This being, to my mind, the *rationale* of the case, I look on the express words of the constitution as conforming to it by limiting the grant of judicial jurisdiction to the Supreme Court, both by the constitution and by the acts of Congress to specific enumerated objects. In the same way there are limited grants of judicial jurisdiction to State courts, under most of the State constitutions. When cases present themselves within these grants, the judges, whether of the States or the United States, must decide, and enforce their decision with such means as are confided to them by the laws and the constitutions. But when questions arise, not confided to the Judiciary of the States or United States, the officers concerned in those questions must themselves decide them; and, in the end, must pursue such course as their views of the constitution dictate. In such instances they have the same authority to make this decision as the Supreme Court itself has in other instances.

Thus the Virginia Resolutions, page 13, say: "However true, therefore, it may be, that the Judicial Department is, in all questions submitted to it by the forms of the constitution, to decide in the last resort, this resort must necessarily be deemed the last in relation to the authorities of the other departments of the Government; not in relation to the rights of the parties to the constitutional compact, from which the judicial as well as the other departments hold their delegated trusts. On any other hypothesis, the delegation of judicial power would annul the authority delegating it; and the concurrence of this department with the others in usurped powers, might subvert forever, and beyond the possible reach of any

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rightful remedy, the very constitution which all were instituted to preserve.

Thus, Mr. Jefferson says: "They contain the true principles of the revolution of 1800, for that was as real a revolution in the principles of our Government as that of 1776 was in its form; not effected, indeed, by the sword, as that, but by the rational and peaceable instrument of reform—the suffrage of the people. The nation declared its will by dismissing functionaries of one principle, and electing those of another; and the two branches, the Executive and Legislative, submitted to their election. Over the Judiciary Department the constitution had deprived them of their control. That, therefore, has continued the reprobated system; and although new matter has been occasionally incorporated into the old, yet the leaven of the old mass seems to assimilate to itself the new; and after twenty years' confirmation of the Federal system by the voice of the nation, declared through the medium of elections, we find the Judiciary, on every occasion, still driving us into consolidation.

"In denying the right they usurp, of exclusively explaining the constitution, I go farther than you do, if I understand rightly your quotation from the Federalist, of an opinion that 'the Judiciary is the last resort in relation to the other departments of the Government, but not in relation to the rights of the parties to the compact under which the Judiciary is derived.' If this opinion be sound, then, indeed, is our constitution a complete *felo de se*. For, intending to establish three departments, co-ordinate and independent, that they might check and balance one another, it has given, according to this opinion, to one of them alone, the right to prescribe rules for the Government of the others, and to that one, too, which is unelected by, and independent of, the nation. For experience has already shown that the impeachment it has provided is not even a scarecrow; that such opinions as the one you combat, sent cautiously out, as you observe, also, by detachment, not belonging to the case often, but sought for out of it, as if to rally the public opinion beforehand to their views, and to indicate the line they are to walk in, have been so quietly passed over as never to have excited animadversion, even in a speech of any one of the body entrusted with impeachment. The constitution, on this hypothesis, is a mere thing of wax in the hands of the Judiciary, which they may twist and shape into any form they please. It should be remembered, as an axiom of eternal truth in politics, that whatever power in any government is independent, is absolute also; in theory only, at first, while the spirit of the people is up, but in practice as fast as that relaxes. Independence can be trusted no where but with the people in mass. They are inherently independent of all but moral law. My construction of the constitution is very different from that you quote. It is, that each department is truly independent of the others, and has an equal right to decide for itself what is the meaning of the constitution in the cases submitted to its action; and especially where it is to act ultimately and without appeal."

In confirmation of this, almost every Eastern constitution authorizes the departments of Government, not Judicial, to call on the judges for aid and advice merely, in questions of difficulty, still leaving those departments to act finally on their own matured information, and their own responsibility. But all the difficulty does not arise here. Suppose the State agents, judicial or otherwise, decide wrong in the opinion of the people; or the agents of the General Government decide wrong in the opinion of the people, on subjects admitted to be within their jurisdiction; is there, first, no remedy for the people? Are not they supreme?

As I before remarked, the people, in their omnipotence, if the case excite them enough, can, and will, in such event, always apply a most sovereign remedy; some-

times reach the disease by changing the agents who have misbehaved; at other times, when unable, by the tenure of office, as in the case of the judges generally, to reach that class of agents by new elections, they can, by conventions, alter or abolish the whole system of government, and the whole course of decisions under them; and improve and create anew whatever may have been objectionable. This is a doctrine neither revolutionary nor leading to anarchy, but rational and democratic, and lies at the foundation of all popular Governments. But granting this, the argument still holds, that, though the people can effect a change, yet the States; one of the parties to the compact, cannot reach or correct what they may deem an erroneous decision by the agents of the other party on the powers given by the compact, and especially that they cannot reach or correct an erroneous decision made by the Supreme Court of the Union. Again, it may be answered, reasoning *a priori*, that, if this be true, it is deeply to be lamented, as the people seldom act unitedly or efficiently except through their State agents—those agents who come so frequently and so directly from among the people themselves. If this be true, it is quite certain that the Supreme Court might, if so disposed, proceed, case by case, from year to year, on one subject and another, in this and that section of the Union, to give constructions to the constitution, tending slowly, but inevitably, to a consolidation of the Government, and to the utter prostration of State rights: and yet the people, as a people, would not widely and at once become enough excited to interpose in their primary authority, and stay or correct such encroachments. If this be true, any Supreme Court entertaining political views hostile to those of a majority of the people, would be able, in time, by cautious approaches, not exciting general and deep alarm, to defeat the majority, to render the reservations to the States and people a mere *brutum fulmen*, turn the doctrine of State rights into a jest, and ride triumphantly over all probable and feasible opposition.

There is wanting in me no respect to the members of our Supreme Court which their great personal worth deserves: but I would inquire if, from the case of *Marbury and Madison*, in 1801, down to that of the *Bank and McCulloch* in 1821, there has not been evinced on that Bench a manifest and sleepless opposition, in all cases of a political bearing, to the strict construction of the constitution adopted by the democracy of the Union, in the great revolution of 1801? I say nothing now against the honesty or legal correctness of their views in adopting such a construction. I speak only of the matter of fact, and of its political tendency; and I ask, if, while the people, through their democratic agents in the Legislatures of the State and General Governments, have been, in the main, adhering to one construction—a strict and rigid construction—if their Judicial agents in the General Government have not been, with a constancy and silence, like the approaches of death, adhering to a freer construction? Thus sliding onward to consolidation; thus giving a diseased enlargement to the powers of the General Government, and throwing chains over State rights—chains never dreamed of at the formation of the General Government. What says Mr. Jefferson on this head? [*4 Jefferson's Works*, page 337.]

"But it is not from this branch of Government we have most to fear. Taxes and short elections will keep them right. The Judiciary of the United States is the subtle corps of sappers and miners, which is constantly working under ground to undermine the foundations of our confederated fabric. They are construing our constitution from a co-ordination of a general and special Government to a general and supreme one alone. This will lay all things at their feet, and they are too well versed in English law to forget the maxim, '*boni judicis est ampliare jurisdictionem*.'"



No institution, in this free country, is above just criticism and fair discussion, in regard to its political views, and the political consequences of its proceedings. Hence, in the States, and every where, the field of inquiry and comment is, and should be, open to all; and a sacredness from this would render any institution a despotism. What, then, let me ask, what have been the illustrations of the bearing of the decisions of that court upon State rights, in particular cases? At one time, has not Georgia been prostrated by a decision, in a case, feigned, or real, between Fletcher and Peck? At another, Pennsylvania humbled, in the case of *Olmsted's* executors? At another, Ohio and Maryland subdued, in the case of *McCulloch* and the Bank? At another, New York herself set at defiance, in the steamboat controversy? And last, if not least, New Hampshire vanquished in the case of *Dartmouth College*? These decisions may, or may not, have been legally right; that is not my present inquiry; but who is not struck with the difference between the progress and effect of these decisions, and what was witnessed in the earlier days of the republic? When Massachusetts, in the height of her glory, was threatened to be brought to the bar of that court for trial, she, in the person of Hancock, set on foot a remonstrance, and a proposed amendment of the constitution, which her great influence carried throughout the Union—an amendment exempting a sovereign State there, in certain cases, from the humiliation of a trial and sentence. Even this amendment, so plausible on its face, has, since 1801, been almost wholly evaded in practice, by suing the agents of a State, instead of the State itself. So again, before 1801, when Virginia, in her might and chivalry, took the field against the alien and sedition laws, and against the decision of the Supreme Court on their constitutionality, an alteration of the constitution, to be sure, did not follow, but an alteration in the administration and the laws did follow; and she effected the political revolution which suffered those laws to expire without a renewal, and will probably prevent their re-enactment, until democracy itself shall have become a forgotten tale. I shall enumerate no other cases, nor detain the Senate by a moment's inquiry into the correctness of any of these decisions: though it may be observed that my own State, on an attempt to obtain her political approbation of the decisions in the cases of Ohio and Maryland, and of the principles therein involved, postponed indefinitely the resolutions on that subject, by the following vote, in one branch of her Legislature:

June 24, 1821. The Senate voted, seven to five, to postpone indefinitely the following, among other resolutions:

*Resolved*, That, in the opinion of this Legislature, the proceedings in the Circuit Court of the United States for the District of Ohio, in the before mentioned report stated, do not violate either the letter or the spirit of the 11th article of the amendment of the constitution of the United States, nor constitute any just cause of complaint."

The only time she ever expressed any opinion, as a State, hostile to my views concerning the powers of the General Government and its Judiciary, was in rejecting the Virginia resolutions, at an era in her politics when, having just cast her votes for the elder Adams, she might naturally be expected to be hostile to the democratic principles of those resolutions.

It will thus be seen how the powers of the General Government have been gradually brought, through one of its departments, to bear on the States; and how the decisions of that department have gradually tended to the dangerous enlargement of those powers. This subject has been adverted to, not for the purpose of questioning the constitutional competency of that court so to decide, when it thinks best, but to ask whether no way exists for the States, when opposed to the political bearing of those

constructions; when opposed to such a political operation of the constitution, to check or control the influence of such a course of decisions? And, if any way does not exist, whether the Government is not likely soon to end in consolidation? And whether our future Presidents and Vice Presidents, without reference to any of the signs of the times about a new alliance, are not, as more than once intimated in this discussion, from the West and East, to be lifted hereafter from that Bench, to preside over the new destinies of a consolidated Government? My own answer, to some of these inquiries, is, firstly, that, by the States, as States, the erroneous decision of the Legislative and Executive departments of the General Government can generally be corrected by changing, in the State Legislatures, and at the ballot boxes, the agents here who made those decisions. This has been the ordinary remedy in ordinary cases. Another class of decisions, and especially those by the Judiciary, when the judges are not removable by the people, or the States, or Congress, as those of the Supreme Court are not, can be corrected, sometimes by the States, as States, through public expressions of opinion in their Legislatures, acting by their intrinsic reasoning and force on the agents who made those decisions, and inducing them to revise and alter their doctrines in future. It would not be derogatory to any court to listen to any expressions of opinions and arguments such as those contained in the Virginia resolutions of 1798; in the resolutions of South Carolina on the tariff; or in the Executive message, resolutions, and report, of the Legislature of New Hampshire, in 1822, on the constructive powers claimed for the General Government. When all these modes fail, another and decisive resort, on the part of the States, is to amendments of the constitution, by the safe and large majority of three-fourths. The acknowledged power of the States, by their resolutions and concert, in this way, to effect any changes, limitations, or corrections, shows clearly that in them the real sovereignty between the two Governments is placed by the constitution, and in them the final, paramount, supremacy resides. They can alter this constitution; but we, here, cannot alter their constitutions. We, then, are the servants, and they the master. On the contrary, whatever others may hold, I do not hold that any certain redress, beyond this, on the part of any State, can be interposed against such decisions of the Supreme Court as are followed by legal process, unless that State resorts, successfully, to force against force, in conflict with the Federal agents. It is admitted by me, however, that a State may resolve, may express her convictions on the nullity or unconstitutionality of a law or decision of the General Government. These things may work a change through public opinion, or lead to a co-operation of three-fourths of the sister States, to correct the errors by amendments of the constitution. But whenever the enforcement of the law or decision comes within the scope of the acknowledged jurisdiction of the Supreme Court, and can be accomplished by legal process, I see no way in which that court can be controlled, except by moral and intellectual appeals to the hearts and heads of her judges, or by amendments to the constitution, or by the deplorable and deprecated remedy of physical force. This latter resort I do not understand any gentleman here to approve, until all other resorts fail; and even then, only in a case where the evil suffered is extreme and palpable, and, indeed, more intolerable and dangerous than the dissolution of the Government itself.

Such was the doctrine of Jefferson and Madison. (Virginia resolutions, p. 18.)

"The resolution has accordingly guarded against any misapprehension of its object, by expressly requiring, for such an interposition, 'the case of a deliberate, palpable, and dangerous breach of the constitution, by the exercise of powers not granted by it.' It must be a case, not of a

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light and transient nature, but of a nature dangerous to the great purposes for which the constitution was established. It must be a case, moreover, not obscure or doubtful in its construction, but plain and palpable. Lastly, it must be a case not resulting from a partial consideration, or hasty determination; but a case stamped with a final consideration and deliberate adherence."

Beyond these views I trust no member of this confederacy will ever feel either the necessity or inclination to advance, and thus put in jeopardy that Union which we all profess so highly to prize. Most of the States, as States, in most of the exigencies that have arisen under the constitution, though all other efforts failed, have thought it better still to suffer—

"Than fly to others that we know not of."

How far the official authorized State acts under Pennsylvania, in the case of Olmstead; and the same authorized State acts in Massachusetts, in withholding the militia from the General Government; and of Massachusetts, Connecticut, and Rhode Island, as States assembling by their delegates in the Hartford Convention, in a time of war, and with such objects as the late Chief Magistrate imputed to them in 1828, and the present Chief Magistrate recognized in his letter to Mr. Monroe in 1816; how far these were exceptions from their history to the obedience of the States as States, to the laws and constitution, I see not, now, any pleasure, or profit, or necessity, in inquiring. Every sovereign State, who has or who may, decide on forcible collision, decides for herself, though she manifestly does it under a high responsibility to her people and the Union; and of course, must consent to be judged upon, however harshly, by public opinion, and be willing to abide on her course the decision made by the scrutiny of argument and time.

Having stated some of my deliberate views on the interests of the States in the public lands, and on the power of Congress in the disposal of them, and having attempted to fortify those views by my opinions on the just construction of the constitution, as regards the power of Congress to appropriate either land or money, I have next hastily adverted to the rights of the States and the people to control Congress and the Federal Judiciary, when disposed to place a construction on those powers not in accordance with the opinion of the States and the people.

Under these limitations of the constitution, as expounded by the State I represent, and by myself, I here profess, on this unpleasant controversy between parts of the West and the East, that I am willing to go, on all subjects connected with the public lands, into equal and useful reform in our present system of either surveys or sales. But, I am frank to confess, I have uniformly voted against appropriations for general surveys for roads and canals, and against donations of land or money towards roads and canals, unless so far as our express contract requires in relation to the Cumberland road, and the extension of it; or unless the roads were military, or situated in territories owned by the United States. Other gentlemen have doubtless done the same, for the same reasons; whether from the South or East; and it is a mistake, evinced by our own records, to suppose that all, or even a majority of the East have uniformly gone in favor of these objects. On other subjects, the case may be very different in respect to the vote of the East or the South, arising from local prejudices, or political opinions; but on that question enough has been said by other gentlemen, and enough shown by documents and records, to render further comment useless, and to throw some additional light and interest upon the political and party history of this country for the last fifty years. A further reason for refraining upon these subjects is, that the strictures made here, unfavorable to the East, concerning these

subjects, have expressly, repeatedly, and from all quarters, excepted the democracy of the East; and hence I see no occasion for myself, as one of that democracy, to enter into that part of the discussion for either inquiry or vindication. If any other political party than the democracy in the East has been attacked, and has felt aggrieved—if the peace party in the late war has met with undue severity, they, if not their associates, will speak for themselves. But this much I will add on the graduation bill of my friend from Missouri, (Mr. BAXTER) and on his good name. I cannot agree, with the gentleman from Maine, (Mr. HOLMES) that they have never come to the knowledge of my constituents; but, on the contrary, however they may doubt the expediency of parts of that bill, they stand ready at all times, and on all occasions, so far as that democracy is represented by me, to pay due homage to the vigorous intellect of its author, and to his indefatigable and faithful services on this floor, not only to the West, but the country at large, upon almost every great question, agitated here since my personal acquaintance with this body. Whatever others in the East may profess, I do not contend that every Western measure, whether for Internal Improvement or different objects, has been indebted for its success to Eastern votes; and I appeal to no alliances, new or old, in confirmation or in consequence of it; nor do I ask, like one of the gentlemen from Maine, (Mr. SPRAGUE) one vote against the West to be judged by the motive and not its effects, another by its effects and not the motive; one by the aid received of a minority from the east of the Hudson, and another by a minority northeast of the Potomac. I, for one, put forth no such claims or arguments; but frankly avow, though generally supporting the Western measures before named, I have in other cases voted against the West, as I have against the South, the Middle States, and the East itself. But I have done it on principles of equal right, of general justice, and devotion to my official oath; and on no principles of peculiar favoritism to either, except as I might know better, and love dearer, the interests and welfare of my immediate constituents. However scoffed at for hearing New England blood called in question, and holding silence, I claim no exemption from that frailty of predilection towards my native soil, which, if frailty it be, may be thought to lean on virtue's side.

"Breathes there a man with soul so dead,

"Who never to himself hath said,

"This is my own my native land!"

The examination which has accompanied this debate will not show, I believe, that the West has, in truth, been more benefited by different constitutional opinions, than she would be by those of a strict and democratic character. All the political kindnesses which can be accorded to the West on these last principles of construction, by such of the democracy of the East as entertain them, always has, and I am confident always will, be granted with cheerfulness. Thus, for one, I have voted for the improvement of her lake harbors, and of her navigable rivers, because the power of imposing tonnage duties and imposts, by which such improvements can alone be generally accomplished, is expressly granted to Congress, coupled with the power to regulate commerce: for the relief of her actual settlers on the public lands, many of whom are hardy and honest emigrants from the East, who, flying from the blast of misfortune there, have sought an asylum for all they hold dear, in the bosom of the mighty West: for the extinguishment of Indian titles, because we too have once had such savage neighbors, and often seen our dwellings in a blaze, and our wives and infants perish under their bloody and barbarous warfare: for remuneration against Indian depredations, because those also our early settlers in the East endured frequently, and frequently belied in a single night the total wreck—the smoking ruins of years of honest and patient indus-

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try. Lastly, I have voted for military and territorial roads, and stand ready to vote for lowering the prices of the public lands. But, on some other questions, I have not, and cannot go with the West, any more than they can always go with us. In fine, whenever, under constitutional limitations, I could confer a benefit on the new States, I have, heretofore, and will, in future, attempt it as heartily, as to confer one on Pennsylvania or South Carolina; but beyond those limitations I trust that no honorable statesman from beyond the mountains—and I know that none of the chivalry there, who fought with the democracy of the East, in the late war, for free trade and sailors' rights, can, for a moment, wish me to go, or for a moment can question the sincerity of this avowal in their behalf, or the genuine devotion to the durable welfare of the West, cherished by the democracy I represent. It has not been questioned in this debate, by my friend on the right or the left, (Mr. BAXTON and Mr. HAYES) but both have eloquently bestowed on that democracy in the East, the praises it richly deserved, and which praises tend to bless both giver and receiver. That democracy has the ties, the sympathies, and affections of the heart, arising from common sufferings and sacrifices, beside the political brotherhood of a common tongue, faith, and institutions, to bind them to the West with stronger ties than any temporary alliances, for purposes whether party or personal. Whether the same ties of the heart can exist between the West and the opponents of that democracy in the East, the peace party in war, who refused relief and succor to the bleeding West, it is for any representatives of those opponents to show. If the Government, on those principles of strict construction of the constitution, cannot be prosperously administered, it requires no spirit of prophecy to foresee that, in a few brief years, in a new crisis approaching, and before indicated, it must, as a consideration, probably cease to be administered at all. It will, in my judgment, become a government of usurped, alarming, undefined powers; and the sacred rights of the States will become overshadowed in total eclipse. When that catastrophe more nearly approaches, unless the great parties to the Government shall arouse, and in some way interfere and rescue it from consolidation, it will follow, as darkness does the day; that the Government ends like all republics of olden times, either in anarchy or despotism.

On some accounts, sir, it would give me most unfeigned pleasure could I close my remarks here. But, for an adherence to what I consider democratic doctrines, on these and other points of controversy, and for an adherence to such men, wherever resident, as practise those doctrines through evil and through good report, it has been the lot of a class of people in the East, for the last third of a century, to be stigmatized by all the opprobrious epithets and insinuations which, in different stages of this debate, have been accumulated on such of them as support the present administration.

On one hand, here, these last have been alluded to as if mere worshippers of a rising sun, and for that, manufactured into democrats dyed in the wool, from the very doors of the Hartford Convention. On another hand, jeered as if democratic only for an adherence to Southern men, and taunted as being small in number, and diminutive in importance. On another hand, stigmatized as Judases and apostates from the true New England faith; and, in fine, loudly denounced, in common with all the supporters of the present administration, as a heterogeneous mass of renegades, from all parties, with no common bond of principle or feeling, and doomed soon to become an easy conquest to the courteous and modest opponents, of what is called this cruel administration. Though one of the supporters of this administration, still (said Mr. W.) nothing short of a strong sense of peculiar duty, on this occasion, could have compelled me to take

any part in answering such angry criminations. They seem only the escape of the steam from a high pressure engine, fitted for an eight years' voyage; but the vessel having unexpectedly been compelled to stop its wheels at the end of four years, thus lets off its heated vapor in the midst of its career. I consider the debate, however, in this respect, if no other, as somewhat fortunate, since it may prevent any injury by the bursting of the boilers. But, sir, averse as I am to party bitterness, and the whole Senate can bear me witness that, unless in self-defence, I never make either sectional, party, or personal imputations; and, little regardful as I am of abuse when heaped only on myself—for I have long since learned to let my life, rather than my language, answer personal slander—yet I stand in such a relation to those friends of this administration, in my own State, as to render it unmanly and dishonorable to permit any imputations on them, from however high sources, to pass unnoticed. Much less will I permit them so to pass, when showered upon us chiefly, not by the South, or the West, or the Middle States, but by persons, some of whom claim to be the only lineal sons of the East itself, and the real Simon Pures of all that is democratic, and all that is New England; persons also, who vauntingly march to the attack here, with eleven twelfths against the administration to one in its favor, willing to repel the aggression, and sustain the cause of its Eastern supporters. But this, I suppose, is another specimen of that magnanimity and true greatness, which, when in a minority, always talk of lifting its quadrant to the sun, and of forgetting and forgiving by-gone strifes, by-gone parties, by-gone oppositions; but which, in a majority, directs its vision and its wrath to the smallest light that twinkles. Let me ask, then, more in sorrow than in anger, why are these aggressions made on us? Have any provocations been given for an attack, by Eastern men, on that part of the democracy of the East which supports the present administration? Had a syllable been uttered here, by any of that democracy, against any of their former brethren, whether or not intimating they were now in other ranks, or in other alliances? Had aught been said from the East, reproaching any of them as Swiss troops, coming from, or going to, the peace party in war? On the contrary, not only the Eastern friends of this administration, but the whole democratic party in the East, whether opposers or supporters of this administration, had been studiously, in the whole charge, excepted from any censure flung by any gentleman, on the East itself, or on the excesses of its federalism, during the late war. Thus, my friend on the left (Mr. BAXTON) explicitly said, he flung no reproach or complaint on the Eastern democracy; and we have the printed, as well as spoken declarations of my friend on the right (Mr. HAYES) to the same effect, and in a strain of the highest, if not most merited eulogy. He said:

"God forbid, sir, that he should charge the people of Massachusetts with participating in these sentiments. The South and the West had then their friends—men who stood by their country, though encompassed all around by their enemies: the Senator from Massachusetts, [Mr. SIMMONS] was one of them; the Senator from Connecticut, [Mr. FOOT] was another, and there were others now on this floor. The sentiments I have read were the sentiments of a party, embracing the political associates of the gentleman from Massachusetts, [Mr. WILKINSON]."

Again, to exempt, with specific certainty, the democratic party at large, as well as the people of Massachusetts, not in concert with the peace party, he (Mr. HAYES) said:

"I wish to be distinctly understood, that all the remarks I have made on this subject are intended to be exclusively applied to a party, which I have described as the 'peace party of New England,' embracing the political associates of the Senator from Massachusetts; a party which controlled the operations of that State during the embargo

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and war, and who are justly chargeable with all the measures I have reprobated. Sir, nothing has been farther from my thoughts than to impeach the character or conduct of the people of New England. For their steady habits, and hardy virtues, I trust I entertain a becoming respect. I fully subscribe to the truth of the description, (given before the Revolution, by one whose praise is the highest eulogy) 'that the perseverance of Holland, the activity of France, and the dexterous and firm sagacity of English enterprise,' have been more than equalled by this 'recent people.' Hardly, enterprising, sagacious, industrious, and moral, the people of New England, of the present day, are worthy of their ancestors. Still less has it been my intention to say any thing that could be construed into a want of respect for that party, who, trampling on all narrow sectional feelings, have been true to their principles in the worst of times—I mean the democracy of New England. I will declare that, highly as I appreciate the democracy of the South, I consider even higher praise to be due to the democracy of New England, who have maintained their principles 'through good and through evil report'; who, at every period of our national history, have stood up manfully for 'their country, their whole country, and nothing but their country.' In the great political revolution of '98, they were found united with the democracy of the South, marching under the banner of the constitution, led on by the patriarch of liberty, in search of the land of political promise, which they lived not only to behold, but to possess and to enjoy. Again, sir, in the darkest and gloomiest period of the war, when our country stood single handed against 'the conqueror of the conquerors of the world'—when all about and around them was dark and dreary, disastrous and discouraging, they stood a Spartan band in that narrow pass, where the honor of their country was to be defended, or to find its grave. And in the last great struggle, involving, as we believe, the very existence of the principle of popular sovereignty, where were the democracy of New England? Where they always have been found, sir; struggling side by side with their brethren of the South and the West for popular rights, and assisting in that glorious triumph by which the man of the people was elevated to the highest office in their gift."

Thus has he so ably and eloquently poured upon our democracy every commendation they deserve, and for which he is entitled to most grateful thanks, both from myself and them; and thus the naked truth puts to rest the attempts since made to pervert his remarks into a sectional attack on the whole East, and to excite improper and unfounded prejudice against the South and West, as if they had put "the whole East to the ban of the empire."

But, in truth, the sectional attempts to inflame public sentiment will appear to have come from the East itself, if not from some of that party there which alone was censured; and the injunctions of Washington against such sectional appeals, which have been read us, might well furnish admonitions against the course pursued by those on my right, who have read them, [Mr. NORRIS and Mr. HOLMES.]

"One of the expedients of party to acquire influence within particular districts, is to misrepresent the opinions and aims of other districts. You cannot shield yourselves too much against the jealousies and heart burnings which spring from those misrepresentations; they tend to render alien to each other those who ought to be bound together by fraternal affection." [5 Marshall's Wash. 300.]

With a charge, then, against only the leaders of the peace party in war, what have we seen in reply? Not an avowed defence of that party, which alone was assailed, and which, by its representation here, commenced the assault on my friend upon the right, by taunts against the South; but we have invocations to forgetfulness, we have protestandos and disclaimers. Not the lions of democracy

rousing when not attacked, but the real game pursued rousing as it feels the huntsman in the chase, and seeking to infuse alarm into all within its influence, and all starting aside, from anger or mortification that the democracy was not also attacked, to fasten upon our throats with all the bitterness of our most virulent defamers for the last third of a century.

I cherish, sir, quite too much self-respect, and too great personal regard for that portion of the federalism of this Union which has been honest, consistent, and faithful to the country, however much we may differ in our political views, ever to cast on any of its number personal or party strictures, beyond what is necessarily involved in settling historical facts, and in defence of myself and my constituents. But I shall endeavor, with all the decorum so exciting a subject permits, to show, if God spares me strength, that the imputations before enumerated, come whence they may, are the worst kind of revilings from a very ancient school of politics in the East, and that they are just as unfounded now as the atrocious slanders were which have been uttered by heated partisans against this same democracy in every great political struggle for thirty years past. It matters not who utters them—whether some of the authors have always claimed to support republicanism, as opposed to federalism, or some have never so claimed; or whether some of them, during the whole administration of the writer of the Declaration of Independence, marched together, shoulder to shoulder, in opposition to that administration, as they now march in opposition to this, or not. But the scoffs themselves have internal evidence of their character, which no professions can rebut: they smell of a lamp, they spring from a school not to be mistaken. Whoever unites in these scoffs cannot complain if judged by the maxim, *nasetur a sociis*. They are the old lessons of an old school. The stain and brand can no more be torn off, than Hercules could tear off the serpentine robe of Nessus.

Under the lead, then, which all have witnessed, that part of the democracy of the East, friendly to the present administration, have first been kindly reminded that they are a new manufacture; and next, that their democracy chiefly consists in their adherence to Southern men and Southern measures. How novel and how true are these taunts, will be seen in a moment, by "setting history right."

Had gentlemen forgotten that the seeds of division were sown in the East, early as 1791, and that, whoever then rose above sectional views, and pursued an independent and democratic course on public measures, was jeered at by some, in such language as once they applied to Hancock: he "is with the Yorkers and Southern bashaws?" Repeated from the same quarter in 1798, against the intrepid Langdon: that he was "a slave—an apostate to the South," because he was averse to the principles and policy of the then administration, and rose against it and above sectional clamor and Massachusetts dictation, supposing that New Hampshire "was, and of right ought to be," as independent of her, as of Georgia or Kentucky, and that any other course by her delegates here would indeed be apostasy, degrading apostasy from democratic principles, and all those holy and inspiring sentiments of pride and patriotism which ought to govern a free and sovereign State. Echoed again, in 1808, against the last President, when professing democracy, and moulded into every variety of bitterness, and peradventure, from some of the same lips now repeating the sarcasms against us, that he was seduced by the South, and was a Judas and traitor to New England, because he denounced what he called "narrow," and "sectional" schemes, in the East, tending to disunion and treason. Re-echoed in 1812 against one of your distinguished predecessors in that chair, the revolutionary veteran Gerry, and many others in favor of that

war, by stigmatizing them as "white slaves of the South," because, in a crisis of great perplexity and peril, they stood by their brethren of the South, the Middle States, and the West, in attempts to vindicate our country's rights, and "pluck up drowning honor by the locks," rather than standing by the mere leaders of a party in the East, who cried out then as now, that the whole of New England was put to the ban of the empire.

Few can be ignorant how often, within the last four years, the same kind of taunt has been reiterated against all those who, in the late Presidential canvass at the East, supported the present Executive. Coming this very morning, and now in my hand, in a paper now under the banner of National Republicanism, but during that war, under the five striped flag, is the very reprobation, for the ten thousandth time, of one of these same groundless scoffs.

"If New Hampshire chooses to send Representatives who can thus desert the best interests of their constituents, and become the white slaves of the South, she must blame herself."

The earmark of this attack on a part of my constituents is, therefore, too large and long not to show at once its true origin and character, and to prove anew how much easier it is to alter names than things. The inconsistency of these sneers from such quarters will also be apparent, when we set our history right, by finding that these same authors of them have also voted for Southern candidates nearly, if not quite, as often as the democrats, and always when their party success could be promoted by it; because, omitting 1789 and 1793, when all united for a Southern man, they appear to have voted for one as President in 1804, 1808, 1816, and 1820.

The smallness of the number, and the diminutive importance of the supporters of this administration in the East, is another magnanimous taunt from the same source, against the genuineness of their democracy: as if, when history is set right, the present Executive did not obtain more votes in New England than did Mr. Jefferson in 1800, and, with the exception of one State, more than Mr. Madison did in 1812. We are accustomed in the East, sir, to new trials for correcting mistakes. New Hampshire, as a State, since the late election, has already changed her delegation in the other House, so as to be entire in favor of this administration. And has not Maine herself, beside an electoral vote for it, sent an equal number there in its support? On this, I think her democrats have some little claim to respect, in point of numbers, however charged with apostasy; and I may be pardoned in the guess that, from the signs of the times there, they will at least try to show a majority in favor of this administration sooner than the present delegation from Maine here shall succeed in obtaining all the Maine and Massachusetts claims for the misconduct of their peace party in the late war.

The resemblance between the political character of the opposition and administration parties, in 1798, 1812, and 1828, would seem to give us some little title to old fashioned democracy. The same democratic States, with one or two exceptions only, are found, at each era, side by side, in favor of Jefferson, Madison, and the hero of Orleans. On one side, Virginia and Pennsylvania, Carolina and Georgia, Tennessee and Kentucky. On the other, Delaware and Massachusetts, Connecticut, and divided Maryland. The same distinguished statesmen of the first era, who survive and who were honored with every species of abuse, from the most malignant of their enemies—those republican statesmen, of 1798, the Livingstons, the M'cons, the Smiths, the Randolphs, and the Gileses, are again found acting and stigmatized with the humble democrats of the East, who support the present administration. Yes, sir, when that gentleman, [Mr. Livingston] little more than a year since, not in old "by-gone days" of virulence, was defeated in an election to the other House, one of the first papers at the "head quarters of good principles"

that hoisted the new banner of National Republicanism, exulted that he "was consigned to the tomb of all the Capulets," and farther added, "when we recollect that Mr. L. is an old sinner, and that we are inflicting punishment for the backslidings of thirty years, we may safely say he falls unwep—unbemoored."

Little did they then expect his Antean vigor, in rising from that fall, would so soon restore him to the councils of his country, as the representative of a sovereign State, rather than of a single district. And little did they heed, as in "by-gone days," the base injustice they are perpetrating on one, of whom it is no flattery to say, he is a civilian, no less than a politician—an ornament both to that State, and his country, if not to our race. Accessions have, of course, been made from other ranks to swell the increased majority of 1828 over those of 1800 and 1812; but they have been, I trust, accessions of principle, and not of bargain; and, if such accessions, then they will endure, flourish, and bear good fruit, long as the original stock upon which they have been engrafted. But if they have not been from principle, who regrets how soon they may be severed from the stock?

Whether the same doctrines, in the main, are also now advocated by us and by the opposition, as were advocated by the administration of 1801, and by its opposition, is of too common notoriety, and has been too fully shown in the progress of this debate, to need much further illustration. On the part of the administration, abused as it has been, or at least on the part of its supporters in the East, whose claims to democracy have been so modestly challenged, I venture with frankness to assert, that there is, in general, the same adherence to a strict construction of the constitution, and to the reserved rights and sovereignties of the States, as under Jefferson; the same acquiescence in instructions by State Legislatures; the same desire for reform and economy; the same abhorrence of implied and doubtful powers, whether over the press, the deliberations of this body, or the industry and free trade of the country. On the contrary, on the part of the opposition, there are, and have been, the same scoffs at reform and economy; the same denial of the right of instruction in the States to their Senators; the same struggle for enlarged constructions of the constitution; a refusal "to be palsied by the will of their constituents;" implied powers carried to the greatest extent, in assuming to accept, in the recess, invitations to Panama, and in claiming the right, in that recess, without the consent of the Senate, to appoint ministers on such an expensive and hazardous mission; and, finally, certain movements of a "specific" character, bearing on the press, not quite in coincidence with a bill introduced here the same day, by my friend from New Jersey, [Mr. Dixon] to refund a fine collected under the sedition law of 1798.

This attitude of a party now in a majority, disclaiming implied and enlarged powers in the Legislative as well as the Executive branches, is a most cheering sign of the times for the safety of our liberties; and is an attitude worthy imitation in all Governments, especially by all republican magistrates, in all future time. I say nothing against the past administration as men, for some of them possess my entire respect; but I am speaking of some of the political measures they, or their friends, have proposed and approved. If any part of the democracy of the East, friendly to this administration, were once in favor of the late Chief Magistrate, and sincerely intended to support his administration, for having, as they supposed, become united with that democracy, and inclined to enforce its principles, and many of them honestly did so intend and believe; if any of them, in "by-gone years," vindicated him against attacks from the same political school whence we ourselves are now assailed, and, like the present President, in the letters here cited against

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him to Mr. Monroe, did think well of the talents and patriotism of that Chief Magistrate, the world will see, when the history of the East is set right, where, and on what side, has been any change of principle.

They will see whether the treachery and apostasy, so often insinuated here, and elsewhere, and formerly applied by the same political school, in the same way, to that very Chief Magistrate, do not now, if applicable at all, if courteous and just to any body, more properly apply to the course of that magistrate and of his administration, than to those democrats in the East, who continued faithfully to cling to the platform of democratic principles? What verdict, on this point, have all the democratic States in the Union, standing together in 1798, 1812, and 1828, almost unanimously returned? Is it not that the past administration, in many respects, departed from the principles of democracy? And what verdict has New Hampshire herself, within the last year, returned? That those who were sent hither by democratic votes, and to defend democratic principles, and who abided by those principles to the hazard of both popularity and office—that they were faithful among the faithless, and their course to be approved? or that the desertion, if it existed at all, was on the side of that part of her delegation in the other House, who, for adhering to all men and measures indiscriminately of that administration, have been permitted to retire to private life?

One only of that delegation, a man whose stern democracy never quailed, or bent to any fellow-man, has, for that, been borne back here triumphantly by the suffrages of the people, proving again, what is, and always should be, a proud excellence in a free Government; that however the waves of faction or sectional prejudice may, for a time, dash against a consistent and faithful Representative—

"An honest man is still an unmoved rock;

"Washed whiter, but not shaken by the shock."

Gentlemen know but little of that democracy, if they suppose their object is to go themselves, or have their Representatives go, for mere men rather than measures: that they are slaves enough, or ever have been, or ever will be, to bend the servile knee to any "lord or master" but the Supreme Lord of all; or to acknowledge any such in office, as intimated, except their constituents and their State. You do them foul injustice and reproach, if you believe that democracy has not the justice and patriotism to uphold those who uphold their country; and if ever misled, for a time, by local prejudice or personal regard, that they will ever long go for men, unless those men go for their cause; ever long go for any slavish and monarchical doctrine of unlimited devotion to particular individuals, or particular dynasties. These principles, I am proud and thankful for the opportunity to say, in behalf of my faithful constituents—whose attachment, when I forget, may my God forget me—these principles belong to that part of the New Hampshire democracy which supports this calumniated administration. But whether they are the principles of that kind of national republicanism in Maine and Massachusetts, which opposes this administration, the world has enjoyed an opportunity of judging in the course of this debate.

The country will thus be able to set right the history of the East, in the late Presidential canvass; and I repeat, that it is only in self defence, and in vindication of a large portion of my constituents and myself, thus attacked on this floor, for their want of real democracy, in supporting the present administration, that I could have overcome my repugnance in this assembly to make any allusions to those fierce party struggles that so often have raged between the modern Spartans and Athenians of the rocky East.

My mind is recalled to one other direction given in this

debate, to the history, merits, and glories of the East, entirely at war with the real worth of that democracy.

Yielding, as I cheerfully do, and always shall, due praise to political opponents, yet, I can never consent that all the excellencies and applause bestowed on the East, by gentlemen from that or other regions, shall at once be assumed and appropriated, as if exclusively belonging to the opponents of that vilified democracy—to the peace party in war. Thus we see, that when nobody has been attacked from any other quarter, except those opponents, every change of eulogy has been rung in reply, as if the eulogy was all deserved, all won, and all to be monopolized by only those who were attacked—by only those opponents. Little did my friend from South Carolina [Mr. HAYNE] think his prophecy would so soon be apparently verified, when he spoke of what might be done by some future biographer of one of the members of the Hartford Convention. "I doubt not," said he, "it will be found quite easy to prove that the peace party in Massachusetts were the only defenders of their country during the war, and actually achieved our victories, by land and sea." Have gentlemen not been pursuing here a constant course of argument, tending, in fact, whatever may have been the intent, to something very like a confirmation of this prediction?

Thus, when members of the Hartford Convention are assailed, there is in reply a flourish of trumpet after trumpet, in defence of those who stood by the country, and who, in fact, resisted that convention, and denounced, as loudly as has been denounced here, its leaders and its doctrines: thus creating an impression that that convention stood by their country, or that those who resisted that convention had been assailed. Is this course of reply one of the means referred to by Washington, for converting any party charge, or excitement, into a sectional shape? Thus, again, if schemes for disunion and for a Northern confederacy are charged home upon the leaders of a party in the East, before the Hartford Convention, and before the embargo, on the authority of assertions by the late President, cited by the gentlemen on my right and left, then we have, in reply, eulogies on Eastern bravery and fidelity, as if belonging exclusively to those implicated in the above schemes. Some doubts, to be sure, on the constitutionality of purchasing Louisiana, and some charges of corruption in purchasing it, are re-intimated, perhaps from the same quarter that repeated those charges twenty years since, and which have been so fully proved to be groundless, from the recent account of that purchase by the Abbe Marbois: and in conclusion, we have again the sectional attempt to make the whole East believe, when the peace party in the East was alone assailed, that the whole East has now, in this hall, been put to the ban of the empire.

As a further specimen, the Senate, in answer to charges against the patriotism of the peace party in the late war, have again and again been invited to look at the glories of Bunker Hill, and Bennington, and Saratoga, and Monmouth—as if these glories had been denied or attacked; and provided they had, as if the democracy of the East, which supported the late war, and those of them which support the present administration, had no part or lot in those sanguinary conflicts. As if the gallant Pierce, who now presides in my native State, and the brave Stark of the same neighborhood, who fought by the side of his immortal father, so singularly eulogized in this very debate, as if the intrepid Hall, who trod in blood on the deck of the Ranger, as lieutenant to Paul Jones, all were not now living monuments in New Hampshire of the part which some of the distinguished survivors of the Revolution take among the democracy of the East, in rallying round the present Executive of the Union. If you turn there to the whole muster roll of the survivors in that contest, you will find the proportion of them as large, entertaining the

same political views with their heroic officers. The peace party in the Revolution, for there was also a peace party in that war, might with just as much propriety claim all the honor of the victories of the Revolution. Just as well, as the peace party of the last war, might they seek to engross all the credit of those victories from that part of the democracy of the East, who survived to mingle in the political contest in favor of either Mr. Jefferson's, Mr. Madison's, or the present administration. So, again, from the same quarter, in answer to censures bestowed only on the peace party in the East, we are invited to gaze on the brilliant achievements of the bloody ninth, the twenty-first, and eleventh regiments, in 1814; and in exultation against those attacking only what the gentleman from Maine [Mr. Holmes] then pronounced "treasonable" opposition to that war, we are informed of the prowess, cavalry, and descent from New England loins, of those who, in fact, put all in jeopardy to support that war.

Did it never occur to gentlemen that history would be set right, and that those regiments, and their brave officers, their Ripleys, their Millers, their McNeils, and their Weekes—all these last natives of the scolded New Hampshire—all these last natives of the scolded New Hampshire—be known to have sprung chiefly from the democracy of the East; and that all of these before named officers, with perhaps a single exception, are decided supporters of this abused administration?

On the contrary, lofty as were the principles and deeds of all the whigs of the Revolution in the East, yet, on all hands, it must be confessed that, during the late war, the patriotism of the leaders of a party there took a most unfortunate direction. While those taunted heroes of those brave regiments, taunted then, as most of them now are, with being slaves to the South, and apostates from New England principles; while they, I say, were flying to the then derided flag of our Union, and were pouring out their blood at Bridgewater and Chippewa, in defence of their country's rights, the leaders of the "peace party in war" were seen flying to far different scenes at Hartford, and pouring out from their pulpits, presses, and legislative assemblies, anathemas against the administration, the war, and all their supporters. Sorry am I to say it, sir, except to "put history right" in our defence, that not the mercenaries of the party, as antimated by the gentleman on my left, [Mr. SARGENT] were engaged in this unfortunate display of this new species of patriotism, but with the leaders, in their pulpit services and opinions, were found some, at least, of their confiding congregations. With the delegates of the three sovereign States, and parts of two others, at Hartford, were found, in principle, some constituents to elect them. With eloquent Representatives and Senators here, were found to support them at home, at least a party, a whole party, and nothing but a party. On this occasion, what I say is not to be misunderstood, however much it may be misrepresented. When, in self defence, I allude to a certain party and its acts in the East, about the period of that war, far be it from me to include all of them, or of those in other quarters of the Union who had borne the same party name.

It is well known, in the history of this country, that, having lived under a limited monarchy till the Revolution, not only then, but in the formation of our State and General constitutions, some honest diversity of opinion existed, as to the extent and limits of power safely to be entrusted in the hands of the people's agents. Without dwelling on the titles which should be given to the one side, for asking large power and much confidence in office holders; and to the other, for granting only small power and limited confidence; it is sufficient to notice that this division, coupled with other matter, from time to time, connected and incidental, separated the whole country into opposing parties—parties, too, which not then being chiefly sectional, were useful rather than injurious, in rousing vigilance, and in preserving unimpaired the re-

served powers of the people and the States. But, as some more exciting and more local topics of difference occurred—an Eastern Chief Magistrate being removed from office, under complaints and remonstrances, as doleful and violent as any heard here on account of more recent removals, and his place being supplied by a Southern successor, and a vast addition being soon made, under that successor, to our Southern territory, and expected also to be made thereby to any peculiar Southern influence, which might prevail in the administration of our Government—these general parties, so far as respected one of them, gradually assumed almost an entire sectional character; and, contrary to the injunctions of Washington, so often urged on our consideration in this debate, its leaders began to drag into the controversy every sectional interest and prejudice that nestle closest round the heart of erring man.

The attempts, which two of the distinguished members of that party have recently avowed were soon after made for separating the Union, had a poor apology, in any belief that the purchase of Louisiana was unconstitutional, as one of their then number; now on this floor, seems still to hold; and must have been, from the account of those members, of a mere rash and sectional character; and, I have no doubt, met with no approbation among many of the honest disciples of that party, even in the East; or among few, if any of them, south of the Hudson. These last had no motives to cherish such local and pernicious views. The embargo, non-intercourse, and war, which soon and successively followed, pressed with extreme severity upon the Eastern States, and gave the leaders of the party, having thus become separated by sectional views from their brethren elsewhere, an opportunity to appeal still more strongly to sectional prejudices, and to renew, or begin for the first time, as the truth may be, a course of opposition to the General Government, violent in language, disorganizing in its measures, and, whether aiming or not at a Northern confederacy, certainly ending in the Hartford Convention—a course of opposition which, to say the least, was any thing but practising the lessons of Washington—any thing but real national republicanism—any thing but respect for the constituted authorities—any thing but eulogy on the great minds and patriotic hearts, then sent to cheer and to bless us in the prosecution of that glorious war—any thing but devotion to our country, our whole country, and nothing but our country. Whoever took the lead then, in that course of opposition, in Congress or out; whoever is attacked by the South or the West, for taking such lead, I, for one, protest, that the whole East, as a section, is not to be involved in the defence; and that its democracy, so far as represented by me, has neither been implicated in the attack, nor seen any occasion for angry retort. The whole controversy, so far as regards my friend to the right, [Mr. HAYES] has been shown, by a reference to his remarks, to have arisen from strictures by him solely on the peace party in the late war, and the violent movements of its leaders in that course of opposition. Leaders and movements then officially, and as strongly as here now, denounced by a large minority in the East itself, as having been exclusively British, and by which leaders and movements the late Executive has publicly repeated that a separation of the Union was openly stipulated. Thus it will be seen how different a character this course of opposition, both before and during the war, had given to that party in the East in respect to its attachment to the Union, and its patriotism at large, from what justly belonged to the same nominal party elsewhere. It is by setting history right, in this way, that proper discriminations can be made between nominal federalists, in and out of the East, and even between those in the East itself, who led, and those who were misled or betrayed, by sectional violence.

If gentlemen please, I for one have so little party bitterness, on merely old party grounds, as to be willing

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to go, in meeting their invitations, to forgetfulness of hy-gone acrimony, and party feuds, more than half way, and to take the epoch of the late war as a period of amnesty, beyond which, like the era of Richard I. for other purposes the memory of man runneth not, about parties, except as connected with historical facts and constitutional principles, bearing on the present administration of the State and the General Governments. But I never can go for any abandonment or compromise of these principles.

Still another concession will I make, in justice to the yeomanry of the East, many of whom, in the late war, were deluded into opposition, by what Mr. Jefferson called "the Marats, the Dantons, and Robespierres, of Massachusetts." (4 Jefferson's Notes, 210.)

The same sectional attempts were, by that class of leaders, then brought to bear on their honest hearts and warm heads, which were made to bear on them in the late canvass, and are now continued, with a view to prejudice them against the South, and to seduce them into a belief that the whole of New England is proscribed, and that the real interest of the two regions is hostile, rather than united, as closely as the interests and inclinations of married life. Is it strange, then, that the large mass, even of the peace party, should thus have been misled for a time, by those leaders, clerical or political, in whom they had been accustomed to place implicit confidence? and that they should fallaciously appear, as if with deliberation, giving sanction to those violent party acts, instigated by the mere leaders, such as official refusals, when our hearths and altars were invaded, to place the militia under the officers of the Union, for defence; such as legislative exhortations against loans and enlistments; public votes and speeches in Congress, against raising additional troops for protection; motions here, at one time, to impeach Mr. Jefferson, and threats at another, that Mr. Madison deserved a halter. Yet, with a similar lead to what then led, we are told, again and again, in defence of attacks on this violent course of opposition, about New England patriotism and New England respect for order and regular government, as if these virtues belonged to those alone who required a defence: and as if that class of politicians possessed all, effected all, and were all in all. As if, for a moment's illustration, the soldiers' bones that moulder on our Niagara frontier were those of patriotic volunteers from the Massachusetts remonstrants, whom the gentleman on my right then fearlessly charged with taking the enemy's ground, supporting his claims, and justifying his aggressions, as if the saving loans in aid of that glorious struggle came from those who pronounced the struggle unjust and murderous; and as if our sailors, who "pulled down the flag of the Guerriere and Peacock," were of those who deemed it immoral and irreligious to rejoice at our naval victories. Not such as the last—not such aid, nor such defenders, did that crisis need.

*Non tali auxilio nec defensoribus istis  
Tempus eget.*

Far be it from me to utter or feel a single sentiment of unkindness to one individual who did not participate in those measures of opposition, and much less to any one who did participate, from honest convictions they were right, and who still has the frankness and magnanimity to avow it; and to await full justice to the abused democracy of the East. Such thought and acted for themselves like freemen, and disdain to shrink from their responsibility for it. But that those of the democracy of the East, friendly to the present administration, and who bore a full share in all the perils, sufferings, and glories of that war, should now be sneered at, as witnessed here, is what none who sincerely sympathized with them in that conflict, and have partaken with them in fidelity to principle since, could be guilty of without blushing blood; or could in others listen to without indignation and abhorrence. It is, then, I

trust, distinctly understood, that I have cast no strictures on federalists, even in the East, except those who, after war was declared, still opposed their own Government and its measures; and, according to Governor Eustis, thus occasioned double sacrifice of life and treasure, while the citizens of other States were exercising their utmost energies against the common enemy. Even many of those I would censure only as misguided and unfortunate politicians; men who, from sectional clamor, were made to believe that the whole East was put to the ban of the empire; who trusted too far to the groundless assertions, by those who have been here called [by Mr. SRAOGE] the bedlamites of the party. Thus it happened, undoubtedly, that so many grave legislators, holy priests at the altar, and other seigniors of the land, both in public and in private life, were deluded to join in that violent opposition. This alone can account, also, for the Hartford Convention, as a solemn, deliberate, and official act, by the Legislatures of three sovereign States, and by primary meetings in the federal portions of two others, at a moment when the foreign enemy had his foot planted on our sacred soil; and when, with a different commander in the Eastern department, some of its members might, we are told, have had a different trial than what has yet been held on them. For withholding the militia from the General Government, as another official act in which the Judiciary and Executive ceremoniously united, and which has since been justly denounced by one of their own Executives, as withholding from the Government the constitutional means of defence. For the exhortation against enlistments, against joining the stars and stripes of their country, over which we have had such eloquent eulogies, as another of those cold blooded official acts instigated by Hotspur leaders. The Massachusetts Legislature, in June, 1812, say, "If your sons must be torn from you by conscription, consign them to the care of God; but let there be no volunteers." The loans, on which gentlemen dwell with so much complacency, as evidence of Eastern patriotism, were also as violently denounced by the leaders, and came mostly from that abused democracy, one of whom, a principal leader, my near and dear relative, still survives in that Cumberland district, so justly denominated the star in the East, to see flung upon him, as a supporter of this administration, the sarcasm of being a new made democrat, from near the doors of the Hartford Convention. The patriotism of such supporters of this administration among the democracy of the East, and I thank God there are many of them, took rather a different direction from the unfortunate one pursued by the violent opposers of that war. Their patriotism was not as early as 1806, to ridicule Mr. Jefferson for his pacific war by proclamations, though losing thousands by French and British decrees; was not to denounce and violently resist an embargo as unconstitutional, and charge the President with French influence and falsehood in recommending it, though their remaining vessels were rotting at their wharves; was not to vote, speak, and write, in constant hostility to the war and the measures for its success, though their funds and their industry were forced out of customary employment. But it was, if not "above all Greek, above all Roman fame," it was the patriotism of the noblest days, of the noblest of our race. Though scoffed as slaves to the South, by persons now professing to deprecate sectional jealousies, it was to devote all to their country; to enter the alarm list themselves for the defence of the sea-board; to advocate enlistments; to lend their remaining and impaired fortunes to the cause, and, in fine, for the salvation of all those great principles of civil liberty their fathers had bled to secure; intrepidity to meet the domestic enemy at the polls, and send their sons on the ocean, the lakes, and the land, to meet the foreign enemy at the cannon's mouth. From the history of all republics, they knew that God had preserved liberty only to vigilance and valor.



SENATE.]

Mr. Foot's Resolution.

[FEB. 24, 1830.]

They, therefore, braved the lion in his den; they rose as their country rose, and fell only as her prospects fell. The victories of the common enemy were a true barometer, in every year, of the victories and hopes of the conflicting parties at home. I was then of an age, sir, to feel such things somewhat deeply, and hence, I may speak of them too strongly. But this much can with safety be asserted, that the political war at home was but little less arduous and exciting than the foreign one abroad. That democracy, though a minority then as now, in every State in the East save one, though abused then as now, and buffeted both in private and public life by their opposers, had, and still have, thank God, some knowledge of their rights, and, "knowing, dare maintain them." In the darkest hours of that war, when civil butchery was in some places threatened, when schemes for disunion were supposed to be maturing, and, according to my friend here, [Mr. GUNDSY] "moral treason" stalked abroad; when the ardent yeoman sometimes slept with his fire arms at his pillow; when his sons were absent as volunteers at Chippewa and Plattsburg—on the lakes and the ocean—then the members of that democracy, who were at home, fought and endured the moral and political warfare, hardly paralleled: the proscription and persecution of private life; the shameless attacks of the press; the insults of heated partisans; the anathemas of the pulpit; and, minority as they were, they fearlessly faced the apologist of the common enemy, and the libeller of their own Government, whether in the courts of justice, the halls of legislation, or in those primary meetings of the thousand town democracies which cover our granite hills.

Grant that individuals of the party opposed to Mr. Jefferson and Mr. Madison did not unite in what the former calls in Massachusetts "the partridge crimes and treasons of the late war," but went gallantly for their country when in peril. They have earned for themselves laurels which they richly deserve to wear, and which, God forbid I should attempt to soil. They relinquished opposition when the common enemy approached, and stood by their country and their whole country, and did not lend a helping hand to those sectional excitements that often belittle and dishonor the politics of New England. By such excitements, groundlessly defaming the democracy of the East and of other parts of the Union, has the glory departed from her Israel, more than by any change of relative population and territory. But if the violent leaders of the Eastern opposition to the war, then, as since, constantly poured out on the democracy of that section the uncourteous epithets of Jacobins and Judases, and styled them, as the whole administration has been styled in this debate, a motley collection of the fragments of all parties, with no common bond of principle, and held together by a mere rope of sand; if these abusers then, as now, made very modest claims to all the talents, order, and religion; I stand not here to retort in kind, but courteously to seek justice for myself and my political friends, from unfounded imputations; and to say, with sober mindedness and charity, that, leaving our opponents to the enjoyment of all their real worth, which, in many respects, I freely admit to be enviable, yet I do contend, that, in private or public life, there is no ground for discrimination in their favor against that much vilified democracy—in all the hardy and heroic virtues which have distinguished New England, if not more highly, yet in common with the Middle States and the South, since the Puritan and merchant adventurers first landed at Plymouth Rock and Strawberry Bank—virtues deeply founded as her hills, and pure as her mountain streams. No ground for discrimination against that democracy, in either correct morals, tireless industry, or unsleeping enterprise—no ground of discrimination in doing their full share to build up the fisheries, extend commerce, and scatter plenty over a sterile soil; to erect and preserve all the Doric if not

Corinthian columns of our whole social edifice in the East, and in doing more than their full share, because their political principles did not forbid them to take a full share with their brethren of the Middle States, the South, and the West, in bearing the flag of victory, whether over land or ocean, in the Revolution or the late war. They have always met the struggle with firmness, and, in common with other parts of the Union, with entire devotion, in times of peril, to the common cause, of their lives, their fortunes, and their sacred honor. They never halted between two opinions when the wolf was on the walk—when the enemy was on our soil. They had, and still have, quite too much of the Roman, not to endure embargoes and wars, and even death, for their country, whether on their own seaboard, or on a distant and savage frontier, when that country and its honor call for the sacrifice. This they have shown by deeds, not words; and this, I will give my pledge, they will always show, when occasion demands. But, once for all, I will repeat, that that democracy make, and have made, no pledges to men, independent of their measures, and that, so far as represented by me, they will offer or seek no new alliances, and consent to none. They have made no old alliances and consented to none, whether with the West or the South, except the general alliance of all in the bond of the Union. They will neither cajole, nor flatter, nor bargain. Those of New Hampshire would find stain among the other States as a peer among peers, a sovereign among sovereigns, an equal among equals; recognizing the rights of no mere man from the East to tender or pledge them, either to make or unmake Presidents—to pull down or build up administrations. They mean to go where democratic principles go—*palmam ferat qui meruit*; and when those principles disappear, they mean to halt. Such were the views that led their young men, in the late war, to succor the bleeding West; and in their cause, as well as that of their country at large, to moisten with their blood the fields of Tippecanoe, and the forests of Brownstown, while from the ranks of a different party in that war, however prodigal in professions of friendship now to the West, not a drum was heard—not a gun was fired. These views in peace, likewise, have led them to aid, to populate, and protect from the savage, the smiling valleys of the Ohio and Mississippi. And their brethren in principle, whether there, or at home in the East, will cheerfully unite in every measure they believe constitutional, for the relief or improvement of those who have suffered with them in the common cause.

Can it be doubted that the same feelings would not lead them to assist, in the same way, either the Middle States, or the South, in the embarrassments of their industry and trade, or in their utmost need, by invasion or war?

On the exciting topic of slavery, as connected with the South, and introduced into this debate, it is true they have honest and deep rooted opinions. But this Congress knows, and the Union knows, that, adverse as the democracy of the East is to slavery, and aiding as they have, within only about the last half century, to abolish it all over New England, and anxious as they are for its extirpation from the whole country, yet, never have they joined, and never will join, in the sectional tirade against the South as "black States." They are convinced that here, as in the East half a century ago, slavery must be left to be regulated by the domestic opinions of each sovereign State itself, founded on its own better knowledge of its own climate, productions, industry, and social policy; and that any great change in the civil institutions of a State must be to be wise, useful, and permanent, be cautiously considered and gradually commenced.

They cherish, too, I am satisfied, the same kindly feeling towards the South, on the subject of the tariff, that they do, and have done to the West, on subjects deeply affecting the interests and the prosperity of that West.

FEB. 24, 1830.]

Mr. Foote's Resolution.

[SENATE.]

Instead of laughing at the calamities of the South, and mocking their complaints, God knows we have of late sufficient reasons at the East to make us feel, in common suffering, common sympathies; and to cast about, if possible, for the consideration of any measures likely to bring relief and harmony. The very Executive who signed the last tariff bill officially declared it, "in its details, not acceptable to the great interests of any portion of the Union, not even to the interests which it was specially intended to subserve." [See President's message, December, 1828.]

Among the merchants and manufacturers, the wide and desolating failures at the East, since that declaration, have more than verified the evils naturally to be anticipated from a bill of that character. The present Executive also, has declared, that "some of its provisions require modification." [See President's message, 1829.]

The gentleman before me [Mr. STURGEON] can testify, that nothing like a parallel to those failures has occurred in the East for a quarter of a century. How much of this deep distress there has been caused by our present unequal tariff, I, and my constituents, I am satisfied, wish to inquire, not from hostility to the protecting principle, as an incident to raising revenue, or as countervailing legislation against oppressive foreign measures, or in some cases as a means of preparation in peace for the wants of war—on that point most of us harmonize—but to see whether any just and equal legislation requires, in profound peace, and with a prosperous revenue, that the people of New Hampshire alone should pay more than their State tax yearly, as a duty on salt—on a single article of the first necessity of life; should pay over one hundred per cent. tax on molasses and other great necessities; and should be taxed most expensively for every nail driven in a farmer's door, every bolt in a vessel, every yard of canvas spread on the ocean, and every pound of sugar, coffee, or tea, that brings comfort to the domestic fireside. I wish to inquire whether this is to be persisted in, after the impost will not be needed for either revenue or protection, but merely to enable this or any other administration to dole out *sops* or bribes to win States that hold the balance of political power, or who give signs of insubordination to the powers that be. They do not wish to attempt any thing but equal justice between the three great branches of industry, but agree with the Executive of New Hampshire, in 1822, that,

"No policy can be more obviously unsound than that of creating manufactures, unconnected with national defence, or important to national interest, at the public expense, to be permanently supported by the same means. However disguised such procedure might be, it would be, in its effects, the imposition of a perpetual tax upon the productive branches of national industry, to be applied to the support of an unproductive one." [19 Niles' Register, page 262.]

They never can agree that the eight-tenths of our population as farmers are not entitled to full consideration in tariff legislation; and that our old fashioned fisheries and navigation are to be sent to sea adrift, without their due proportion of favor and protection. We have lords of the soil as well as lords of the spindle, and I for one, though friendly to a moderate and equal tariff, on the principles before named, can never consent that the self-styled American System shall be confined in its bounties to spinning jennies alone, and exclude as worthless and undeserving our agriculture and our commerce. Much less can I consent that the American System shall be converted into a hobby-horse, on which any aspirant whatever may ride into political power. "Ill vaulting ambition doth o'erleap itself." And the notions of a distinguished member of the other House, in 1824, on American industry, have ever met with my entire approbation. [Mr. WEBSTER.]

"Gentlemen tell us they are in favor of domestic industry; so am I. They would give it protection; so would I. But then all domestic industry is not confined to manufactures. The employments of agriculture, commerce, and navigation, are all branches of the same domestic industry; they all furnish employment for American capital and American labor. And when the question is, whether new duties shall be laid, for the purpose of giving further encouragement to particular manufactures, every reasonable man must ask himself, both whether the proposed new encouragement be necessary, and whether it can be given without injustice to other branches of industry."—[26 Niles' Register, 412.]

Entertaining such notions on these topics, I must be pardoned if, as one of the majority, I decline to accept the invitation of the gentleman on my right, from Missouri, [Mr. BARTON] to stand on his new political platform, whether of nine or thirty-nine articles, of opposition to the present administration. Without claiming for this administration infallibility, I still believe its general course of policy democratic and constitutional; and my friend from Louisiana can inform him or the gentleman from Maine of as severe Jeremiahs for the loss of office in 1803, as now: can inform him that, on the principle of rotation in office for even political motives, this policy only follows up the doctrines of the great revolution of 1800; and that, since, it has in practice had the sanction of the people and the States in every quarter of the Union. Even in Maine, "without respect to sex, age, or condition," to use its Senator's language, when parties are strongly divided, the same policy has been pushed through, to the removal of doorkeepers.

It is the true republican doctrine. A rotation first made by the people themselves, in the highest office in the land the Chief Executive of the Union; and made for political cause, for *probita* as well as *allegata*, according to the verdict returned. Does not the same cause affect most of the active deputies and subordinates as well as the principal? Whatever disappointment and suffering by removal some individuals may sustain—deserving and receiving in many respects my private sympathy—yet they know the legal tenure of their offices, and, if violent partisans, should disdain to hold them under men and an administration they have wantonly calumniated. Hence, the agents of the people cannot fear the cry of cruelty, persecution, or Neroism, when following calmly the example set by the people themselves; when, at the worst, if the power of removal be discreetly exercised, doing no injury to the public, but to change one good man for another good one; and when teaching to many the salutary lesson in a republic, that office holders have no property in their offices, and that liability to removal tends to increase industry and fidelity. Nor need those agents dread the discussion of the constitutionality of the exercise of a power of removal, which was legislatively recognized by the very first Congress under the constitution; was then advocated by the framers of that constitution; and has been practised on, at pleasure, by every Executive, from Washington down to the present Chief Magistrate.

The extent of the exercise has been left to the discretion and policy of that branch of the Government whose duty it is "to see the laws faithfully executed;" and if it was less under one and more under another administration, it has always been influenced by the state of that administration, whether coming in as opposed or hostile to their predecessors, and whether in a minority or a majority, so as to be able to accomplish their wishes. The other doctrine is the doctrine of minorities, and, if correct, the tenure of all office might as well be changed to life, and our Government become, in name, as in practice, a monarchy. Then, in earnest, well might we accept the proposition of the gentleman, to go over to the

SENATE.]

*Mr. Foot's Resolution.*

[FEB. 25, 26, 1830.]

minority for greater tranquillity, and, as in other monarchies and despotisms, see how admirably minorities can govern. One accidental instance of such a government, by way of illustration, may possibly have been given to us this session, in respect to the printing of the public documents; and, I must confess, it has not diminished my aversion to such kind of governments, and especially to their practical doctrines on public economy. If the gentleman from Missouri, on my right, [Mr. BARROW] seeks by such measures to pull down this administration, he may not find it so "downhill a business" as he represented the pulling down administrations in this country usually to be. Perhaps it would be well, before further taunts of this kind are repeated, to set history right, and to recollect that pulling down administrations in this country has never proved quite so easy and downhill a business as seems to be supposed, when the administrations have been democratic—not a very downhill concern when it was attempted on either Mr. Jefferson's, Mr. Madison's, or Mr. Monroe's administration; but rather easier to be sure—rather more of a downhill concern—in the two four-year administrations in this country, suspected, at least, of no very great devotion to some of the leading principles of democracy.

But I shall neither vaunt nor prophesy; but only express a doubt that, if the present administration may yet be easily pulled down, it will not be pulled down by such measures as the printing resolution, nor exactly by such politicians as now lead in the attack on that administration. If beaten ever in that way for a few days, the friends of it probably have Antæan vigor enough to rise stronger from the fall. If the administration, relying upon its real friends, and on the true principles of democracy, is still occasionally beaten, whether in fact, or only on paper and in party credulity, the opposition may find it will not long stay beaten. And this "downhill business" may prove an uphill job to the undertakers. At least if this administration is ever, by such leaders, and in this way, rolled to the bottom of the hill, I may, as a Yankee, be allowed to guess, that those leaders, like Sisyphus, will find it must speedily be rolled back again.

I have thus finished [said Mr. W.] what my sense of duty, painfully, in some respects, has urged me to say on this occasion; and if, in the cause of my political friends, I may have flung myself on the spears of my enemies to perish, I shall be content to perish in a cause which my heart loves, and my judgment approves.

[Here the debate closed for this day.]

THURSDAY, FEBRUARY 25, 1830.

The Senate resumed the consideration of the resolution offered by Mr. FOOT.

Mr. SMITH, of South Carolina, addressed the Senate until three o'clock, when he gave way for a motion to adjourn.

FRIDAY, FEBRUARY 26, 1830.

Mr. SMITH, of South Carolina, addressed the Senate in continuation and conclusion of the speech which he commenced yesterday.

He remarked that the debate had assumed a wide range, and encircled almost every political subject that had agitated the Government for the last forty years, and more. Although about to give my own views to the Senate, [said Mr. S.] I do not aspire to ornament, but to illustrate what I may say. This debate has been one of feeling; and especially as it related to the disposition, by the General Government, of the public lands. And if I am to judge from the manner in which it has been treated by gentlemen who have said a great deal concerning it, I should suppose they had examined but superficially its extent and importance to the people of the United States. If your treasure is

worth preserving for the use of the Government, why should you sport away your public land more than your public moneys? For the manner in which it is proposed to get rid of it, if not sporting it away, is probably as bad.

I do not intend to limit my remarks to the subject of the public lands, entirely, but, after I shall have done with that, will take a cursory view of several other topics that have excited much interest; which, perhaps, I may not treat precisely as other gentlemen have done, yet, I will endeavor to treat them fairly. I have always found that matters of fact give a fairer view of party subjects than your abstract speeches. A gentleman who speaks abstractedly generally does little more than give you what is best suited to his purpose. But if these topics are discussed for public use, the public are entitled to hear all; otherwise the public are imposed upon; they are misguided by seeing but one side of the question. The public are always prepared to judge rightly, and, if correctly informed, will always do so. On the subject of party politics—a subject from which there is more to fear than from any other that agitates your Government—the truth has not been half told; and when I reach it, I may perhaps differ from other gentlemen in the view that I may take of it.

On the subject of the public lands, their importance, which seems to be overlooked, and the manner in which the gentleman from New Hampshire [Mr. WOODBURY] and my colleague [Mr. HARRIS] propose to dispose of them, their views are so totally different from my own, as to require my first attention. And believing, as I do, that they have not treated that subject as its importance requires, I will first notice what they have respectively said on that question, and then give my reasons, founded on facts, why I differ from them.

The gentleman from New Hampshire says, in addition to doing justice to the people of the Western States, it is necessary to accelerate the sales of your public lands, as fast as possible, lest you drive your citizens to foreign countries, to seek for lands and comfortable homes. In support of this opinion, that gentleman informs us that the British Government is now selling lands at reduced prices, not only in their colonies in New Holland, but in the Canadas, and are thereby holding out inducements to your citizens to emigrate thither. That other European nations have adopted the same seductive policy. Even Persia holds out inducements to emigrants, by selling her lands at reduced prices. In consequence of your own delays, and this liberal policy of other nations, your citizens, we are told, are actually departing from the United States; by which we are to understand, your States are to be depopulated, and your physical strength transferred to other countries, and to foreign enemies. This would be an injudicious policy, indeed, on the part of our Government, could we assent to the premises. But what possible inducement could an American citizen have to break up his household, sell off every thing, and transport himself to New Holland—a country that not one American in twenty thousand ever heard of—there to speculate upon a quarter section of land, when there are millions of acres lying at his own door, at one dollar and twenty-five cents per acre? Or can we imagine that any motive whatever could induce an American to forego all the comforts held out at home, to look for better times in Persia?

What is the fact [Mr. S. inquired] as regards the Canadas? In 1825 I visited that country, and whilst at Quebec, and elsewhere, was informed, from high authority, that their Government imported from Ireland, annually, ten thousand people, and that another ten thousand, at least, came of their own accord, or were brought from that country by their wealthy friends. That most of these people went to Upper Canada, being esteemed the best portion of the British possessions in America, and there received a bounty in lands, farming utensils, and provisions, by the Government, and were there kept un-

FEB. 26, 1830.]

*Mr. Foot's Resolution.*

[SENATE.]

der some kind of guard, to prevent them from emigrating. Notwithstanding all those attentions, and all this vigilance on the part of Government, one-half of them, at least, made their escape to the United States. The reasons why they should do so are obvious. Whilst this country, sir, continues to present so many and such strong inducements to the enterprising, as well as the oppressed of other nations, we have none of the perils, which that gentleman has brought to our view, to fear.

My colleague [Mr. HAYNE] had been still more importunate; and would induce a belief that this Government would be overwhelmed, if you do not forthwith dispose of your public lands, and that to the Western States; and reproaches the General Government for selling, instead of giving them to the Western people. Before I offer my own opinion, I will give his, in his own words, as far as he has published what he expressed. He says:

"No gentleman can fail to perceive that this is a question no longer to be evaded: it must be met—fairly and fearlessly met. A question that is pressed upon us in so many ways, that intrudes in such a variety of shapes, involving so deeply the feelings and interests of a large portion of the Union, cannot be put aside, or laid to sleep. We cannot long avoid it—we must meet and overcome it, or it will overcome us. Let us, then, Mr. President, be prepared to encounter it, in a spirit of wisdom and of justice."

He further says:

"I believe that, out of the Western country, there is no subject in the whole range of our legislation, less understood, and in relation to which there exists so many errors, and such unhappy prejudices and misconceptions. There is a marked difference observable between our policy and that of every other nation that has attempted to establish colonies, or create new States. The English, the French, and the Spaniards, have, successively, planted their colonies here, and have all adopted the same policy, which, from the very beginning of the world, had always been found necessary in the settlement of new countries, viz: a free grant of lands, without money and without price. The payment of a penny, or a peppercorn, was the stipulated price."

Here he contrasts the policy of these foreign Governments with the policy of our own Government, it being their policy to give away their lands, and ours to sell them for a fair price. And says of our policy:

"It would seem that the cardinal point of our policy was not to settle the country, and facilitate the formation of new States, but to fill our coffers by coining our lands into gold. Let us now consider for a moment, Mr. President, the effect of these two opposite systems on the condition of a new State. I will take the State of Missouri, by way of example. The inhabitants of this new State, under such a system, it is most obvious, must have commenced their operations under a load of debt, the annual payment of which must necessarily drain their country of the whole profits of their labor, just so long as this system shall last. Sir, the amount of this debt has, in every one of the new States, actually constantly exceeded the ability of the people to pay. What has been the consequence, sir? Almost universal poverty. Sir, under a system by which a drain like this is constantly operating upon the wealth of the whole community, the country may be truly said to be afflicted with a curse."<sup>\*</sup>

My colleague, [said Mr. S.] after passing a high eulogium on the English, French, and Spanish monarchies, for giving away their public lands "without money and without price, for a penny or a peppercorn," and a censure upon our own Government, for its oppression upon the people of the West, for selling, instead of giving them all the lands, has declared, [that after the public debt shall

have been paid, if he should not give them away, he would at least sell them to the States in which they lie, for a mere nominal sum, and of that nominal sum he would not put one cent into the public treasury; and that he would now begin with the State of Ohio, as he considered that State ready for such a change in our policy.]<sup>\*</sup>

In discussing subjects of public concern, [said Mr. S.] I will always go with my colleague, whenever good reasons exist to justify me in doing so. But, upon this occasion, my views are essentially different from his. He thinks the people of the Western States are excessively oppressed and borne down by the exactions of the General Government. I entertain a contrary opinion. I think the Government has been more than lenient to the people of the West. He has given his reasons for the opinions he entertains. I beg leave to give mine why I am opposed to his propositions. He says the people of the West are hardly dealt with: the profits of their labor were annually drawn off to fill the coffers of the treasury, and to be expended elsewhere; that the amount of their debts exceeded their ability to pay: that, under a system by which a drain like this is constantly operating upon the wealth of the whole community, the country may truly be said to be afflicted with a curse, &c.

It is not from any unkind feelings towards the people of the West [said Mr. S.] that I am induced to differ from my colleague. On the contrary, I shall always rejoice in their prosperity. An overgrown prosperity, however, was not to be cherished, at the entire expense of the rest of the Union. I will endeavor to ascertain if these complaints, which seem to grate with such severity upon our feelings, were well founded, or imaginary only. The Western States are compared to the colonies of the monarchical Governments of Europe, and their policy had been urged by my colleague as worthy our imitation. The colonies of monarchical Governments, and the new States adopted into this Union, are totally different in their character. A colony founded by a monarch is never with a view to promote human happiness, or the private interest of the subject, but for the aggrandizement of the monarch himself. He does it to augment his power. He gives his domain to his subjects, "without money and without price;" "for a penny or a peppercorn." But he can strip them of every vestige of civil and religious liberty, if he chooses to do so. The lands composing the Western States do not belong to Congress; they belong to the people of the United States; not obtained by conquest, but purchased with their money. Congress is nothing more than their agent to dispose of them upon fair terms, and for a price, and that price to be placed in the public treasury; not for the benefit of any particular portion of the States, but for the benefit of the Union, in which the Western States enjoy a full participation. These lands are not sold to, or forced upon, any portion of your citizens, who had no alternative. They were the common property of the people. They were sold at auction to the highest bidder. Those who chose to buy, and every one had their option, bought with a view of going there to better their condition. They did not buy until the country was conquered and at peace. They were at no expense in conquering the country. It was conquered by the Government, and the lands surveyed, ready for the highest bidder to take possession immediately. Is it right, sir, because a small portion of the people have, as a matter of free choice, bid off a small portion of your public lands, that you should surrender to them four or five hundred millions of acres for a mere nominal sum, for no other reason than because it is said they cannot pay their debts?

Sir, there are other insuperable objections to disposing of your lands in this way: for, suppose you were to sell

<sup>\*</sup>The part marked with double commas contains verbatim what he said in his printed speech, as corrected by himself, and published in the *Daily National Intelligencer*, of January 29th.

<sup>\*</sup>The part printed in brackets is what Mr. Hayne expressed, verbatim, in his first speech, but which has been omitted in his speech as printed.—*Notes by Mr. S.*

to the State of Ohio all the public lands that lie within its chartered limits, for a mere nominal sum, could you expect thereby to purify the political morals of the community, or stay the importunities of the people of the West? Will not every other Western State demand the same indulgence? Then, sir, instead of being "lashed round the miserable circle of occasional argument," by a few individual debtors, you will be doubly "lashed" by the whole people of the West. They will at once ask you to remit that nominal sum; and if there be not virtue and firmness enough in Congress to resist the "lashings" and importunities of a few public debtors, how are you to calculate upon such delicate statesmen, as this argument would imply Congress to consist of, to resist the pressure of the whole Western States, united in one common cause, and propelled by the same common interest? If we have not firmness enough to listen to the arguments of two or three gentlemen from the West, without being subdued, against the convictions of our own minds, we ought to say so at once, and tell the people of the West, we know you ought not to have these lands, because they are the common property of us all; but we have no firmness to resist your importunities; therefore, take them, and save Congress from corruption.\* Can any thing be more degrading? What can be more humiliating to a public assembly than to be informed it must prepare to get rid of an important public question, "or it will overcome us!" Such a prostration of your independence will put an end to your powers, and fit you solely for ministering to the vices and intrigues of all who may discover your imbecility. Sir, this is the argument with which Congress has more than once been assailed upon this question—the corruption it tended to introduce into Congress. Nothing can lead so directly to corruption as too great an imbecility in Congress to resist its approaches. If corruption cannot be met and resisted here, how is it to be resisted in the States, suppose you sell them the lands, where the State Legislatures can more easily be approached, and where there would be a more immediate access for the whole community? It is by no means my intention to impute corruption to the people of the West, or, in the least degree, to diminish their standing in this Union. I am proud to say I believe there does not exist a finer population in any State, in this or any other country, than the population of the Western States. The reasons were obvious, and which I will not stop here to render. It has been those who have been yielding to their importunities that have given rise to this imputation. I have found no difficulty in resisting those importunities myself; nor do I fear the influence of corruption from that source.

Sir, as I believe all the declamation that we have heard uttered against the General Government, for its unrelenting rigor in its exactions from the Western States, and the oppression and distress which they have fallen under, by the misguided policy of Congress, to be totally unfounded, I will here inquire what had been the policy towards the new States, and if not distinguished by its favors conferred on the Western people? Among the favors gratuitously bestowed, was the setting apart every sixteenth section of the public lands for the use of public schools, which amounts to the thirty-sixth part of all the public lands owned by the Government. They have also five per cent. of all the public moneys arising from the sales of all public lands sold within their respective States, to be paid out of the public treasury of the United States, and to be applied in the States, respectively, to make

roads; lands for colleges, lands for every other public institution for which they have asked it; lands in great abundance for making roads and canals—half a million, and a million of acres at a time, have been given. When times grew hard, and they could not pay, without great inconvenience, for these over purchases, Congress enacted laws authorizing every purchaser to relinquish to the Government any portion of the lands he had purchased, and transfer the moneys paid therefor to the payment of such lands as he thought fit to retain. These laws had been re-enacted whenever asked for. All moneys that had been forfeited for not complying with the stipulated conditions of sales of lands, were returned. Sir, Missouri, which my colleague had selected as a State on which the oppression of the General Government had fallen with a heavy hand, had received all those indulgences, privileges, and donations, with the other Western States. They had, moreover, been peculiarly cherished by the General Government. The public laws, under which the trial of title to lands claimed by that State, and also by the United States, were to be decided, had been modelled and remodelled to suit the wishes of her citizens, whenever her Senators have said to Congress that a change of the law was desired by their constituents. An army had been sent there expressly to guard her frontier. A school of army discipline had been established at St. Louis, for no obvious reason but to scatter the public moneys for the benefit of her citizens. A military force is kept up for the express purpose of escorting her Mexican traders through a wide wilderness, and kept up at a great expense to this Government; and at this time it is about to be augmented by adding a corps of United States' cavalry of five hundred, that will cost this Government one hundred thousand dollars per annum. Yet it is urged by the Senator from that State [Mr. BAXTON] and my colleague, that she is borne down and stripped of her hard earnings, for no other reason than because the General Government will not surrender to her the vast domains, as a prey to inordinate speculation. The other Western States do not complain. They ask indulgences, and receive them; but they, with very few exceptions, believe that such a surrender would be destructive to their morals and harmony. Besides, sir, there were other considerations to be regarded. The United States had purchased those lands at a great expense. The original cost paid to France, Spain, to Georgia, and to the Indian tribes, amounts to more than thirty millions of dollars. There are also a vast number of Indian annuities, arising from Indian purchases, as a part of the price: some of them to terminate at a given period; more than fifty of them, however, are permanent annuities, and must endure as long as the tribes to which they are payable shall endure.\* This perpetual yearly drain upon your treasury will be felt, if your public lands are to be sold to the Western States for a mere nominal sum, and not a cent of that sum put into the treasury. There are a vast many other incidental expenses, for removing Indians, for Indian treaties, and Indian agents. This is all to be left for the General Government to pay.

Sir, amidst all the ardor to relieve the Western States from the oppression of the General Government, neither my colleague [Mr. HAYNE] nor the Senator from Missouri [Mr. BAXTON] had taken any notice of the interest which the United States have in this question. They have not referred to the vast quantity of lands which have been purchased by the General Government, nor to the condition of those lands. It would seem, from the views they have taken of the public lands, that they consider them of very little consequence, further than as a peace offering from the General Government to the Western States. But those who have examined the question more at large, consider the sacrifice too great. It had been requir-

\* It is this easy yielding, which is so often submitted to, that has subjected us to the almost total annihilation of Southern influence in the councils of our country. To be called magnanimous, is but a poor compensation for the sacrifice of our dearest rights. This is about the amount of our portion in the benefit of the General Government. We have shared this largely. For it, we gave our control over the tariff and internal improvement.—Note by Mr. S.

\* See: Senate Documents, 3d session 16th Congress, vol. 1, No. 14.

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ed, in order to ascertain the precise State of the public lands, that is, what quantity of acres had been purchased from the Indians by the Government; what portion of that had been surveyed by your public surveyors; what portion of it had been sold; what portion of the lands surveyed still remained to be sold; and what was the quantity of unsold lands, including what was unsurveyed as well as what was surveyed: also, the amount of moneys for the lands sold; the amount paid, and the amount then due from purchasers: a return of which had been made by the Treasury Department, as found recorded in the Senate documents, 2d session, 19th Congress, vol. 3d, No. 63, where there will be seen the following statement:

*"A Statement of the Public Lands, 1st January, 1826."*

	ACRES.
The quantity then purchased,	260,000,000
do. surveyed,	138,000,000
do. sold, only	20,000,000
The quantity surveyed and then unsold,	118,000,000
The quantity surveyed and unsurveyed, and unsold,	213,000,000

Amount of sales of public lands, 1st January, 1826,	\$ 39,301,794
Amount of moneys paid by purchasers,	31,345,963
Amount due by individuals,	7,955,831

	ACRES.
Quantity of lands unsold,	213,000,000
Deduct for barren lands one-half,	107,000,000

Will remain of good lands yet to sell,	106,000,000
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(a.) This, sold at the minimum price, \$1 25, will give for revenue,	\$ 132,500,000
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	ACRES.
There yet remain, upon a moderate calculation, of lands yet in possession of the Indians, the titles to which you are constantly extinguishing. Deduct half for barren lands,	100,000,000

Leaves of good lands for sale,	100,000,000
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Which, sold at minimum price, \$1 25, will give for revenue,	\$ 125,000,000
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(a.) Add to this the above \$132,500,000,	132,500,000
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Will give a revenue of	\$257,500,000
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This, [said Mr. S.] is not a supposed case, gotten up for the purpose of argument, that may be true, or may not be true, but is as certain as a mathematical axiom—a conclusion drawn from established premises, and cannot be controverted. And I would ask the Senate if they are prepared to sacrifice two hundred and fifty-seven millions five hundred thousand dollars of revenue, to appease the importunities of two or three members of Congress from the Western States, because this revenue could not be grasped in a moment? Or because it is said, "if we do not overcome the Western importunities, they will overcome us?" Or why, sir, should Missouri, already gorged with the bounties and privileges of this Government, be selected by the gentleman [Mr. HAYNE] as an example by which to illustrate the oppression of the General Government upon the Western States? That Government has "drained" from Missouri but very little of the profits of her labor, as yet, sir. How stands the account between Missouri and the General Government?

	ACRES.
In Missouri there had been sold, only	980,282
There yet remains to be sold in that State,	34,000,000
Of this, there have been surveyed and ready to sell,	21,000,000

Before one thirty-fifth part of the public lands within her limits are sold, we are asked to withdraw the oppressive hand we are imposing upon Missouri, and forbear to draw from her people the whole profits of their labor.

We have come now [said Mr. S.] to the last view of this land question; one of much magnitude, and one that seems to have entirely escaped the observation of those gentlemen. During the Revolutionary war, in which all the States were engaged, it was suggested by some of them, that the wild lands of the West, although within the chartered limits of some of the States; yet lying beyond the limits of the population, and unappropriated, ought of right to belong to the Union. And whether this was a correct or an incorrect principle, so it was, that, when that immense tract of country lying northwest of the Ohio river was ceded to the United States, by the State of Virginia, a provision was made in the act of cession—

"That all the lands within the territory so ceded to the United States, and not reserved for, or appropriated to, any of the before mentioned purposes, or disposed of in bounties to the officers and soldiers of the American army, shall be considered as a common fund for the use and benefit of such of the United States as have become, or shall become, members of the confederation, or federal alliance of the said States, Virginia inclusive, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and *bona fide* disposed of for that purpose, and for no other use or purpose whatsoever."

The public debt of the United States is now nearly extinguished, and will probably be quite so, without drawing much more from the public land fund, which has produced a long and ardent discussion in the House of Representatives, concerning a division of these lands among the several States of the Union, upon the provision in the act of cession. The proposition by those who are advocates for a division is, that the lands shall be divided among the several States, in proportion to representation. This principle, sir, is erroneous. If a division is to take place, the principle upon which it shall be made is laid down in the act of cession itself, and can admit of no alteration or modification to suit present circumstances. To divide, according to the ratio of representation, would give to the State of New York thirty-four two hundred and thirteen thousandths, but would give to South Carolina only nine two hundred and thirteen thousandths; making a difference in favor of New York, with her present overgrown population, of nearly four times as much as that of South Carolina. But if you take the rule as laid down in the act of cession itself, it will give a very different result in favor of South Carolina. The plain and obvious meaning of the act cannot be mistaken. The words which bear upon this question are—

"Shall be considered a common fund for the use and benefit of such States, &c. according to their usual respective proportion in the general charge and expenditure."

These words are altogether retrospective; and evidently refer to "their usual respective proportions in the general charge and expenditure," incurred during the revolutionary war. To arrive at that conclusion, it is only necessary to ascertain why this cession was made by Virginia to the United States; and at what time it was made, and what purposes it was to accomplish. It was entered into whilst the Union was under the articles of the Confederation. And the purposes it was intended to accomplish were, to indemnify the several States for what they had respectively expended in support of that war. It is as plain as the English language can convey it to our senses, that the "respective proportions of the general charge and expenditure," expressed in that cession, can attach to

\*See Laws of the United States, vol. 1, page 474.

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no other "charge and expenditure" but the charges and expenditures of that war. They point to that object alone; no other existed. And the "respective proportions of the general charge and expenditure," incurred in effecting the objects of the war, were settled upon as the equitable standard by which "the respective proportions" of each State should be measured.

Now, [said Mr. S.] having laid down the premises so obviously deducible from the act of cession, we shall arrive at that conclusion which I anticipated would give a very different result in favor of South Carolina. To accomplish this, sir, it would be necessary to show what "the respective proportions in the general charge and expenditure" were. This I shall be enabled to do from the "Reports on the Finances." In this report, the balances that appeared, after the war, to be due to the creditor States, are specifically stated. Of the creditor States there were but five: Massachusetts, Connecticut, New York, Virginia, and South Carolina.

South Carolina is a creditor State to the amount of	\$5,386,232
Massachusetts stands next in amount,	5,226,801
New York is a creditor State only to the amount of	1,167,575

I will not pursue the statement any further. My object was to exhibit South Carolina the highest creditor State, and to contrast the claims of that State with the claims of New York, upon the principle laid down in the act of cession. Upon this principle, South Carolina will receive, in the division of these lands, nearly five times as much as the State of New York, if they are to be divided among the States. To divide on the ratio of representation, which appeared to be the principle agreed upon in the House of Representatives, a few days since, the State of New York would obtain nearly four times as much of the public lands as South Carolina would. This, sir, is a matter worth looking into, as regards South Carolina. To divide on the representative basis, will give New York four for one over South Carolina. To divide on the cession basis, will give South Carolina five for one over New York. This will make a difference of nine to one in favor of South Carolina over New York.

I have endeavored [said Mr. S.] to demonstrate that, in dividing among the several States the public lands, or the proceeds that shall arise from the sales thereof, the division must proceed upon the principle laid down in the act of cession, according to their respective proportions in the general charge and expenditure. How far I have succeeded, the Senate will determine. One thing is certain, that it never was intended by the cession to make the division upon the principle of representation; and this for the plainest reason imaginable. At the time this cession was made, the General Government was administered under the articles of confederation; and under that system the representative principle was not known. The representation of each State was the same, and each State had but one vote: so that the division upon the representative principle could not have been thought of. It would have been nugatory, as every State had an equal representation. The negative of the representative principle is also sustained by the eighth article of the confederation. This shows that the operations of the Government were not carried on upon that principle. That principle has grown up under the present constitution of 1787, which, being after the cession, cannot control such rights of the States as existed before that constitution was ratified.

Sir, it appearing to me perfectly evident that the public lands are the property of the people of the several States, and not of the Western States, exclusively, and committed to the Government only to dispose of for their benefit;

and if not necessary for revenue, then to be divided upon some given and settled principle, among them all, I have endeavored to prove that the settled standard by which the division shall be made is, "according to the respective proportions of the charge and expenditure" of each State, in the prosecution of the Revolutionary war. And if, at a time when the public funds are sought for with an avidity heretofore unknown, when all are looking to the extinguishment of the public debt, and consider all beyond as public spoil, either to be given as bounties to purchase the patronage of the Western States, or divided out upon some new principle, most favorable to the large States, I have been fortunate enough, in the view I have taken, to show that the principle is already established, it will secure to the State of South Carolina the largest dividend; but a dividend proportioned only to the "charges and expenditures" she bore in that Revolutionary war which gave you the sovereignty over those public lands. Notwithstanding it is a new view, and may essentially interfere with the propositions of other gentlemen, nevertheless, if it be a correct view, it is to be hoped, whensoever the partition shall take place, if a partition must be made, it will be made in pursuance of that principle, not the principle of representation.

I will not propose a system for disposing of your public lands; I will leave that, sir, to some other hand. If, however, the sales were to go on, as heretofore, I think the Government would profit by it. I would permit the surveys to progress. I would not lower the minimum price. There will be time enough to do that after the best lands are disposed of. However, I would do one thing, which heretofore has been rejected by Congress. It is this: I would give a fair commutation, in lands, to every pensioner, both of the revolutionary war, and of the late war, in complete extinguishment of their pensions. If the pension system is to be kept up, the commutation would save the Government many millions of dollars; and would afford a home to the disabled or indigent soldier, and an inheritance to his family. I would go further, sir: I would give to every man who would settle on the public lands, and reside there one year, a half section, a quarter section, or a half quarter section, at the minimum price. I would not give this, or any other quantity, to any man, unless he should make certain improvements thereon, and cultivate a certain reasonable portion of the lands for one year. This would be filling the Western States with that description of population which constitutes the strength of a Government. Such a system as this, will enable the poor and the enterprising man to procure a home. This privilege I would give to the occupant or cultivator only. The small quantity thus disposed of cannot lead to speculation. Let him who would speculate, buy at the sales, as heretofore, as the highest bidder. I clearly see, unless you hold out some such inducement as this, to keep the disposal of your lands going on, it is to become a source of bargain and sale, as the occasions of political speculations shall arise, and produce a scene of corruption that may overwhelm this Government—a scene more terrible than that produced by the Tariff and Internal Improvement, heretofore brought on you by degrees, and by a liberal policy, as it was called.

After closing his remarks relating to the subject of the public lands, Mr. S. said:

And here, sir, I might close; but this discussion has gone so far, and spread so widely, and public expectation has become so excited, on particular topics, on which I am not willing to be wholly silent, that I will pursue it a little further—

In the first speech with which the gentleman from Massachusetts [Mr. WENSTON] favored the Senate, he introduced the subject of slavery. I was sorry to find it brought into a debate of this peculiar character, and was not satisfied with that gentleman's remarks. However, I was

\*Reports on the Finances, vol. 1, pages 25, 36.

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pleased to find, when he addressed the Senate a second time, he gave such an explanation as to do away the odious impressions which had been received from his first remarks; and, in addition to his explanation, has very frankly acknowledged that slavery, as it exists in the United States, is protected by the constitution. I am willing to receive these admissions from the gentleman; and am equally willing to admit them to be sincere. Whilst I have ever been sorry to hear this subject brought into debate, I have been disposed to admit any concessions of its constitutionality. Whatever may be the present opinion of the gentleman from Maine, [Mr. HARRIS] who also touched upon this subject, I will recollect when he struggled with us, side by side, at the most important and gloomy period of this subject that has ever agitated this Government. We know the sacrifices he made on that occasion. We know there were other New England gentlemen who supported us with independence and manly zeal on that occasion. We know an other gentleman from Massachusetts, a member of the other House, who, if we believe his own declaration, is willing to go farther with us than merely acknowledging the right we have to hold slaves; he is ready to arise in our defence in case of a servile war. Shall I reject such overtures as these, and pronounce them insincere? No, sir; I would rather thank him for his independence than challenge his motives. I have had, sir, as little reason to fear an improper interference with our slaves, from the New England States, as from any other States. There are, doubtless, some restless spirits in New England, as well as elsewhere, who, borne away by fanaticism, or something worse, are sending their seditious pamphlets and speeches among our slaves, and taking other improper steps to excite insurrections; but those who are most devoted to this unholy service are nearer to us.\*

The gentleman from Massachusetts, [Mr. WEBSTER] has compared the comforts and advantages of the people of the free and slave States, and given a decided preference to the former. I believe, without arrogance or ostentation, there is, to say no more, as much comfort to be found in the slave-holding States, as in any other portion of the Union. There is as much industry, as much kind feeling, as much charity, as much benevolence, as much hospitality, and as much morality; and all the social virtues are as much cherished as they are anywhere, either in this or any other country.

I am not disposed, sir, in this desultory manner, to examine this subject in all its bearings. The occasion is not a suitable one. Nor will I go into the origin of slavery in this country. If I were to do so, I might, without fear of contradiction, say, that "Plymouth, the place where the pilgrims landed," was the second port at which African slaves were bought and sold on our shores. I once examined this subject fully, but, at the same time, fairly and fearlessly. I say, sir, I will not inquire how slaves were first introduced here, but seeing they are here, and have been crowded from all the other States upon us to the South, I will address my arguments, or present my reasons, to the sober understanding of those that hear me, why they ought, and why they must be, left to time, and to the discretion of those who own them, to effect a change, if one can be effected, to alter (I cannot say to better) their condition. All the schemes of colonization, and returning them to their primitive country, are wholly visionary. These things do well enough to talk about; and sometimes have a political effect, or give pecuniary employment to those who have nothing else to do. But, sir, if they were now all free, and the Government had nothing farther to do than merely to transport them to Africa, you might take a very cent from your treasury, your whole annual revenue, and it

would not pay one-fourth part of the expense of their transportation—no, not one-fourth part.

Then, sir, what are we to do? Are we to turn them loose upon society; to shift places with their masters; they to become masters, and their masters to become slaves? For, be assured, the two cannot live together as equals. What other effect is such a state of things to produce upon this community?

When the subject of slavery was once before the Senate, on a former occasion, I recollect it was stated by a very distinguished gentleman, then a Senator from Connecticut, [Mr. DANFORTH] that in the town where he resided there were an hundred and fifty white persons for one black person; and that there were at least three black persons for one white person convicted of public crimes. To what extent would be the pillage and depredations of these people, were they all let loose upon society? What could check their rapacity? Its limits cannot be imagined. Some mad missionaries, and self-cherished philanthropists, with some of our raving politicians, affect to believe that the salvation of this Union depends upon the question of a general emancipation. But I will ask, if there be an orderly, honest, and peaceable citizen, either in the Northern, Southern, Eastern, or Western portion of this Union, who would calmly and deliberately give his assent to such a state of things. I will not believe, for a moment, there is such a one to be found. Therefore, I can scarcely believe that I ought here to make this a serious question. Whenever it shall happen that any State shall bring this subject, in any serious form, before the public, I shall then be ready and willing to meet it, in any shape in which it may present itself, be that shape what it may.

We have been egregiously misrepresented, sir, by visionary theorists, speculating travellers, and ranting politicians, who would impose upon the world a belief that the slaves of the Southern States are starved, and miserable, and tortured, and treated like brutes. It is utterly false. They may travel from pole to pole, and traverse every region of the civilized world, and they will find that there is not a peasantry on the face of the earth that enjoys so much civil liberty, and, at the same time, lives so comfortably, and so beautifully, as the slaves of the Southern States. The idea which has gone abroad, to the contrary, is visionary and fabulous. We are told, and the world is told, in the pamphlets and public speeches, written and uttered by blockheads that know nothing about it, that we never lie down to sleep in safety; that we are continually in fear of having our throats cut, before we awake. In some of the cities, where these pretended philanthropists are daily tampering with, and exciting the slaves to insurrections, they have occasionally had some alarms; but on the plantations, and in the interior of the State, such a thing has never been heard of. Did it become necessary for me to arm against an enemy, either foreign or domestic, and the laws of my country would permit me, I would select my troops from my own slaves; I would put arms into their hands, and tell them to defend me; and they would do it; not from the timid fears of abject slaves, but from their devotion and attachment to me, as their benefactor and protector. I will not deny that there are hard masters among the slave holders, but that evil is doing away; public opinion, and that attachment that is constantly growing up between the master and his slaves, have nearly put it down. There is not to be found, sir, more cheerfulness, and more native gaiety, among the population, in any condition in life, than on a plantation of slaves where they are treated well. Moreover, the slaves themselves know all this; and what is more, they feel it. They have none of that sickly longing for freedom, with distress, poverty, and starvation. I repeat it, sir, that there is no portion, I do not say of black population, but of the peasantry, of the European continent or anywhere else, among whom there is more enjoyment, more hilarity, and more practical civil

\*A paper published at Georgetown, Tennessee, and a pamphlet published in Baltimore, were against slavery, and both sent to South Carolina, and were as poisonous as a viper.—Note by Mr. S.



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liberty—yes, civil liberty, in its true practical sense—than constantly exists among Southern slaves. As to crimes, they are so rare among them as to be almost unknown. In proportion to their numbers, there are fewer public crimes committed than among any other people, of any other condition living.

This is not an exaggerated picture of their condition. Why, then, have we all this slang about emancipation and colonization? Were the Government able to pay for them, and transport them to Africa, it would be a sacrifice of their rights and their happiness. It would be sending them from a state of peace, protection, and plenty, to the miserable condition of starvation and butchery. I, sir, will never be the instrument of setting a negro free, or permitting the Government to do so, that he may be consigned to poverty and misery, when I am conscious I can make him comfortable the rest of his days.

Sir, one word more: In the State of Ohio, where slavery is not tolerated, there was at one time a great deal of this kind feeling, as regarded the emancipation of slaves; many took sanctuary there, who had escaped from their masters. So strong was this feeling, at the crisis which brought about the admission of Missouri into the Union, that all the members of Congress from that State opposed her admission, unless under an express prohibition of slavery.\* Since that period, however, they have found, from experience, that a free black population cannot be tolerated in that State, but under peculiar restrictions, imposed by law. In consequence whereof, the laws of that State have recently been enforced, and the free people of color, being unable to conform to its rigid exactions, have been led to seek an asylum in the British province of Upper Canada; where, we learn through the medium of the public prints, they have made a settlement, and expect to augment it by applying to the British Government for a large donation of lands. Should this colony succeed, and grow to any extent, if I might hazard an opinion I would say, this might become a more formidable annoyance to the peace and safety of that State, than their former Indian neighbors. It is not for me to arraign the conduct of the good people of Ohio for any municipal regulations their Legislature may have thought fit to adopt. If they be satisfied with that policy which has driven from that State the black people, whom they call free people of color, but many of whom are the slaves of American citizens residing in other States, to the British possessions, it is not for me to complain. But suppose, by what has been called the humanity of their laws, slaves from other States should be still tolerated to take sanctuary there, and make that State a medium through which to pass from their rightful owners in the other States, to this new colony in Upper Canada, and that colony should be fostered by the British Government, may not the people of color, in case of a rupture between the two countries, become a thorn in the side of our fellow-citizens of Ohio? Perhaps there is no description of people in existence who so completely fill the character of marauding warriors and free-booters as a colony of free blacks brought together under such circumstances.

With these remarks upon a subject of deep concern to the Southern States, and which ought to be of little concern to any body else, I shall pass on to the subject of Internal Improvement, of much concern to us all, and which has occupied more or less of the attention of every gentleman who hath participated in this debate.

In pursuing this theme, although of great magnitude, and of much importance to this Government, it will be my course, as well as it hath been of those gentlemen who have preceded me, not to give it a thorough investigation.

The debate upon this question has thrown but little light on it. It has been a debate more of censure than of illustration. Each gentleman has at least justified his own political course, whilst he reproached that of others. And some warmth has arisen as regarded the origin of this measure—one asserting it originated in the South, another denying that fact, and imputing the origin to the North. Claiming no share of that honor myself, I am perfectly willing to leave that part of the controversy to those whom it may concern. But it is certainly worth remarking that, in all the warmth of discussion, they have confined themselves to expediency alone, without touching the constitutional question.

The gentleman from Massachusetts, [Mr. WEBSTER] has come out with his opinions very decidedly in favor of the power of Congress over the subject of Internal Improvement. His opinions and my opinions do not accord. However, whether they accord with mine or not, I like decided opinions upon political questions, because they can be met and combated. This gentleman assures us his mind is settled; that he has satisfied himself that the power exercised by the General Government, in constructing roads and excavating canals, is within that class of powers delegated to Congress by the constitution; and that the exercise of that power is for the great interest of the Union. However I may be pleased with the frankness which that gentleman has displayed in avowing what his opinions are, I am, nevertheless, by no means satisfied with opinions only. They illustrate nothing; settle no point; nor is it by any means satisfactory that that gentleman should inform us that he had been associated with other gentlemen, from South Carolina, in promoting the objects of Internal Improvement, or that it had its origin in South Carolina. It is enough that the people of South Carolina think for themselves upon this great question, and feel themselves bound by the opinions of no politicians. Without any compliments from me to place that gentleman conspicuously before the public, we know very well that he is well versed in the laws of his country, in the laws of nations, highly distinguished for his legal attainments, and long accustomed to the construction of legal instruments. I should have liked, therefore, to have heard from him, on this occasion, not only his opinions, but likewise his constitutional reasons, for his very decided opinion that Congress possessed this constitutional power.

The Senator from Kentucky [Mr. ROWAN] has dwelt a good deal upon this subject, but has arrived at no explicit opinion upon the constitutionality of the measure. He is equally learned and equally experienced in law and legal construction with most gentlemen. It would have been desirable to have heard his constitutional views, but he has not favored the Senate with them. He has assigned, as a justification of the course he has pursued himself, not that it was constitutional, but that his constituents believe the General Government has this power, and that it is for their convenience that the General Government should exercise it; and, as their Representative, he felt himself bound to support it. He acknowledges the inexpediency of the exercise of this power by Congress; yet he has uniformly voted for every appropriation, for the Louisville canal especially, as well as for every other road and canal for which an appropriation has been asked.

I do not see the Senator from Missouri [Mr. BENTON] in his seat. I am sorry he is not there; but not intending to say any thing, as regards his opinions, in his absence, which I would not say where he present, it is not material. He has not been altogether uniform on this question. He has voted according to circumstances. Of the Cumberland road he has been a uniform supporter, always voting for appropriations for its continuance, whenever asked for. He has uniformly, also, supported the appropriations for the Louisville canal, or for subscriptions by the General Government for stock in that company, which are

\* General Harrison was an exception. He had thought well on the subject, and was decidedly opposed to the restriction. He put every thing to hazard, that he might discharge his duty.—Note by Mr. S.

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appropriations of the most exceptionable character. He is, however, opposed to appropriations for roads and canals that lead from the Western States to the Atlantic States, because, as he alleges, they divert the commerce of the Western States from its appropriate channel, the Mississippi, and appropriate market, New Orleans.

To what purpose has this subject been brought into this debate? It has undergone an elaborate discussion by those gentlemen, but neither of whom have so much as attempted to give an exposition of the constitutional principle that confers this power upon Congress. It is not satisfactory to exercise the power without showing how the power is obtained. The exercise of this power produces a continued drain upon your treasury. It is much to be regretted that, whilst both the gentleman from Kentucky and the gentleman from Missouri have given such a display upon constitutional principles and State right principles, this constitutional principle should not have been illustrated.

In support of State rights, they have bestowed much consideration. But there is something irreconcilable to my mind that gentlemen can raise the State right standard, and yet vote large appropriations for roads and canals, to be applied under the power of the General Government in the States. The State right party cannot admit that doctrine. They consider the appropriations by Congress for Internal Improvement as the source of the evil. It is Internal Improvement that keeps alive your tariff. It is fed by your tariff. Without the latter would perish. How a statesman can support Internal Improvement and oppose the Tariff, is a paradox which I cannot solve. But how he can vote for both, and still advocate State rights, is a paradox that nobody can solve.

Another gentleman [Mr. HAYES] has said, the law of 1824, which appropriated thirty thousand dollars to enable the President to obtain plans and surveys of roads and canals, was an experiment—that the subject was not well understood. This was a woful experiment, sir; an experiment that has rendered the Southern States completely tributary to the other States of the Union. The enactment of that law was hailed by the advocates of Internal Improvement, which had been balancing for eight years, between victory and defeat, as a confirmation of the power of Congress over Internal Improvement. The subject was as well understood by the members of Congress then, as it is now. The people at large did not understand it; nor never would, had the discussions been confined to Congress. That Congress understood it, cannot be questioned. It had been debated warmly in Congress, from 1816 till that law passed in 1824. The great bonus bill of 1817 underwent a thorough discussion in both branches of Congress, and passed both Houses, and was negatived by Mr. Madison. The next year it was resumed, and then underwent another very long and very animated discussion. And so it did every year, in some shape or other, until the act of 1824, which act, alone, has taken from your treasury thirty thousand dollars every year since, except one, for plans and surveys, independent of millions for the making of roads and canals. On the bonus bill, sir, in 1817, only one fortnight after I first took my seat in the Senate, I made my stand. I voted against that bill in all its modifications. And I think, sir, I understood it as well then as I do now. I understood it then to be a political speculation, and a speculation in violation of the constitution of my country. In 1820 or 1821, when it was contemplated to extend the Cumberland road, a resolution was submitted to the Senate by General Laocoe, then a Senator from Pennsylvania, to appropriate ten thousand dollars for a survey. I opposed it. On that occasion I stood alone, except that my worthy friend Mr. Macon, who I regret is not here, voted with me. I was then told that nothing would be asked of the Government but to survey. I replied, if you make the survey, you must make the road. My prediction has been fully verified; the road has been extended every

year. And you have appropriated more than one million of dollars since that time, to continue that road. In this way, sir, we have suffered this system to grow up in our Government by gradual encroachments.

On this subject I have, on a former discussion, when it was properly before the Senate, in a shape upon which a vote could be directly taken, had the honor of giving my constitutional objections at full length. I shall forbear to do so here, and leave this subject precisely where I found it—a subject of debate, without a conclusion.

I come now to the subject of the tariff, concerning which there exists so much anxiety, and upon which there depends so much interest. It has occupied a conspicuous place in this discussion. And I have, from the commencement of the debate, felt an invincible reluctance to approach it here. I should have no reluctance, but, on the contrary, a great deal of pleasure, were this the time and place suitable for that occasion. The question is one of vital importance, not only to the State from which I come, but is of vital importance to the whole Union. In discussing it here, and at this time, who am I to address? I have the honor, it is true, to be surrounded by the Senate of the United States, who will, perhaps, do me the favor to hear me. Also, the galleries are full of respectable citizens, who will probably give me their ordinary attention likewise. To which of these bodies shall I appeal for a decision, whether I am right or wrong? If I appeal to the Senate, they have no such question before them. If to the galleries, they have no jurisdiction to decide upon any question here. And although we are in the Senate chamber, the Senate can no more decide upon this question than the meekest stranger in the galleries. It is a subject, sir, that might not to be impaired by any commonplace familiarity, in debate, where a complete investigation of all its bearings cannot be attained, and where no decision is sought for. It is lessening its consequence, and giving up more than half its importance. The time is approaching when we shall be able to bring it before the Senate in a different form, where it can be discussed upon its merits, and the vote of the Senate passed upon it to a useful purpose. But, seeing the subject has been brought before the Senate, although I do not intend to go into any thing like a general view of the question, I will, nevertheless, not pass it entirely unnoticed.

This discussion, sir, has involved the consideration of two great political questions; whether, if a State be borne down by the oppressive operation of a law of the United States, the proper appeal from that oppression is not to the Judiciary; or whether, in such a case, the State aggrieved has not a right to withdraw, and say to the rest of the Union, we no longer belong to you, because you have violated the compact with us; we have decided for ourselves that you have oppressed us; your laws are unconstitutional, and we will no longer continue a member of the Union.

On the first portion of this subject, if it could be heard before the Senate as a distinct proposition, and the Senate had the power to decide upon it, I would give it, as far as I should be able, the best consideration its importance would demand; but it is utterly out of the question for a speaker to investigate and descend upon a mere speculative political question, where no results are to be expected, as he would feel himself bound to do were the question a real one, from which some solid and permanent good was to flow, instead of one that should yield little more than an opportunity of making a speech to raise his own fame. But, as it has been the course, in this erratic flight of the Senate, that has drawn into its vortex any thing and every thing, civil, religious, and political, as the speaker may have thought fit to select, and this has been selected as one choice subject by those who have gone before me, I will offer a few unpremeditated remarks.

For the judges of the United States I entertain the highest respect, both in their judicial character as well as in

their individual character; and am willing to attribute to them as much integrity, and as much talent, as falls to the share of any judges, in this or any other country. But it seems to me that their province is limited to decisions between citizen and citizen, and between the United States and citizens, the individual States, &c. and in all cases of *meum et tuum* their decisions are conclusive. But may not a distinction be taken, where a law is notoriously unconstitutional and oppressive upon the whole community of a State; where the ground of complaint would be, that Congress had enacted a law, not only against the letter, but likewise against the spirit and meaning of the constitution; which law was undermining all the private rights of individuals, as well as rights appertaining to them as the community of a State?

Then, sir, suppose the court of the United States always to consist of seven judges, as it now does; and suppose a question upon the constitutionality of a law of the United States that had vitally affected the people of a State in their private and municipal rights should come before these seven judges for their decision, and three of the seven should pronounce the law constitutional, and three others of the seven should pronounce it unconstitutional. Here the opinions of six of the seven are completely neutralized, and the whole weight of the question, be it of what moment it may, must devolve upon a single judge. This single judge would hold the balance, and have it in his power to decide the fate of the Union by his single dictum. The entire operations of the law must cease, if he should say no, or its operations must go on if he should say ay; be the consequences what they may. The peace and happiness of the Union must be destroyed or preserved as he should be guided by prudence and honesty on the one hand, or by caprice and ambition on the other; because judges are not always exempt from these passions. Or let us suppose a law, affecting in a special manner the private or municipal rights of the people of a whole State, should be enacted by Congress, to compel vessels going from one port to another, in the same State, or to a port in a different State, to clear out at the port of departure, and the master should refuse to do so because the law was unconstitutional, as the constitution expressly forbids it: Should your judges ever be misled to declare such a law constitutional, and the collector of the revenue should be resisted, could he who made the resistance be convicted of an offence against the constitution of his country? If the opinions of the judges are to be considered the constitution, or if the judges are clothed with this tremendous power—a power that gives to a single man the control of the destiny of this Union—is it not time to inquire whether it be not fit to place it in some more responsible repository?

The other great question, whether a State has a right to secede from the Union, if Congress should pass an unconstitutional law that should prove oppressive, is a question of still greater moment.

Were I to be asked what opinion I entertained of the power of a State to dissolve its political connexion with the Union, I would respond, go ask my constituents. This is not the time, and place, and circumstances, that will justify a discussion of that question between the United States and the State of South Carolina. If South Carolina is aggrieved by the tariff—and she most assuredly is, to an extent of great oppression—and the remedy is only to be found in a separation from the Union, it belongs exclusively to the people of that State to meet in convention, examine the subject, weigh the consequences, and settle the mode of operation. That is the course, and the only course, by which this question can be determined, and not by any flight of fancy that may exist in my imagination, or that of any other member of Congress. I unfeignedly believe there is at this time in the Legislature of South Carolina, much talent, much patriotism, much devotion to the Union, and as much independence and firmness as could

possibly be wanting to adopt any plan of operation that wisdom, patriotism, justice, interest, or the love of union, may dictate, for the relief of their burthens. I do not withhold my opinion here from fear of responsibility. I shrink from no responsibility imposed upon me as a member of this Senate. If the wisdom of my Legislature, whose province it is to determine upon that measure, and act upon that great occasion, should think proper to call a convention, and my country should honor me with a seat there, I will assume any responsibility which the wisdom of the occasion, or the interest of my country, may require at my hands.

Sir, I will go further; and should the expediency or the madness of the majority in Congress push them on to impose one unconstitutional burthen after another, until it can be no longer a burthen, and no other alternative remains, I will then take upon myself the last responsibility of an oppressed people, and adopt the exclamation of the poet, *dulce et decorum est pro patria mori*; and if the exigencies of my country should ever demand it, I will be ready to shed my blood upon the altars of that country. I am attached to the Union; I wish to see it perpetuated; I wish it may endure through all time. But if the same causes exist in our Government which have overturned other Governments, what right have we to expect an exemption from the fatality of other nations? We need not go abroad, or into ancient history, for instance to warn us. If we only go back to 1774 and 1775, we shall see a much less cause producing that revolution which separated these United States from Great Britain, than now exists between the United States and the State of South Carolina. What was the exciting cause of that revolution? A three penny tax on tea, which was then merely the beverage of the rich, and a small tax upon stamps. It was these small duties that set the whole United States in a flame; and that flame spread with the velocity of the winds, from one end of the United States to the other. Massachusetts, Virginia, and South Carolina, were united then in the same cause—the defence of their civil liberty; which was threatened by the small duty on tea. Memorials and remonstrances were resorted to, but for a short time, until a company in Boston, disguised in the habiliments of Indians, counselled, if not led, by the immortal Hancock, boarded the ships, and threw all the tea in the harbor overboard. May we not look for the same effects from the same causes, at all times, and in all places?

Whilst I regret that, under existing circumstances, this picture is not too highly colored, yet I believe there is a redeeming spirit at hand. The constitution itself, which has been made to bend to suit the interests of majorities, is undergoing a new version. Investigations of its true and plain common-sense construction is going on in more lands than one.

Among the distinguished writers engaged in this investigation is Dr. Cooper, who has been alluded to by gentlemen in this discussion; whose name is identified with every science; whose life has been devoted to the cause of civil liberty and human happiness. In his Political Economy, Consolidation, and other recent political pieces, he has torn the mask from the delusion of constructive powers and party intrigue.

A writer under the signature of "Brutus," in his "Crisis," has, with a master hand, given an exposition to the great agitated points of the constitution, on the subjects of the Tariff and Internal Improvement, that will remain a treasure to his country while talents shall be regarded.

The lectures of Mr. Dew, of Virginia, on the restrictive system, are more like a mathematical analysis than the lectures of a professor on political economy. His illustrations are so plain, and so strong, and so conclusive, that they are perfect demonstrations of the errors and absurdity of the American System.

None of these writers have ever been answered by the

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advocates of Internal Improvement and the Tariff System. To these may be added, a paper recently published, by order of the House of Representatives, which will be read with much interest. It is the report of the Committee on Commerce, written, as we understand, by Mr. Cambreleng, the chairman of that committee. It gives a more expanded view, and furnishes more evidences, drawn from facts, of the great impolicy and ruinous effects of the tariff, than have appeared in any state paper heretofore published by the Government. The disastrous effects which it has already, and will continue to produce upon our foreign commerce, are so fully and clearly established, that it must command admiration, and will be extensively read.

The flood of light which those distinguished writers have shed upon this subject, to which may be added this report, cannot fail to enlighten the benighted minds of an honest industrious community, and bring them to reflect, seriously, whether it be just to tax the many for the benefit of the few. The manufacturers themselves regret that this system has been introduced. And well they may: for it is now fully ascertained that at least one half of the moneyed capital of the New England States has been sacrificed by this *mania*, and a large proportion of the proprietors of manufacturing establishments bankrupted. Fortunes, that have been accumulating for half a century, have been swept away in an instant.

There can be no probability that men of business, raised to active pursuits, and accustomed to employ their capital in some productive and advantageous manner, can remain devoted to a system that must produce their certain destruction. In addition to so many reasons that exist, why we may hope for an early dissolution of this oppressive system, another reason, as strong at least, if not stronger than any other, is the certainty that the public debt of the United States will shortly be extinguished. When that period shall arrive, there will not be even a pretext for the continuation of the tariff, except it be for the explicit and avowed purpose of protecting the manufacturers. And I beg leave to ask if there be even one man who can for a moment suppose that twelve millions of the free people of the United States will calmly submit to have the direction of the whole of their labor taken out of their own hands, and placed under the management of the General Government; not to secure a revenue for governmental purposes, but that the Government may, at its discretion, parcel out the profits of the labor of one portion of the Union to bestow on those of another portion of the Union? Sir, it is morally certain that they will submit to no such tyranny. Nor will it be necessary for the people to rise in their might to put it down, either by one portion seceding from the rest, or by the more direful alternative of civil war, that must drench the States with the blood of their own citizens. Public opinion must, and will correct this mighty evil, and in its own way, and leave the States still further to cultivate their union, upon those pure principles that first brought them together. If I am mistaken, however, and these hopes should prove illusive, it will then be time for the States to determine what are their rights, and whether they have constitutional powers to secede from the Union.

But, sir, whilst I hope that a happy revolution in our political affairs awaits us at no distant period, resulting from this powerful combination of circumstances, I entertain not the least hope of relief from the justice or magnanimity of either the Eastern or Western States. They have got the tariff, however, fixed upon us, and will, no doubt, hold on until it becomes their interest to abandon it; and then, and not till then, can we hope for their concurrence in its repeal. The gentleman from Missouri [Mr. BAXTON] appeared, at the beginning of this debate, to feel great sympathy for the oppressed planters of the Southern States; and some gentlemen hoped that he might probably join the South, and lend his aid to repeal at once

the oppressive tariff. But, sir, that hope is gone. Instead of giving his aid to repeal the tariff law entirely, and especially such parts of it as bear most oppressively upon the Southern States, he has introduced a bill purporting to be "A bill to provide for the abolition of unnecessary duties; to relieve the people from sixteen millions of taxes; and to improve the condition of the agriculture, manufactures, commerce, and navigation, of the United States."

This is the title of the bill, sir, which is very specious, and would seem to indicate that the tariff system was to be totally abolished, and that as soon as this specious bill should be acted on. When you leave the preamble, and look into the provisions of the bill itself, it gives you a very different view. You will there find the duties to be reduced are, for the most part, duties on articles of luxury; such duties as affect the rich classes of society only, and for which the laboring class of the community care nothing. Not a few of them are articles of extreme luxury. Amongst them are, "cocoa, olives, figs, raisins, prunes, almonds, currants, cambrics, lawns, cashmere shawls, gauze, thread and silk lace, essence of bergamot, and other essences used as perfumery, porcelain, Brussels carpeting, velvet cords," &c.

These are articles mostly used by the rich, the gay, and splendid. They are rarely used by that substantial class of citizens who move in the middle sphere of life. Indeed, there is not a single article in the whole catalogue the removal of the duties on which will materially affect the Southern States, but would prove as favorable to the Western States, and more so than to any other portion of the Union. All spirits, woollens, and cotton goods, that come in competition with spirits, woollens, and cotton goods manufactured in the United States, are not included in this exemption from duties. Besides, even this supposed relief is, by the provisions of the bill itself, postponed for ten years. In ten years, if the present tariff should continue, it will be perfectly immaterial whether they are ever taken off. If they are to be taken off, why not now? As well might it be postponed till another generation, as to postpone it ten years. The articles of iron and steel, in all their forms, and cotton and woollen goods, cotton bagging, and cordage, and many other articles, are passed by, unnoticed, in this bill. These are the articles we wish to see duty free. They would restore your commerce and navigation, and give real relief. But, sir, what is of still greater importance to the Southern States, the gentleman has concluded this relief bill, by laying a heavy duty of thirty-three and one-third per cent. on all foreign furs and raw hides—a duty heretofore unknown in any of our tariff laws; a duty perfectly suited to Missouri, as that State is a grazing as well as a fur State. Such a tariff is precisely what she wants. These duties, added to the duties laid on lead, in all its forms, in the tariff of 1828, which that gentleman [Mr. BAXTON] voted for, with the express purpose of securing this duty on lead, will for the present complete her wishes. Furs and raw hides are articles of prime necessity in this great community; and, unless the people will consent to go without hats and shoes, or, in plain terms, go bareheaded and barefooted, the rest of the States must pay a very heavy tribute to enrich the people of Missouri. This may be a relief bill for Missouri, but for no other State. Besides, there is a bill reported more than a month before this bill, by the Committee of Finance, which embraces the whole tariff, without imposing any new burthens, and which, I hope, may be taken up in due time, and acted on.

Sir, I have pursued this subject much farther than I originally intended. I will here abandon it, and reserve what I may wish to say farther, until the question on the tariff shall be fairly before the Senate, and will now advert to another leading topic in this debate, as there are many to choose from.

The topic, sir, I have alluded to, is that which relates to

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the party politics of other times. A contest had arisen of a singular character; which was, whether the Eastern States, or the Southern States, had been most friendly and magnanimous in promoting the growth and advancing the interests of the States in the West. And in solving that question, the controversy had assumed a new aspect, and had been converted into one upon parties and party politics, of the most violent and personal character, between the gentleman from South Carolina [Mr. HAYNE] and the gentleman from Massachusetts [Mr. WEBSTER.] The gentleman from South Carolina had brought before the Senate a full view of the old federal party of 1798. He had carried it back to the whig and tory parties of England, and derived the federal party from the tory party of that country. He had brought before the Senate the Hartford Convention, and read its journals, to prove that a settled purpose had existed in the New England States, to dissolve the Union. He had brought before the Senate the Olive Branch, and read many of its choice paragraphs, to illustrate the violent opposition in New England to the late war between the United States and Great Britain: and concluded with the "coalition," the ghost of which he supposed had haunted the gentleman's [Mr. WEBSTER's] imagination, and, like the ghost of "Banquo, would never down."

The gentleman from Massachusetts, [Mr. WEBSTER] in reply to these charges of political heresy, says he had nothing to do with the Hartford Convention; that he had never read its journals; and if its ghost, like the ghost of Banquo, had risen to haunt the imagination of any body, "it could not shake its gory locks at him." And, in his turn, brings charges against South Carolina, and says, "other conventions, of more recent existence, had gone farther than the Hartford Convention," and named what he called "the Colleton and Edgefield Conventions;" and read the proceedings of the Colleton meeting of 1828, after the enactment of the tariff law of that year. These proceedings, he argued, were more inflammatory, and tended more to disunion, than the proceedings of the Hartford Convention could possibly do.

If these conventions, as they have been called, have existed, either in New England or South Carolina, they are not chargeable to me. And should the ghosts of either, or all of them, arise, to haunt the imaginations of any concerned, I can exclaim, with the gentleman from Massachusetts, "they cannot shake their gory locks at me."

There has been much crimination and recrimination between those two gentlemen. One reproaches the other with political tergiversation, and it is reciprocated. The gentleman from South Carolina says the gentleman from Massachusetts had distinguished himself, whilst a member of the House of Representatives, in 1824, in opposition to the tariff; but in 1828, took a different course in the Senate, and supported the tariff. The gentleman from Massachusetts, on his part, says, the gentleman from South Carolina, in 1824, while the act to procure the necessary plans and surveys of roads and canals, "which covered the whole subject of Internal Improvement," was under discussion, opposed every modification of the law that tended to diminish the power of Congress over that subject, but that he had since shifted his ground, and had become opposed to Internal Improvements. The speeches, the yeas and nays, and the Senate Journals, have all been produced and read in the Senate, to substantiate those mutual accusations. Other members of the Senate, who have shared in this debate, have pursued the same course of crimination and recrimination; charging and proving on their opponents, whomsoever they may happen to be, that they had held and maintained, at different times, different opinions upon the same political subjects; and had voted on the one side at one time, and on the other side at another time, as party interest or party feelings might dictate. These reciprocal vituperations have not been the result of a sudden gust of ardent feelings, or unguarded expressions, to pass off

with the moment and be forgotten; but the records and journals of Congress, as far back as the revolutionary war, have been ransacked and hunted up, and brought into the Senate—the speeches, and the yeas and nays, read, to establish the inconsistency of each other; and, moreover, all this has gone abroad to adorn the public prints, and mingle in the party strifes of the day.

When such scenes as these are playing off in the Senate chamber, with open doors, and a crowded audience, if it be not a duty, it is at least justifiable, for those who are conscious of having pursued a different course, to avow it in self-defence. In those accusations and defendings, in the course of this debate, a great deal of that kind of egotism which they necessarily involved had been indulged. I will beg leave to indulge a little in this egotistic style also. If any occasion will palliate this request, it must be such as the present.

I have had the honor of acting an humble part in public stations from an early period of my life; I have been eleven years in this Senate, and if it were not too ostentatious, I would invoke a scrutiny of my own votes and political opinions. I fear no challenges for inconsistent votes; I fear no Journals, no yeas and nays. I claim no exemption from human fallibility. I may have given many erroneous votes, but am conscious I have never given an inconsistent vote, or held, at any time, inconsistent political opinions. If I have, I ask them to be proclaimed.

The origin of parties is as old as the Government itself. When the division between the federalists and republicans first took place, the parties were nearly balanced, as regarded numbers, and as regarded talents; and were, moreover, pretty equally dispersed throughout the United States. But all parties unanimously concurred in the election of General Washington to the Presidency. At the close of his administration, the distinction of parties was fully developed, and the contest for supremacy between the two parties commenced. The federal party succeeded in the election of Mr. Adams, the elder. He had been a revolutionary man, of distinguished fame, and his party, a little the strongest, placed him in the Presidency, as the successor of General Washington. And Mr. Jefferson, who then stood at the head of the republican party, was elected Vice President. The federal party, considering themselves firmly fixed at the head of Government, for the next eight years at least, the better to secure the acquisition, and perpetuate their power, enacted the alien and sedition laws. The country became alarmed at this high-handed measure, and the republican party, very justly, laid hold of it to show the dangerous tendency of augmenting the strength of the General Government by the constructive powers of the constitution "to provide for the public good and general welfare." The consequences were, that the republican party gained strength from this, and other circumstances, and at the next Presidential election elected Mr. Jefferson over Mr. Adams. They held the power until the late war commenced, and through that war, until its termination, and the restoration of peace. The federal party were universally opposed to the war, at its commencement. The federalists of the Northern States, and many others, elsewhere, continued their opposition throughout the war. But the war having terminated triumphantly for the United States, the federalists soon became too enfeebled to act any longer as a party. And having no fixed object, some turned republicans, and, being new converts, like all other new converts, became exceedingly devout. Many respectable men amongst them, not disposed to abandon principles which they had honestly adopted, retired to private life. One portion, however, in the State of New York, about forty in number, the better to provide for themselves, made a formal renunciation of their principles, in a public address, in

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which they alleged there was no longer any federal party to which they could hold on; therefore, they avowed their adhesion, for the future, to the strongest republican party. Some humorous wag of the federal party, upon seeing this formal renunciation, drew up a regular deed of conveyance, in which, for divers good causes and valuable considerations him thereunto moving, he did bargain, sell, release, and set over in market, overt, forty thousand federalists, who had left their ranks, to the republican party, in fee simple forever.

It was now supposed that the federal party had fallen to rise no more, and they were much sought after, and greeted as brothers of the republican family, by the leading politicians of the day. They were told there was but one party; that no such thing as a distinct federal party, or a distinct republican party, existed. But the phraseology was, "We are all federalists, all republicans." It became an invidious thing to denounce a gentleman as a federalist. In the State of South Carolina it was so taken and generally understood by all, and so acted on. The community were said to be satisfied with it. Good feelings were said to be generated by it. It was pronounced as the great desideratum to strengthen the Union. In fine, there was nothing great or good which it was not to effect.

As an evidence of the temper and understanding of the citizens of South Carolina, upon the happy results of the amalgamation of the federal and republican parties, among many other instances I will beg leave to read a few short passages from an eloquent oration, delivered in Charleston, on the 4th July, 1821, before the Cincinnati and Revolution Societies, by a distinguished gentleman of that place, who was a member of the Cincinnati Society. After speaking on other interesting relations between Great Britain and America, and the effects of the late war between them, he says:

"These are not the only reflections of an exhilarating character, which the late war is calculated to excite. It has led to the extinction of those parties, the collisions of which once weakened our country, and disturbed the harmony of its society."

"I come not here to burn the torch of Alecto; to me there is no lustre in its fires, nor cheering warmth in its blaze. Let us rather offer and mingle our congratulations that those unhappy differences, which alienated one portion of our community from the rest, are at an end, and that a vast fund of the genius and worth of our country has been restored to its service, to give new vigor to its career of power and prosperity."

"To this blessed consummation the administration of our venerable Monroe has been a powerful auxiliary."

"The delusions of past years have rolled away, and the mists that once hovered over forms of now unshaded brightness are dissipated forever. We can now all meet and exchange our admiration and love, in generous confraternity of feeling; whether we speak of our Jefferson or our Adams, our Madison or our Hamilton, our Pinckney or our Monroe, the associations of patriotism are awakened, and we forget the distance in the political zodiac, which once separated these illustrious luminaries, in the full tide of glory they are pouring on the brightest pages of our history. This unanimity of sentiment is not a sickly calm, in which the high energies of the nation are sunk into a debilitating paralysis."

"This Union can only annoy the demagogue, who lives by the proscription of one half of his fellow-citizens, and in the delusions of a distempered state of public opinion. But to him who loves his country as a beautiful whole, not scarred and cut into compartments of sects and schisms, such a picture is one of unimixed triumph and gratulation. The necessity for the existence of parties in a free State, in the sense in which we have unfortunately understood them, is one of those paradoxes which the world

has rather received than examined, and seems allied to the sophistry which would lead us to believe that the pleasures of domestic life are promoted by its dissensions, or that the jarring of the elements is essential to the harmony of the universe. No! an united is a happy as well as an invincible people."

I have never acted with that portion of politicians who were denominated federalists. I formed my political creed at the eventful period of 1796. I then took my stand as a republican of the Jefferson school, and I have never departed from it. And if the politicians of that, or any other school, say I have, they slander me. I have been uniformly opposed to the federal principles, and am opposed to them now. I have been opposed to them, because I thought them wrong. But whilst I have been uniformly opposed to federal principles and federal measures, I have as uniformly treated the persons and reputations of the federal party with every possible respect. I am aware that I have never been a favorite with that party. I have never sought to be so. I am, nevertheless, willing to attribute to them all the integrity and honesty of purpose, of any other party; but I am not willing to adopt their creed. There are gentlemen of that party with whom I am upon intimate terms, and whose friendship and society I esteem as a treasure; but we never converse on party politics.

I cannot, sir, be annoyed by any condition of my fellow-citizens that contributes to their social happiness. Party dissensions hold out no charms for my gratification. There is no faculty of my nature that could take sides in a contest for the proscription of any portion of the community to which I belong, upon party principles. But when I consider the destruction of the federal, and its amalgamation with the republican party, and look at the consequences that have resulted from that union, I cannot but believe that it has been a misfortune, instead of a blessing, to this Government. It has defeated all the great purposes for which the republican party was originally instituted. The federal party was characterized by its constant tendency to extravagance; by its efforts to increase the powers of the General Government; by a free construction of the constitution; by the creation of new offices; profuse expenditure of public moneys; the establishment of banks, and the establishment of a standing army in time of peace. The republican party were opposed to all these operations. It was decidedly by their opposition to these political errors, that they broke down the federal party, and obtained the possession of the Government. Economy was the watch-word of the republican party; the purity of the constitution was their rallying point. They put down the constructive powers of the Government: the alien and sedition laws, based upon "the public good and general welfare" construction, withered and died at their bidding, and never revived. They operated as a complete check upon every abuse of power in the hands of the federal party, and particularly whilst that party held the Government.

By the operation of this powerful check, not a constitutional check, but of the vigilance of a strong opposition party, the constitution itself was brought back to its common sense construction, and the extravagances of the Government were levelled down to the proper exigencies of the Government.

When the republican party got possession of the Government, and Mr. Jefferson came to the Presidency, they enacted the embargo law which he recommended, and which the federal party opposed, upon the ground of its unconstitutionality, it being a creature of "the public good and general welfare" construction; which construction the federal party, although in the minority,

\* This oration was delivered by Major James Hamilton, Jr. late a member of Congress, on the 4th July, 1821.

SENATE.]

*Mr. Foote's Resolution.*

[FEB. 26, 1830.]

yet a very strong minority, denied to be the legitimate construction; and, by their opposition, that law could not be enforced to any valuable purpose, even under the administration of Mr. Jefferson. The legitimacy of the war they could not deny; and whilst contending against the expediency of the war, with a large majority opposed to it, the war terminated successfully, and the federal party terminated with it, as to all efficient purposes of a party. And thence, this "happy union" of the two great leading political parties was consummated. And no party was henceforth known but the republican party, who have had the entire administration of the Government ever since; and whom it was expected would have administered the Government upon the pure democratic principles, and a strict regard to the fair construction of the constitution. And now the inquiry is, not what have they done, but what have they not done? They have given you an American System; they have given protection to that system, with all its train of evils; they have given away your public lands, with an unsparing hand, to the Western States, to private corporations, and to other associations; they have appropriated large sums of money to make roads, canals, clear out rivers and creeks; they have appropriated large sums of money for a joint stock co-partnership with private corporations; and they have now a proposition to divide the surplus revenue amongst the several States, like the spoils of war amongst a successful clan.

All these measures have been effected within the last fifteen years, and since the fall of the federal party. They have been effected by the republican party, many of whom are supporting and voting for most of those measures at this time. These are the blessed fruits of that union of parties which never existed until the federal party was extinct.

I would ask, sir, for what purpose federalism has been raked from its embers at this time? Why has this new impulse been given to a subject that we have been taught to believe had gone down to oblivion? A subject that had been put to rest, long since, by the republican party itself. What evidence have we that ought to alarm us at this period? There is no Presidential election pending; General Jackson has possession of the Presidential chair for the next three years; the Government is solely in the possession, and under the control, of the republican party. The federalists can never be formidable if left to themselves; they are only so when associated with the republicans.

It is not my intention to palliate the federal policy. But to denounce them, when crumbled into dust, appears to me like the lion in the fable. Indeed we know of no party existing by that name. Nor has any existed by that name since the grand union. We know of individuals who still retain that name, and are proud of it; and who still retain a devotion to federal principles. But as a body they are impotent; at least we think so in the Southern States; and they think so themselves. But they become an host when united with the republicans; republicans who call in federal aid, when necessary to do so, to put down a rival and secure their own triumph; and who often throw themselves into the federal ranks to help out a federal candidate, in return, to put down a republican, whom some republican leader wishes to see displaced. They are often associated together under the republican banner; contending in concert against other republican candidates, for the same honors. And if a federalist did not belong to the Hartford Convention, and approved of the war, no matter how late he came to that conclusion, they are, by public opinion, and the sanction of constant usage, entitled to participate in all the honors and offices of the Government. This toleration I am not disposed to complain of; but why are they alternately denounced and careased? If the denunciation was only against the Hart-

ford Convention, and federalists opposed to the war, they can excite no terror; if against them in mass, why are they cherished by the leading republicans, or such as assume to be leaders?

The great misfortune to our country is, the republican party, since its union with the federal party, have separated and formed themselves into three or four parties—all calling themselves republicans, each setting up for itself, and each striving to put down the others. And some politicians are not very fastidious about the means to be employed against a rival party. And when the repudiated federalist is to be used to aid in a project of destruction, he is used in either character, as a federalist or a republican, as the occasion may require.

After the election of President Monroe, three or four republican parties rose upon the ruins of the federalists. Amongst them was the Crawford party. Mr. Crawford being a man of distinguished talents, excellent morals, and greatly esteemed, more than ordinary means were employed to put him down. The presses were employed for that purpose. The Washington Republican was established in this city for that express purpose. Its papers were sent gratis throughout the Union. It denominated Mr. Crawford the Radical chief, and those who supported him radicals. This being a new term in the political vocabulary, its definition was not understood. It was defined to mean—

"An old federalist in a new form, holding the people to be too ignorant to choose a President, and that it is lawful to cheat and defraud them for their own good, upon the ground that they are their own worst enemies."

To aid in this good cause, Mr. Adams, the Coalition Chief, was brought into the republican ranks, and obtained, at least, the second place in the republican family, and especially in the two Carolinas.

In North Carolina, where the electors are elected by general ticket, there were two tickets run—one called the Crawford ticket, the other the People's ticket. In some of the counties, it was agreed, the better to prevent Mr. Crawford's success, that those who voted the People's ticket should endorse upon the ticket "for General Jackson" or "for Mr. Adams," as the voter might choose; and when the election should close, and the tickets be counted, if the people's ticket succeeded, then the endorsements should be counted also, and whosoever had the greatest number—General Jackson or Mr. Adams—should be the people's candidate, and be supported by the people's electors. The people's electors were elected, and they unanimously voted for General Jackson. But I suppose if Mr. Adams had had the greatest number of endorsements, he would have gotten the vote, according to compact. This compact was not universal.

In South Carolina, Mr. Adams was equally beloved by many of the leading republicans. In September of 1824, in the district of Edgefield, a very large and respectable assemblage of the people convened, for the purpose of determining on the most suitable person as their Presidential candidate. They went into a formal election, and General Jackson was elected. But lest they should find that General Jackson would not be sustained in other States, they proceeded to a second choice, to be brought forward in case General Jackson was not likely to succeed; and Mr. Adams was elected, as their second choice, to be kept in reserve. Their proceedings were published in the newspapers, and sent abroad to the world—recognizing Mr. Adams as a republican, and second to none but General Jackson.

\* This was the definition of a Radical, given by Mr. McDuffie, in a pamphlet, which he published at Columbia, South Carolina, in November, 1824, immediately preceding the Presidential election. In that pamphlet, he ranks Gen. Jackson and Mr. Adams together as the two most prominent republican candidates, in South Carolina, for the Presidency. Since that period, the people of South Carolina have obtained the true definition of the term Radical, and are now fighting under its banner.—Note by Mr. S.

FEB. 26, 1830.]

Mr. Foot's Resolution.

[SENATE]

In the city of Charleston, October, 1824, on the day of the election for Representatives to Congress and to the State Legislature, who were to elect the Presidential electors, a full ticket of candidates published their names, and for that purpose addressed the following note to the editor of the Southern Patriot, in this form:

"JACKSON AND ADAMS TICKET."

"To the Editor of the Southern Patriot.

"SIR: You are authorized to say, that the following gentlemen will in no event vote for electors favorable to William H. Crawford as President."

To this declaration they annexed their names, eighteen of them in number. Among those names I recognize gentlemen of the first respectability, of the old federal school; also republicans of the first respectability—all uniting in "fraternity," to support Mr. Adams as the republican candidate, in case any thing should render the success of General Jackson doubtful; but in no event to support Mr. Crawford.

In February, 1824, a committee of the republican members of Congress, consisting of twenty-four, three of them from South Carolina, were nominated to take the sense of Congress whether it were expedient to meet in caucus, to fix upon a suitable candidate for the Presidency.† The committee reported it was inexpedient to meet in caucus at that time. The reasons were, because all the candidates were republicans, and a caucus was only necessary in federal times. Mr. Adams was one of these republican candidates, and was elected.

Accompanying this report of the anti-caucus committee, was the following statement:

"1. That, of the two hundred and sixty-one members of Congress, somewhere about forty-five are federalists; so that the democratic members that might go into caucus are two hundred and sixteen.†"

I will give one instance more of the facility and dexterity with which some of our republicans can metamorphose a federalist, to suit any occasion that may occur. The instance alludes to myself; and I hope I may be pardoned for mentioning it, as I was not an actor, but merely the subject of the stratagem. In less than two years after

the leading party in Charleston, South Carolina, in October, 1824, had exhibited to their constituents and to the world, their "Jackson and Adams ticket," exhibiting them as brother republicans of the same school, and equally worthy of being supported for the Presidency, I had the honor of presenting my humble pretensions for public favor; and, although less than two years after the display of that ticket, I was denounced in a public newspaper as the supporter and ally of John Q. Adams, who was himself a federalist, and a friend to the Hartford Convention; and that I was opposed to General Jackson.\* And this was enlarged upon and reiterated in the same paper; and this, too, when it was known, as far as I was known, that the reverse of all this, as related to myself, was literally true.

I never was the advocate of Mr. Adams. I am opposed, and have always been opposed, to his political principles. I erred in one thing: I did not abuse him in the streets and highways. Had I done so, it might have saved me from this reproach.

When General Jackson was first a candidate, although I was not one of his supporters, I was nevertheless one of his admirers, but not one of his traducers. Before he became a candidate, I had made up my mind in favor of Mr. Crawford, who had high claims; and General Jackson has too much regard for good faith to suppose I ought to have abandoned him. But, in the second canvass, I supported General Jackson throughout; and I will support him again, if he should consent to serve his country a second time. But, when I make this avowal, I am not pledged to follow General Jackson, or any other President, implicitly. I was not sent here to enlist under party banners, but to serve my country upon the principles of the constitution, from which I hope General Jackson will never depart. Much has been said by the politicians, of their support of General Jackson for the Presidency. He was not placed in office by that portion of the community denominated politicians, who make Presidents for their own convenience, and to answer their own interest. They only followed in the train. They were forced into the ranks by public opinion. His party was his country, and his supporters were the sovereign people, who, not yet contaminated with the sickly and corrupt intrigues that will one day prostrate your country, bestowed the Presidency on him for his long, his meritorious, and his well-tried services.

The great mass of the people of the United States are republican, and seek after truth: and when correctly informed, will always decide justly. They love their country, and they love the constitution; and would always serve the one, and be guided by the other, were they freed from the polluted intrigues that daily surround them, generated in the party feuds of scheming politicians, who, without any fixed party principles, are everlastingly engaged in party intrigues, regardless of the constitution, and regardless of the public good. This is a deplorable picture, but it is, nevertheless, true. You have, at this moment, four distinct parties; not well poised parties, of different political principles, calculated to operate as a salutary check on all sides, but all claiming to be of the true republican school, and each party having a distinct candidate for the Presidency. The patriot may deplore, and the orator may denounce, the effects of rival political parties; but, sir, as well may you hope to stay the billows, or lull the tempest, by your single fist, as to stay the existence of parties in this Government, whilst politicians have ambition to gratify and distinctions to hope for.

Sir, I have as ardent a love for the preservation of the Union of these States as can inspire the heart of any gentleman whose voice has been heard in the Senate. I

\* See the Southern Patriot, 11th October, 1824.

† See Niles's Register, vol. 25, page 375.

‡ The proceedings of this anti-caucus committee demonstrably prove what I have elsewhere said, that the destruction of the federal party, and its amalgamation with the republican, instead of a blessing to this Union, may yet prove its overthrow. The evidence of the abuse of power in the hands of the republicans, when the check of the federal party was destroyed, is to be drawn from the following dates and facts:

On the 14th of October, 1824, this anti-caucus committee of twenty-four made their report, that it was inexpedient to meet in caucus. They showed, at that date, that there were two hundred and sixteen republicans, and only forty-five federalists. This put it beyond all doubt that the republicans, two hundred and sixteen, to forty-five federalists, had the whole power and control of legislation in their own hands.

On the 30th of April, 1824, only two months and a half after the anti-caucus report, and during the same session, Congress enacted a law—

"To procure the necessary surveys, plans, and estimates, upon the subject of roads and canals."—[See 7th vol. Laws U. S. page 330.]

This law is without limitation in its duration, and gives to the President unlimited powers over the whole subject; and the unlimited power "to appoint as many officers of the engineer corps as he may think proper." And these engineers have swarmed in every part of the Union ever since. Five republican members from South Carolina, all of whom were opposed to a caucus, voted for that law.

On the 23d May, 1824, a little better than three months after the anti-caucus report, and during the same session, Congress enacted a law to amend the several acts "imposing duties on imports."—[See 7th vol. Laws U. S. page 208.]

This law fixed upon us the most grievous burthen that any portion of the people of this Union ever endured. No member from South Carolina voted for this law. But what is the difference? Without the Tariff, Internal Improvement would expire; and vice versa.

Of the two hundred and sixteen republican members, the report of the anti-caucus committee says one hundred and eighty-one were opposed to a caucus. If one hundred and eighty-one republicans are associated to oppose the caucus, could not the same one hundred and eighty-one republicans have prevented the enactment of these ruinous laws? If they were republican for any purpose, they were certainly republican for every other purpose.—Note by Mr. S.

\* See the Charleston Mercury, in all July, August, and September, 1829, in which it was published. This essay was not editorial. \* The writer is neither known nor sought for. I shall always submit to a public scrutiny, but hope I may be permitted to contradict falsehoods. I ask no more.—Note by Mr. S.



SENATE.]

Mr. FOOT'S Resolution.

[FEB. 27, MARCH 1, 1830]

am sensible of its worth; I know its price was the blood of our ancestors; I know it swells our importance abroad, as a member of the family of nations; and I know the lustre it will shed upon the character of republics. And, as a testimony of my fervent desire for its long duration, I will beg leave to borrow the brilliant apostrophe of the gentleman from Massachusetts, if he will permit me; and "when my eyes shall be turned to behold, for the last time, the sun in heaven, may I not see him shining on the broken and dishonored fragments of" the constitution of my country, once the axis of our rights and the palladium of our liberty; but let them rather behold that constitution regulating the enactments of Congress according to its delegated and limited powers, dispensing equal laws and equal rights, according to its well defined and well digested provisions, to every portion of the people of these States. I shall then die content, under a full belief that this Union may be as durable as time; and that the Union can only be broken up by the violation of the sacred principles of that constitution.

Mr. HAYNE rose, and said he should certainly not go into the examination of any of the questions which had been discussed by his colleague. I rise [said Mr. H.] merely for the purpose of correcting an entire misapprehension on his part, of my views in relation to the public lands. My colleague supposes me to have contended that the public lands ought, at once, to be given to the States, without any regard to the public debt, for which they stand pledged; or if sold, that they should be sold merely at a nominal price, which ought not to go into the treasury. Sir, my colleague is altogether mistaken throughout, as to the scope and character of my remarks on this subject. I have not contended that the lands are to be given away; I have not contended for a sale at a nominal price, much less that the proceeds of such sale should not go into the public treasury. My views, sir, were these: that before any final disposition could be made of the public lands, "the public debt, for which they have been solemnly pledged to the public creditors, must be first paid." "This done, sir, [I said] I would suggest for consideration, whether it would not be sound policy to adopt a system of measures, looking to the final relinquishment of the lands, to the States in which they lie; giving up the plan of using them forever, as a fund, either for revenue or distribution; ceasing to hug them as a great treasure; renouncing the idea of administering them with a view to regulate and control the industry and population of the States, or of keeping in subjection and dependence the States, or the people of any portion of the Union. The task will be comparatively easy of striking out a plan for the final adjustment of the land question, on just and equitable principles. Perhaps, sir, the lands ought not to be entirely relinquished to any State, until she shall have made considerable advancement in population and settlement. Ohio has probably already reached that condition. The relinquishment may be made by a sale to the State, at a fixed price, which I will not say should be nominal; but certainly I should not be disposed to fix the amount so high as to keep the States, for any length of time, in debt to the United States." "In short, that the lands ought not to be kept and retained forever as a great treasure, but that they should be administered chiefly with a view to the creation, within reasonable periods, of great and flourishing communities, to be formed into free and independent States."

[After a few words from Mr. SMITH, in rejoinder, the debate here closed for this day.]

SATURDAY, FEBRUARY 27, 1830.

The Senate resumed the consideration of the resolution offered by Mr. FOOT.

Mr. GRUNDY addressed the Senate till the hour of adjournment.

MONDAY, MARCH 1, 1830.

The Senate resumed the consideration of the resolution offered by Mr. FOOT, in relation to future surveys and sales of the public lands.

Mr. GRUNDY concluded his speech; which is as follows:

So long, sir, as this debate was confined to the subject matter of the resolution upon your table, I felt but little inclination to embark in it; [said Mr. G.] and was still less inclined to do so, while Senators were engaged in defending themselves and their respective States against imputations supposed to have been cast upon them. The field of discussion, however, has been greatly enlarged, and now embraces within its limits many subjects of deep interest to the people of the United States. Upon some of these topics I have opinions to express, and replies to make to some of the arguments of those who have preceded me; and shall also find it necessary to present answers to allegations, unfounded allegations, which have been made by others. I have no unkind feelings to gratify or accusations to make; yet I must be permitted to declare my opinions frankly and fully, and to meet what has been advanced by others, fearlessly and unmoved.

I am gratified, greatly gratified, at the spectacle which this debate exhibits; a majority—an administration majority of an American Senate, contending against constructive Federal powers, and all those doctrines which are calculated to increase the authority of the men now in office, holding in their hands the reins of this Government. This augurs well: it has never occurred in the history of this Government but once before; and, of the men who acted in the civil revolution of 1801, only two remain in our national councils. It has been the good fortune of the senior Senators of Maryland and Louisiana (Messrs. SMITH and LIVINGSTON) alone to have acted a distinguished part at both periods; and it is fortunate for this Senate to have both these political Nestors to direct its deliberations in the great effort now making to bring back the Government to its true, original, republican principles.

According to the order of this debate, the first inquiry is, what is the true policy of this Government in relation to its public domain? Or, in other words, what disposition should be made of the unsold land in the Western States? I wholly differ in opinion with some Western politicians, who insist that those lands belong to the respective States in which they are situated, by virtue of their sovereignty. Of this I will speak hereafter. I confess myself alarmed at another opinion still more prevalent, and more likely to prevail, which is, that these lands belong to all the States, and should be divided amongst them in proportion to their representation in the other House. Sir, these lands belong to the Federal Government. In that character they were acquired, partly by gift, partly by purchase. The States, as such, have no interest in, or claim upon, them; and if my opinion would be effectual, the States should not receive them, were the General Government to act so improvidently and unwisely as to make the offer. I am unwilling to see twenty-four sovereign States fed upon the crumbs that fall from the Federal table. I never wish to see the States pensioners upon the bounty of the General Government. When gentlemen say they wish the States to be independent, I invite them to adopt principles, and pursue a course, calculated to preserve their independence. If the States are to remain independent, it can only be effected by their relying upon their own resources, and exerting their own energies; and in never looking to this Government for supplies which can be furnished or withheld at its pleasure. If, from the fullness of the treasury of the General Government, arising from its revenue, its lands, or otherwise, the States are to receive their respective dividends how can it be expected that the encroachments and usurpations of this Government are to be resisted? As men of experience and observation,

MARCH 1, 1830.]

*Mr. Foote's Resolution.*

[SENATE.]

I ask Senators, most of whom have served in the State Legislatures, whether that firm and manly stand will be taken in the States, which may be proper and necessary, when thereby the risk is encountered of stopping the current of Federal munificence? The exercise of the taxing power is always reluctantly resorted to, and public men avoid it at all times when practicable; and it will require great firmness in a State Legislature, when it shall come in conflict with the General Government, to assert the rights of the State, and he thereby compelled to perform this odious and unpopular duty. It is with governments as it is with individuals. If one man is in the constant habit of receiving benefits from another, the former loses his independence, and the will of the benefactor becomes the will of him who receives the benefactions. Another objection is still stronger; the stability and permanency of our institutions depend on the people understanding the operations of them. The idea that the General Government shall collect the money and transfer it to the States, has a tendency to complicate the operations of the machinery of Government, and place it beyond the comprehension and understanding of the community. By this means the greatest security for a faithful administration of public affairs is lost; although the public burthens are precisely the same in the one case as in the other, and the people taxed in the same degree. All respect for the State Governments must be annihilated, when it shall be seen in practice that the means of carrying on the State Governments are furnished by the General Government. Whenever this state of things shall occur, the State Governments will be put down, as useless and expensive institutions; and a General Government, with unlimited powers, will be established. I am aware that the reception of the money by the States would be a pleasant operation; it would be sweet to the taste, but bitterness and death would follow.

The General Government owned these lands before the States existed in which they are situated, and they have neither bought nor paid for them. Their only plea is the right which sovereignty confers. Let it be remembered, that the very same act which creates their sovereignty secures the title of these lands to the General Government. What justice, then, could there be in these new States saying, we will enjoy all the benefits and advantages accruing to us from a solemn compact with the General Government, but will not comply with the stipulations on our part? I will not permit myself to believe that the new States would do such an act if they possessed the power, whatever some of their politicians may say to the contrary. They would thereby lose all claim to that character which is based on justice, and a punctual compliance with engagements, and justly incur the charge of Punic faith.

It seems to me that the Senate must be satisfied that neither the States in which the lands are situated, nor the States generally, have an ownership in these lands. The General Government is the only rightful proprietor.

The inquiry then presents itself, to what objects should these lands, or their proceeds, be applied? The General Assembly of Virginia, in their act of cession, declare that it is made for the purpose of paying the public debt, and for the public benefit; and Congress is required, and actually engaged, to encourage and promote the settlement of these lands, and form new States, whenever the population would justify it.

Forty-eight millions of the public debt remain unpaid. This is an incumbrance on the public domain, a lien which should be removed before the fund is applied to other purposes. Being thus applied, you comply with the express intention of Virginia when she made the donation, and the pledge given by the old Congress at the time of its reception. By doing this, the wish and intention of all the parties will be faithfully complied with.

It has been suggested by the gentleman from Massachusetts

(Mr. WADSWORTH) that he would be willing to see the public debt discharged, merely because it was a debt, but he felt no particular concern about it. I differ from that honorable Senator on this subject. I feel great anxiety and solicitude to see the public debt extinguished, and will assign my reasons for it. In the first place, it will manifest not only an ability, but a willingness, on the part of the Government, to comply punctually with all its engagements. This will promote and establish public credit, which adds greatly to the strength and power of a nation. In the next place, it will lessen the public burthens, and relieve the labor and industry of the country from the payment of an annual tax of fourteen millions of dollars. Instead of a revenue of twenty-four millions, which is now paid, ten millions will be sufficient for all the purposes of carrying on this Government. Then a fixed and settled policy can be adopted. It can then be decided whether one portion of this community is to be taxed, and severely taxed, to enable another portion to keep competitors out of our markets. I did not intend to say anything upon the tariff on this occasion, but my remarks having led me to that subject, I will say a few words in relation to it. Can its advocates believe that a tariff will continue long in this country, of a character which shall deprive the labor of one part of the country of its just profits, and confer them on another? Surely, the moral sense of this community will rise up in opposition to it.

When it shall be seen that the Government needs only ten millions of dollars annually, a tax of twenty-four millions will not be submitted to. My friend from New Jersey (Mr. DICKINSON) tells us he has a specific for this evil—an infallible cure for this disease, or malady; which is, an annual distribution of the surplus revenue among the States. I ask him to reflect again upon this subject, and see whether there is not great danger of violating the principles of both policy and justice by the course he recommends. If the money is to be collected by the Government, and then returned to the same people from whom it was received in the first instance, you have gone through an operation of collecting and returning to its rightful owners, money not needed by the Government; and you have lost, in commissions and failures of public officers, to a great amount; and you are at the point from which you set out, except that you have wasted much of the public treasure. But suppose you collect the money chiefly from one part or section of the country, (as is the fact at present) and divide it equally amongst all; are you not practising great injustice upon that portion from which the tax has been levied? Gentlemen need not flatter themselves that a majority of the American people will long permit injustice to be practised upon any portion of this community. Let me not be misunderstood. I would not tear off the tariff if I could, thereby placing the manufacturing institutions of this country at the mercy of foreign Governments or foreign manufacturers. My wish is to see it modified, so as to protect manufactories which have grown up under the faith of our laws, and at the same time remove oppression from others. This is practicable; it cannot be that the oppression of any portion of this happy land is necessary for the security and protection of another.

Farther, the speedy extinction of the public debt is calculated, more than any thing that can be done, at this period, to increase the respectability and moral influence of this Government, both at home and abroad. This done, we shall be the wonder of an admiring and astonished world. We cannot ourselves tell how it has happened, that, in little more than half a century, three millions of people, scattered along the Atlantic border, have grown to be so great and mighty a nation, extending from the sea-board near two thousand miles to the West, and from the Northern Lakes to the Gulf of Mexico; containing within its limits upwards of twelve millions of inhabitants. Louisiana,

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large enough for an empire, purchased; the Floridas acquired; a respectable navy; the extensive sea-board fortified; the Indian title to millions of acres of land extinguished; two wars with the most powerful nation on the earth successfully prosecuted and honorably terminated; and, after all this, not one cent of the expenditures incurred remains unpaid! Will not all mankind say, if this new people and this new Government have achieved all this in their infancy, what can they not do in the days of their maturity? Sir, foreign nations will entertain a higher respect for our country, and the causes of future wars will be diminished.

With regard to some modification of the existing land laws, I am perfectly willing to unite in any scheme of gradation of prices which shall make a distinction between lands of different qualities or values, and shall not, at the same time, retard the sales, and thereby prostrate the payment of the public debt. Towards one class of individuals, the actual settlers, I am willing to go as far as any man, in or out of this Senate. I am anxious to place it in their power to become freeholders—to have an interest in the soil. It is good policy to convert Eastern tenants into Western freeholders. If the suggestions made were well founded, that some Eastern politicians desired to prevent their citizens from emigrating to the West, in order that they might be retained in their manufacturing establishments, all such efforts would be vain and ineffectual. You might as well attempt to stop the torrents rushing from a thousand hills, as to arrest the tide of emigration, which is rising higher and higher, and pouring and spreading itself over the vast valley of the Mississippi. It is the course of nature and of man, and no human legislation can stay it. It is the duty of man to pursue his own happiness. Competence and independence are main ingredients in human happiness, and no portion of our citizens will be restrained from going to a land of ease and plenty if within their reach. I regretted to hear remarks made by the Senator from New Hampshire, derogating from the merits of settlers on the public lands. He considered them as trespassers and intruders, and meriting punishment as infractors of the public law. Sir, they are acting on the original principle upon which titles to lands were first acquired; they are mixing their labor with the soil, and improving its condition; they are adding to its value, and increasing the wealth of the country; and I can tell that Senator, that, when the country shall be in adversity and peril, these men, now reviled, will prove as prompt to step forward and defend it, as any other portion of our citizens. I refer to the Senator from New Hampshire, [Mr. BRILL] not to my friend near me, [Mr. WOODBURY] who speaks in different tones; his voice falls, at all times, pleasantly on my ear.

I have already voted to give a preference to occupants now in possession, and am at all times ready to do so. This, however, falls far short of my favorite system of disposing of the public lands. I would not confine the provisions of the law or preference to settlers now seated upon the land, but would act prospectively. I would by no means limit the right of preference to the few who are now in the occupation of the public lands, but say to all the citizens of the United States, that any of them who would settle on the surveyed public land, should be entitled to a quarter section, or one hundred and sixty acres, at a reduced price, say fifty cents per acre or less; provided they would remain on the land two years, and raise two crops upon it. You would, by this course, enable men, who cannot acquire lands in the old States, to secure for themselves a competence and independence; a wife, a home, and child to prattle on his knee, would be the lot of many who are now destined to drudge on through life in poverty and want. Rich communities would grow up in the distant wilderness, and the national wealth and strength be greatly increased. After all the land of value shall have been disposed of, and nothing left but the refuse, as my col-

league, [Mr. CROCKETT] of the other House, calls it, let the Government relinquish the remainder to the States in which it is situated; not upon the principle of a gift, creating an obligation and state of dependence, but because it is of little or no value to the General Government, and is a matter of convenience to the States; thereby enabling them to devise some means of disposing of it, so as to subject it to the taxing power of the States. This, in my judgment, is the best mode of disposing of the public lands; and I invite gentlemen on all sides, who have professed so much devotion to the interest of the West, to unite in maturing and adopting the system I have suggested, and thereby promote the best interests of the Western country and of the nation at large.

I will now proceed [said Mr. G.] to an examination of another subject, upon which a great diversity of opinion seems to prevail—I mean the powers of the State and Federal Governments. As to the true division or distribution of their powers, no difficulty exists so long as we speak in general terms; differences of opinion arise when we come to act on particular cases: at present, we have no case before the Senate, and are only discussing the subject for the purpose of ascertaining the true rule by which to test cases as they arise; and in the event Congress should transcend the limits or boundaries of its constitutional powers, to ascertain where we are to look for the ultimate corrective tribunal.

The States existed prior to this Government. Each of them possessed all the rights and powers which appertain to sovereign and independent nations. For all the purposes of self-government, no want of power, or the means of using it, was felt by any of these communities. Life, liberty, reputation, and property, all found an ample protection in the State Governments. If any Internal Improvement were necessary, within its limits, the sovereign power of the State, having entire and uncontrolled jurisdiction, could cause it to be undertaken and effected. For none of these purposes or objects was there a defect of competency in the State Governments. There were objects, however, of high importance, to which the States, separately, were not equal or adequate to provide. These are specified in the recommendatory letter issued by the convention, and signed by General Washington, which accompanied the constitution, when presented to the old Congress for its consideration. The language is, "The friends of our country have long seen and desired, that the power of making war, peace, and treaties; that of levying money and regulating commerce, and the corresponding executive and judicial authorities, should be fully and effectually vested in the General Government of the Union." Here is an enumeration of the objects which made it necessary to establish this Government; and when we are called on to decide whether a subject be within our powers, we ought not to lose sight of the purposes for which the Government was created. When it is recollected that all the powers now possessed by the General and State Governments belonged originally to the latter, and that the former is constructed from grants of power yielded up by the State Governments, the fair and just conclusion would be, that no other power was conferred, except what was plainly and expressly given. But if doubt could exist, the 10th article in the amendments to the constitution settles this question. It declares that "The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people." The conclusion hence arises, that this Government is one of limited, delegated powers, and can only act on subjects expressly placed under its control by the constitution, and upon such other matters as may be necessarily and properly within the sphere of its action, to enable it to carry the enumerated and specified powers into execution, and without which, the powers granted would be inoperative. This I

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understand to be the good old republican doctrine, and by it I will endeavor to regulate my conduct.

In cases of disagreement between the Federal and State Governments, as to their respective powers, who is to decide? This is the question I propose briefly to examine. In cases of doubtful character, no question will probably arise, because no court, State or Federal, will declare a law unconstitutional, unless it is clearly and manifestly so. This is the rule of decision avowed by all the high judicial tribunals of the country; nor will any State act differently. I admit that the Supreme Court is the final arbiter in all cases in law and equity, arising under the constitution, and the laws of the United States made in pursuance of it. Still, the case put by Mr. Madison, in his report to the Virginia Assembly, in the year 1799, is not included. The alien and sedition laws, the subjects on which he was then acting, were believed and declared by him and the Virginia Assembly, to be a deliberate, palpable, and dangerous exercise of powers, not granted by the compact or constitution. In such a case as that, I ask the Senate, shall one party decide? It will be readily granted, that, in settling questions of right or power between different nations, one party ought not to be the exclusive judge; otherwise, so strong in the love of dominion and rule, it will include within its grasp all the power possessed by both. This is the very principle for which gentlemen contend, when the subject is stripped of a fallacy, which at first obstructs the mental vision of the inquirer after truth. Gentlemen seem to consider the Supreme Court of the United States as a separate, distinct tribunal, erected by all the parties concerned, and as dependent on one party as on the other. Not so; it is a portion or part of one of the parties, created by the legislative and executive branches of the General Government, and responsible alone to that Government. The Federal Judiciary, although the tenure of office be during good behavior, is greatly dependent on the other branches of the General Government. Burthens may be imposed upon them, and their labors so increased, as to expel them from the bench, from an inability to discharge all the duties required by law. I name this, because an effort is now making to compel the present judges to perform their official duties in six additional States—a thing wholly impracticable.

In every contest for power, there would exist in the Judiciary the same motives to lead it astray, as would exist in the other departments, with this difference—they would be stronger, because the judges hold their offices by a tenure of greater duration. If the position of Gentlemen be well founded, then the State Governments have been guilty of the folly and weakness of creating a Government which can adjudge away all their sovereign rights and powers; a creature competent to the destruction of its creators; and all this, by the easiest operations imaginable. A case is presented to the court by the Attorney General, an opinion is written on a few sheets of paper, and Mr. Peters (the reporter) is directed to put it in his book, and forthwith twenty-four sovereign and independent States are prostrated and destroyed. Sir, much as I love peace and quietness, before I witness this, I desire to hear more clamor about it than would arise from this silent, sapping, and undermining procedure. I am arguing upon the principle, without reference to the judges now sitting under this Senate chamber; towards each of them I entertain a high respect; and should any attempt be made affecting the independence of the Judiciary, I will go as far as he who goes farthest in its defence.

If those from whom I differ be right, the only security the States have, is the integrity of a majority of seven men; and as the constitution did not direct what number of judges should constitute the Supreme Court, one could have been placed there; and upon his will alone, according to the argument on the other side, would depend the fate of twenty-four sovereign States.

In all questions of *meum and tuum*, embraced within its constitutional jurisdiction, this court is the supreme tribunal, and incidentally, between individuals, it must decide upon all questions necessary to enable it to come to a result or final determination; and the decision will be binding upon the parties. This, however, by no means proves that the court can decide upon the sovereign rights of the States, so as to affect them. The gentlemen have been requested by my friend from Kentucky, [Mr. Rowan] to produce an instance in which sovereignty has submitted itself to any judicial tribunal. The very act of doing so implies dependence and inferiority; and that government which admits its adversary to decide in such a case, acknowledges that it is not sovereign and independent. Mr. Madison, who understood the constitution and structure of the Government as well as any man that ever lived, was of opinion that the Federal Judiciary possessed no such power. Mr. Jefferson, the great teacher of republicanism, throughout his whole life contended against it; and, fortunately for the American people, their opinions are recorded in our national archives, and will be preserved for the benefit of those who are to succeed us. The necessary result is, that the power of deciding finally and conclusively does not exist in either Government, or any department of either. What, then, is to be done if Congress pass an act beyond the limits of its constitutional powers, and it is found to operate oppressively, say upon Virginia? I name this old, leading, champion State, for the purpose of illustrating my argument more clearly. Shall Virginia submit? No. She is oppressed—unconstitutionally oppressed. The General Government has declared in all its departments that the act is binding. The Legislature of Virginia is of a different opinion. Has she no right to say to the General Government we did not give up this power which you have exercised? May she not say it is an authority you have usurped? Such language has been held—it was done by Virginia and Kentucky, by their resolutions in 1798 and 1799; and it produced the desired effect. Those who had exercised unconstitutional powers were put down, and the administration of Mr. Jefferson succeeded. This was an appeal to the intelligence and patriotism of the nation, to correct the evil through the medium of the elective franchise. It prevailed, and will always prevail, unless an interest exist in the majority at variance with the rights and interest of the minority. When that is the case, it may happen that a sense of justice will be too weak to produce a repeal of the unconstitutional measure. What then? Shall Virginia throw herself out of the Union? No. One set of agents employed to act in the Federal Government have asserted their authority and jurisdiction over certain subjects, and they insist on their right to do so. Another, acting in the States, insist that the agents of the General Government have transcended their authority, engrafted on the constitution provisions not originally contained in it, and are exercising the reserved powers of the State. It becomes a mere dispute among agents; the employers, the masters, the real sovereigns, have not decided it. In this state of things, shall Virginia submit to be despoiled of her sovereignty? Sir, she will not, by tame submission, surrender her high political character and pre-eminence: rather than do this, her Madisons and Monroes would forget their years, and mingle again in the political strife; her Giles would lay aside the crutches of decrepitude; and the gentleman from Maine [Mr. Holmes] would again hear the keen, cutting voice of the Roanoke orator, dividing and separating, even unto the joints and marrow.

If I am to understand any Senator as saying that a State Legislature can nullify and make void an act of Congress, so far as to prevent its operation within its limits, I dissent from him. The Federal constitution was not received or adopted by the Legislatures of the States; the mem-

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bers are not elected for such high purposes. The ambition of a few aspiring men might mislead the Legislature, when called on to act suddenly and unexpectedly. Let the injured and oppressed State, then, assume its highest political attitude—a convention in the State, for the purpose of deciding whether the great fundamental law, which unites and binds the States together, has been violated, by Congress having exercised powers reserved to the States, and not delegated to the General Government. If a false clamor has been raised, this measure will put it down. In every State there is a division among politicians, and the minority are only waiting for an opportunity to put the majority in the wrong. The people being called on to act in this solemn manner, will put the whole intelligence of the community into action. The aged, the wise, the experienced, well tried friends of the country will be called into the public service. Such men will not lightly pronounce an act of Congress unconstitutional and void; but should they upon full consideration so declare, how will the question then stand? If the State possesses the power to act as I have shown, the necessary consequence is, that the act of Congress must cease to operate in the State; and Congress must acquiesce, by abandoning the power, or obtain an express grant from the great source from which all its powers are drawn. The General Government would have no right to use force. It would be a glaring absurdity to suppose that the State had the right to judge of the constitutionality of an act of the General Government, and at the same time to say that Congress had the right to enforce a submission to the act. This would involve a palpable contradiction. This may be illustrated by reference to the powers of the Supreme Court in analogous cases. All admit that this high tribunal has the right, in a case properly before it, and within its jurisdiction, to declare an act of Congress unconstitutional; the effect of which is, to render the act inoperative, not only in one State, but in all. In this case, Congress is obliged to acquiesce and abandon the power, or obtain an express grant from the original source, after the manner already stated. No force can be applied to give effect to the act thus declared void by the Supreme Court, or to compel it to change its decision. But gentlemen, instead of meeting our arguments fairly, exclaim that such a power on the part of the State is inconsistent with the existence of the General Government, and is placing twenty-three States at the mercy of one, and that the Union, by such an act, would be dissolved. I cannot but think that all such objections arise from an imperfect view of our admirable system of Government. They originate in a supposition that Congress possesses an independent and uncontrollable power, which is unknown to our system. If the gentlemen will but advert to the fifth article of the constitution, they will find a redeeming power—a power above all others; which can mould the constitution, and define, anew, the relations between the State and the General Government: I mean the constitutional number of States. This is not a mere dormant power. The mode in which it is to be called into action is expressly laid down, and, when properly invoked, will at all times prove adequate to save this glorious system of ours from disorder and anarchy. Whenever a conflict, such as I have described, arises between one of the States, acting in its sovereign capacity, and the General Government, it is to this high arbiter, (a convention of the States) the parties must resort, and not to the Supreme Court, the creature of one of the parties. But who is to make the appeal? Surely the party claiming to exercise the power, and which alone possesses the means of making it. To require the oppressed State to do it, would be absurd. The constitution provides two modes of amendment: one, when two thirds of both Houses of Congress shall propose amendments; the second, when two thirds of the Legislatures of the State shall make application to Con-

gress to call a convention for proposing amendments. In either case, three-fourths of the States are required to ratify; and the agency of Congress is necessary in both. On Congress, then, is the burthen of making the appeal, on the ground that it claims the exercise of the power, and because, alone, it is possessed of the means. It cannot be considered unreasonable that a State, which has declared, in the most solemn manner, its reserved rights to have been violated, should possess the power of compelling the General Government to make an appeal to the source from which all its powers are derived. It was called into existence by three-fourths of the States, and can exercise no power, without usurpation, which has not been granted. What can be more rational? What more consistent with the spirit of our system, than where there is a conflict between a sovereign State (a party to the compact) and the General Government, as to the powers which have been yielded to the latter, that it should be compelled to decide the question by an appeal to the source of all its powers? I do not hesitate to say that the power on the part of the States to compel such an appeal is indispensable to the existence of their sovereignty, and to the preservation of their reserved rights. Without it, the General Government, in its practical operation, would be an unlimited, consolidated Government, notwithstanding the limitations imposed by the provisions of the constitution. Its construction of the constitution would be the constitution. Those who know the force and influence of construction, how it can pervert the plainest import of words, when under the influence of self interest, well understand the fearful changes it is capable of producing. If there be no check, an interested majority, using the powers of the General Government, which were given for the protection and benefit of all, as the instrument of aggrandizing themselves at the expense of the minority, may, by construction, gradually undermine and render obsolete the sacred provisions of this instrument. We already see fearful symptoms of encroachment, which no patriot can look at without dismay, and which, if persevered in, can only be arrested by an exercise of the power for which I contend. The Supreme Court is wholly inadequate. If three-fourths of the States shall not concur in admitting the contested power, or shall not pronounce that it already exists, Congress will be constrained to abandon the exercise of it, inasmuch as no new power can be granted without such concurrence. The decision of a less number ought not to be obligatory, where a State has solemnly pronounced that such a grant of authority was never made. But suppose three-fourths of the States decide the question against the complaining State, then acquiescence becomes a duty, and it must submit; or a state of things arises not provided for by the constitution, on the consequences of which I will not dwell. The doctrine for which I contend is not of recent origin. I am merely an humble disciple of an old school, recalling it to public view. Mr. Jefferson long since advanced the opinion I now advocate, and in his letter to Judge Johnson, of June, 1823, he remarks, in reference to the following expression, used by another distinguished citizen, that "there must be an ultimate arbiter somewhere," "True," said Mr. Jefferson "there must; but does that prove it is in either party? The ultimate arbiter is the people of the Union, assembled by their deputies in convention, at the call of Congress, or of two-thirds of the States. Let them decide to which they mean to give an authority, claimed by two of their organs. And it has been the peculiar wisdom and felicity of our constitution to have provided this peaceable appeal, where that of other nations is at once to force."

Sir, [said Mr. G.] the subject of slavery has been introduced into this debate. This is charged upon the slaveholding States by some as a misfortune; by others as a

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crime. It may be the former, but cannot be the latter. Were the question submitted to me, whether slavery should be introduced, I should, unhesitatingly, decide against it: for such is my devotion to liberty and the rights of man, that I would have no agency in subjecting the person or will of one man to the dominion of another. Still, I am not prepared to condemn it as a crime, or charge those who own them, under existing circumstances, with doing wrong. All history speaks of its existence from the earliest ages. Homer, the father of poets, makes Hector tell Andromache, his wife, if Troy shall fall, she will draw water at the well of some victor chief. The Phœnicians, Egyptians, Carthaginians, Greeks, and Romans, all had slaves; with them the masters possessed the *jus eue et necis*—a state of slavery not tolerated in any of the United States: for, in all the States, laws are in force requiring the masters to treat their slaves with humanity and kindness. We all know there is nothing in the Old Testament condemning it, nor in the New. I admit that the commission of the Prince of Peace was to the hearts of men, and it was no part of his office to change governments or political institutions. Yet one thing ought to be admitted on the other side, that no vice or sinful practice escaped his notice and animadversion. He came to reprove the world of all sin. Seeing that slavery existed at the time of his appearance amongst men, and within his knowledge, he enjoined it on slaves to be obedient to their masters, and did not command masters to liberate their slaves. I think the inference is clear and conclusive, that it is not sinful to hold slaves; nor does it present any obstacle in the way that leads to everlasting happiness. The error, and the great error of this subject, is not attributable to the slave-holder, but to those who produced this state of things. While England's most inspired poet, of his day, was saying, in the language of enchantment,

- "I would not have a slave to till my ground,  
 "To eary me, for me while I sleep,  
 "And trouble when I wake, for all the wealth  
 "That sures bring him and sold have ever earned:  
 "Not dear as freedom is, and, in my heart's  
 "Just estimation, prized above all price,  
 "I had much rather be myself the slave,  
 "And wear the bonds, than fasten them on him:"

While her orators were pouring forth similar language in the Senate and the Forum: even at that very time, with the connivance, and by the authority and direction of the Government, her subjects were engaged on the shores of Africa, tearing asunder all the ligaments which bind the husband to the wife and the parent to the child! And why was this done? Not to transport them to Great Britain. No. "Slaves cannot breathe in England; they touch our country, and their shackles fall." This is the language of poetry and fancy. What is the language of truth and fact? Their labor was not needed in Great Britain; already the population was so great as to be fed with difficulty, therefore were they sent to the British West Indies and her American plantations, as if this mitigated the offence committed against high Heaven and the rights of man. It was not until the year 1806 that this traffic was put a stop to by the British Government. It was the last act of Mr. Fox's public life. But let us come nearer home. When the history of this unhappy race shall be fairly written, the name of no Marylander, no Virginian, no Carolinian, (North or South) no Georgian, no man of the West, (for West there was none at that day) will be found inscribed in that chapter which is written in tears and blood. It was the citizens of some of the Eastern States who carried on this traffic. My friend from Rhode Island [Mr. ROSS] can tell you more upon this subject than I know. I name not this by way of reproach on the great body of the population. I have no doubt the moral sense of the community was against it; but the avarice and cupidity of some of their citizens prevailed over considerations of

justice and humanity. I am no advocate for slavery. I wish success to the exertions of the philanthropists of all the States, who are engaged in ameliorating the condition of, and laboring to restore, this unhappy race to the land of their fathers; and should another Moses rise up, and lead them peaceably to a distant land of liberty and plenty, I would not join in the pursuit to bring them back. What is our condition? We have the evil, and how can we get rid of it? That free people of color cannot live amongst us, is demonstrated by what is seen in Ohio and the other non-slave-holding Western States. I have in my hand the memorial of two thousand free people of color, resident in Ohio, praying this Congress to provide them funds to enable them to remove to Canada, because they cannot remain in the State of Ohio, on account of the severity of the laws imposed on them. I do not censure the State of Ohio for the rigor of its statutes, because a community has a right to provide for its own safety. It proves, however, that these general notions about the liberation of slaves are idle and visionary, when attempts are made to reduce them to practice. The State of Indiana has forwarded its memorial, asking Congress for aid to remove the free people of color, now in that State, to Liberia. This shows that those who have tried the experiment of having free people of color amongst them, have become weary of it. I doubt whether this project of a settlement in Canada will succeed. I am not sure that the descendants of Africa can grow and thrive in a cold, frozen region. If they can, may not all the horrid scenes, so ably portrayed by the Senator from South Carolina, [Mr. SUMNER] occur? May not their present advocates and their children have to meet them in a very different character than that of friends? This, I fear, will happen, whenever Great Britain shall order it to be so.

We have heard much upon the subject of removals from office. Some gentlemen have charged the administration with proscription; and one Senator, [Mr. HOLMES] still bolder than the rest, has charged it with "glutting its vengeance" upon its enemies. I like not this predatory warfare. I now challenge gentlemen to come out boldly, and discuss this subject with us freely and frankly, not calling to their aid passion or feeling. These are poor auxiliaries in inquiries after truth. In this way I will endeavor to examine this subject, and afterwards will make some remarks specially for the gentleman from Maine [Mr. HOLMES.] The question, as insisted on by the other side, is, that the Senate has the constitutional right to examine into and judge of the propriety of removals from office, and to control the Executive in the discharge of this branch of his duty. We say the Senate possesses no such authority, and that our power is confined to the question of fitness or unfitness of the persons nominated to succeed. I think I have stated the matter in difference fairly, and will proceed to its discussion. This is a subject of great delicacy. It not only relates to the powers of the President, but the powers of this House. If we decide that the President has not this power, we determine in favor of our own. We should approach this subject with great caution, lest we be misled by the ideas which sometimes influence the human mind, that power is always dangerous in the hands of others, though entirely harmless in our own; and more especially should we act warily, when we recollect that, for forty years, ever since this Government went into operation, the practice we contend for has prevailed, bottomed upon a legislative construction of the constitution, made by the House of Representatives, the Senate, and President of the United States, in the year 1789. If those who insist on the power of the Senate are not warranted by the constitution, they are guilty of a greater error than that of which they complain. They are attempting to usurp a power not given to them by the constitution. In the first place, we will examine who possesses this power of removal under the constitution.

The great, distinguishing, and characteristic principle in our institutions, State and Federal, is the separate, distinct, and independent existence of the different departments, Legislative, Judicial, and Executive; and on every question of this kind, reference should be had to this leading feature in our Government. In the first section of the second article of the constitution, it is provided that "the Executive power shall be vested in a President of the United States of America," &c. Had nothing more been said in the constitution, all seem to admit that the power of appointment and removal would exclusively belong to the President as a branch of Executive authority, and to appertain to him as the Chief Magistrate of the nation. In the second section of the same article, his powers are enumerated, and appointment to office is one of them; but in making the appointment, he must obtain the advice and consent of the Senate. This constitutes an exception to the general rule; that the departments are to be separate and distinct; and there is wisdom in this provision. The framers of the constitution foresaw that all experience had proved, under this Government, that a President, with the best intentions, and anxious only to promote the general good, might make a selection of an individual, through want of correct information, who would be deficient in moral or intellectual worth. This has happened under every administration. When this occurs, and the name of the individual is placed before the Senate, a strict scrutiny is instituted; and if, upon examination, he is found unworthy, he is withdrawn by the President, or rejected by the Senate. In making this investigation into the character and qualifications of the individual nominated, the Senate has the aid of the Senators of the State in which he resides, who are generally acquainted, and know whether the President has been misled by information received from others. Thus far the constitution expressly authorizes the Senate to act in aid of, and in conjunction with, the President of the United States, and no farther. If further joint action were deemed proper, it could easily have been expressed.

*Expersio unius est exclusio alterius.*

Was there any necessity or propriety in giving the power now contended for to the Senate? If it can be shown that it would do injury, and destroy the harmonious operations of the Government, it ought not to be considered as existing in this body, unless clearly given.

Thus far we have considered the mode by which an individual gets into office. The question arises, how is he to be gotten out, and by whom? So soon as an Executive officer is appointed, he is placed under the immediate inspection and control of the President, who becomes intimately acquainted with his qualifications. Are his talents equal to his station? Has he integrity, industry, and all those other qualities, which will enable him to discharge his duties beneficially to the country? If so, the probability is strong in favor of his being retained, unless his place can be as well or better supplied. On the other hand, the President discovers a deficiency. It is his duty to remove him; and then, according to the argument on the other side, the case comes before the Senate for trial, I suppose. The Senate will not take the will of the President as the rule of its decision: for, if it should, no valuable purpose could be obtained by the action of the Senate. We are then to inquire whether this man shall be retained. We must not make a mockery of it; he must have a fair trial, and as necessary incidents to it, witnesses and counsel must be heard; and you thus place the Chief Magistrate of the country in the odious attitude of a public prosecutor, who may fail to make out his case, as nothing is more true than that a fact may exist to the satisfaction of all men, and yet not be provable before a judicial tribunal. Suppose the Senate should decide that the officer shall not be removed—say the Secretary of

the President, who has already pronounced him unworthy of confidence, and not fit to be trusted. What kind of a cabinet will you have, made up and forced to remain together, of such materials? Should the Secretary of the Treasury, in the absence of the Senate, be about to secrete all the money of the Government, will it do to wait to take the advice of the Senate as to his removal? In time of danger and contest, the Secretary of War is in the act of betraying the armies of the United States into the hands of the enemy: shall the President wait, and ask the Senate what is to be done? The Secretary of the Navy is about to deliver up the whole navy to the enemy: shall the President possess no power to displace him, but sit quietly by, until his advisers shall convene? Gentlemen say, the President ought to suspend the officer, and wait till the meeting of the Senate before the removal can be effected. I answer, that the power of suspension is not given by the constitution, and it will require a greater power to suspend and appoint another, to perform the duties in the interim, than to remove and supply the vacancy. If the Senate possesses this power, the existing practice of the Government must be changed; the Senate must always be in session. Our legislative functions must be abandoned; the whole time will be consumed in these investigations.

In the year 1789, this subject was taken up in the House of Representatives of the Congress of the United States, upon a bill to establish the Department of State. The bill, as introduced, contained a provision giving the power of removal to the President. Upon a full discussion, the clause giving the power to remove was stricken out, upon the ground that the Chief Magistrate possessed the power under the constitution; and the bill was so changed as to acknowledge the pre-existing constitutional right, or power, in the President of the United States. The bill, thus modified, passed the House of Representatives and Senate, and was approved by General Washington, then President of the United States.

Let it be remembered that Mr. Madison, who is one of the best constitutional lawyers our country has ever produced, was a member of that Congress, and advocated the opinion for which I contend. He was a member of the convention that framed the constitution; had met the best talents of the country in the Virginia convention; had there discussed it in all its bearings and tendencies; and was then, in 1789, engaged in putting the Government into practical operation. Fisher Ames, whose fame and talents were great enough not only to make New England, but all America, feel proud that he was her citizen, advocated the opinion which prevailed.

In order that it might be understood how every President and Senate have thought and acted, from the commencement of the Government, I have looked into the Executive Journal, and find that every Chief Magistrate has acted upon this power as exclusively appertaining to him. I hold in my hands a copy of General Washington's commission to Mr. Jefferson, as Secretary of State, probably the first issued under the Government. That commission reads, that the office is to be held during the pleasure of the President of the United States. Also, the commission of Mr. Morris, as minister to France. Under every President, all commissions to executive officers have issued in the same way.

On the 3d of May, 1792, Edward Cross was removed, and Edward Wigglesworth was appointed collector at the port of Newburyport. The surveyor of the port of Plymouth, in North Carolina, was removed on the 19th of November, 1792. Mr. Carnichael, a foreign minister, was recalled—1 Executive Journal, p. 157. The collector of Yorktown was removed, as appears by Executive Journal, 1 vol. p. 165; a collector in Maryland, p. 172; a collector in Jersey, p. 173; a collector in South Carolina, p. 194; an inspector of revenue in Jersey, p. 176;

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an inspector of revenue in South Carolina, p. 203. These removals were made by General Washington, without consulting the Senate.

Mr. John Adams, immediately upon coming into office, dismissed the collector of New York. I name not this with a view to show his love of power; my feelings towards his memory are of a different kind; but for the purpose of showing, that he considered the power as so clearly existing, that no difficulty presented itself in the exercise of it. He also removed the collector in Charleston; a consul at Bordeaux, in France; a supervisor of the revenue in New Hampshire; a surveyor and inspector of the revenue in Virginia; the collector and inspector of Perth Amboy, (Jersey.) On the 12th May, 1800, Mr. Adams removed Mr. Pickering, then Secretary of State.

On the 6th of January, 1802, Mr. Jefferson nominated twenty-three persons to the Senate, to fill vacancies occasioned by removals made by him.

Mr. Madison removed the marshal of Georgia in 1809. On the 7th of March, 1814, Mr. Meigs was nominated to the Senate as Postmaster General; and a motion was made in the Senate, the object of which was, to ascertain from the President whether the office was vacant; and, if so, how it had become so? This proposition was negatived, and the nomination of Mr. Meigs approved.

Mr. Monroe, on the 12th December, 1817, nominated a consul, a receiver of public moneys, and a naval officer, at Wilmington, North Carolina, to supply vacancies occasioned by removals.

On the 5th of March, 1825, Mr. John Quincy Adams nominated a person as consul to fill a vacancy occasioned by a removal.

I have selected the cases referred to, for the purpose of showing that every President has exercised the power, now contested for the first time, since 1789; and no question was ever raised in the Senate, except upon the nomination of Mr. Meigs as Postmaster General; and then a majority of the Senate decided that the President could not be questioned upon the subject. When gentlemen contend against this power, and its exercise by the President, they seem to forget that the President is elected by the people, and is responsible to them; and his tenure of office is even shorter than our own. Besides, he must for a long time have stood before the public, and his conduct have been well examined. In this I think there is great security. If gentlemen will only exercise a little patience, in about two years and a-half they can try this question between the present Chief Magistrate and themselves, before the great American tribunal—THE PEOPLE.

So long as the present practice continues, you secure responsibility. Now, the President is looked to as accountable for the manner in which the whole Executive Department is conducted; and so long as he can alone remove the subordinate officers, this accountability is just; but the moment you force men, and continue them upon him, you furnish him with arguments which will exonerate him before the nation. May he not justly say, that he has no control over the inferior officers in the Executive Department; that his wishes are disregarded; and that he has no power to coerce those engaged in performing different duties, to execute his will? The state of insubordination which must follow, in practice, from the opinion contended for on the other side, will destroy all harmony and responsibility. If this power of controlling the Executive be assumed by the Senate, all the great powers of the Government will be concentrated in this body. Already we can prevent the Representative will from having effect, by negativing the bills of the other House; by the power of the Senate now contended for, we can bring the Executive to our feet.

Why is it that we hear so much complaint on the subject of removals from office? It is owing to a congeniality of feeling among office holders, State and Federal, through-

out the whole country. They have a common interest in giving public opinion a direction in their own favor. Hence, whenever a removal takes place, all, or most of them, unite in condemning it, and they have succeeded in giving currency to the idea, that there is an actual ownership of office in the possessor; and they speak of their offices as they do of lands and other property, which they have bought and paid for; when, in truth, (I speak of Executive offices) the offices are created for the public benefit; and officers are employed as mere agents to perform the duties, so long as their services will be more advantageous to the public than others who can be employed; and so soon as others can be engaged who will, in the opinion of the appointing power, better promote the public interests, they ought to be displaced. Much has been said about turning men out who are unable to make a livelihood in any other way. When I hear this, I know that right has been done. In this wide extended country, furnishing such a variety of means for mental and manual employments, if an individual cannot live without office, I pronounce him unfit for that. If this idea, which is so earnestly pressed, is to prevail, your Government will become a parish for the support of prodigals and spendthrifts, who, having destroyed their own substance, will claim employment and support from the public treasury. It is also urged, that some are removed who have been many years in office. I think the error lies in furnishing this argument to them, by having retained them so long. The offices held by these individuals have either been advantageous and profitable, or otherwise. If the first, they ought not to monopolize the benefits for too great a period; they should give place to others, and not exclude all their contemporaries during their whole lives. If the office has been disadvantageous, they ought to be relieved from the burthen.

Gentlemen say it is an imputation on the character of an officer, to be deprived of his office. It is not so, except so far as officers have made it so, by pressing it as an argument for retaining their places. It only proves that there is another man as well qualified as he is to perform the duties; and that the Government can be administered without his aid.

After all, I consider this subject of removal, as a matter wholly between the Chief Magistrate and the people, with which the Senate has nothing to do, except to see that unworthy men are not appointed. How this power ought to be exercised is left to the Executive discretion, not to ours.

When Mr. Jefferson came into power, he found most of the officers filled by his political adversaries. He made a liberal use of this power, deeming its exercise healthful to the body politic. In answer to the New Haven remonstrance, which was against removals, he insists that, in order to secure a fair participation in the offices of the Government, he must use this power, as "few die (speaking of the officers) and none resign."

Were I to give my own opinion, as a citizen, I should say, that all who had prostituted their official influence and power for electioneering purposes, should be removed; likewise, all who loved their party more than their country, and had manifested such feelings and dispositions as made it apparent that they would rejoice at a failure of the administration, rather than its success. For a free, full, independent exercise of the right of suffrage, no man should be removed. These are my opinions, nor am I aware that the present administration has gone beyond them.

I now say to gentlemen, that all their charges of proscription and of glutting vengeance are but the nibbling of minnows at a mountain; they cannot remove one pebble from its base; and although I am aware that I can add nothing to the strength or beauty of that vast pillar of renown, which the great and patriotic actions of the present Chief Magistrate have reared up for him, I will say one



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thing to the gentleman from Maine, [Mr. HOLMES.] When minor men shall die, and rot, and be forgotten, the name of Andrew Jackson will be held in reverence by all posterity, and his great actions will be a shining light, pointing out to benighted nations the way that leads to liberty and happiness.

Sir, gentlemen might as well attempt to raise a commotion in the ocean, by throwing pebbles on its surface, as to agitate the people of this nation on account of the removal of a few subordinate officers, who have held their offices already for too long a period, and whose places are well supplied. The same clamor was attempted to be raised against Mr. Jefferson; the groans and lamentations were as loud and long, and still no effect was produced to his disadvantage.

This debate [said Mr. G.] reminds me of the days of other years. My name has been introduced by my friends as the author of a sentiment or doctrine called moral treason. In 1813, when this country was in its greatest peril and danger; when the richest blood of the West had enriched the soil of Tippecanoe and the banks of the Raisin; when Davies and Allen, and other patriots had fallen; when Winchester, Madison, Lewis, and Winder, were in captivity; when I saw the blood of my country issuing from every pore; I likewise saw a portion of our citizens discouraging enlistments, and dissuading capitalists from loaning their money to the Government. I did pronounce men, thus engaged, moral traitors. I argued thus: If an individual shall arm himself, and go over to the enemy, and stand in his ranks, he is guilty of treason under the constitution, because he has added the overt act to his treasonable intent. If the same individual shall not go over to the enemy, but remain with us, and employ his influence so as to prevent ten men from joining the standard of their country, he thereby does a greater injury to his Government; and his intention is as criminal as though he had been found in the ranks of the enemy. So I spoke of those who used their influence to prevent the loans of money which were necessary and indispensable to a successful prosecution of the war. I spoke as I then and still think. I re-affirm it. But I need not urge arguments to enforce a doctrine now admitted by all as canonical. Although, like other truths, it was disputed and questioned when first advanced, now none seem to controvert it. I must here express my regret that the gentleman from Maine, [Mr. HOLMES] who then stood up in the Legislature of Massachusetts, and manfully, ably, and eloquently, contended for his country, and myself, should now be found on adverse sides. I then censured, but in far less degree, the opinion entertained and practised upon, that the militia of the United States could not, under the constitution, be compelled to cross the lines of their States, or of the United States, in times of war. They read the constitution to the letter, regardless of its spirit. Congress had decided the question differently; and my opinion was, that all should submit to that decision, until the common enemy was expelled from our borders. My then and now constituents concurred with me in opinion. When called on by their country, they hastened to obey; they never stopped to inquire or study geographical divisions or lines; their only inquiry was, where are the enemies of the country? They went in search of them, and the only charge ever made against them was, that they went too far, and overdid their duty. This charge, and those who made it, their aids and abettors, are hastening to oblivion. Shall I, on account of this difference of opinion, reproach and censure Massachusetts, or call in question the patriotism of her citizens? No, sir; Boston was the cradle of American liberty. There is the ground over which Samuel Adams and John Hancock moved, when they called the sons of liberty to arms. To me, it is holy ground. I will not profane it. The atmosphere which such men breathed, must be favorable to independence,

and the rights of man; and, although noxious vapors may arise, and settle and abide there, as elsewhere, for a season, the rays of the sun of liberty will penetrate and dissipate them.

I thank the Senator from Missouri for all the kind feelings he has manifested towards the ancient sufferings of the West. Sir, they were great. I know it. I need turn to no documents to tell me what they were; they are written upon my memory, a part of them upon my heart. The honored men you see here are but the remnants, the savings, the wreck, of large families lost in effecting the early settlement of the West. If I look to the right or to the left, and all around, I see mementoes of ancient suffering and woe. Ask my colleague, [General DRESS] who sits near me, what he remembers. He will tell you that, while his father was in pursuit of one party of Indians, another party came in and murdered two of his brothers. Inquire of yonder Governor of Arkansas, [Mr. POPE] what became of his brother-in-law, Oldham? He will tell you that he went out to battle and never returned. Ask that honorable Representative, [Mr. WICKLIFFE] where is your uncle, the gallant Hardin? He was intrepid enough to carry a flag of truce (under the direction of the Government) to the hostile savages. They did not know the sanctity and protection which the flag of peace threw around him, and they slew him. If I turn to my old classmate and friend, [Mr. ROWAN] one of the ancient sons of the wilderness, now a grave, and wise, and potent Senator, I am reminded of a mother's courage and intrepidity; and who she rescued from savage hands, when in the grasp of death.

I was too young to participate in the dangers and difficulties of my country; but I can remember when death was in almost every bush, and every thicket concealed an ambuscade. If I am asked to trace my memory back, and name the first indelible impression imprinted on it, it would be the sight of my eldest brother, bleeding and dying under the wounds inflicted by the tomahawk and scalping knife: another and another went in the same way. I have seen a widowed mother plundered of her whole property, in a single night; from affluence and ease reduced to poverty in a moment, and thereby compelled to labor with her own hands, to educate her last and favorite son, who now addresses you. Sir, I remember the two companies (spoken of by the Senator from Missouri) sent by Virginia to our relief. They were called rangers. They were stout, rough-looking men, not fit for courts or palaces, but each man was a man: to us they were angels of deliverance. They guarded us, and fed us upon the game of the wilderness. Sir, in my just estimation, one company of them (seventy-five men) were of more real value than as many office hunters of the present day as could stand in the Pennsylvania avenue, between this capitol and the President's house.

These scenes are past; and now, shall I throw censure upon the old States for want of a proper regard to the interest of the West? I cannot do it so far as Kentucky is concerned. The greatest sufferings there were from the first of the year 1780, until the fall of 1782. During all that period, the old States were contending for their own safety; and although Cornwallis surrendered in October, 1781, it was not until after the battle of the Blue Licks, which took place in August, 1782, that such assurances of peace between Great Britain and the United States were entertained, as would justify sending a force to the Western country. It was not until the 30th of November, 1782, that the preliminaries for a peace were signed; and from that period such was the rapid increase of the Kentucky population that the war was soon transferred to the enemy's country. The citizens of Tennessee suffered to a much later period. There the insufficiency of the protection afforded by Congress was felt, after the war with Great Britain had ended: and it was not until Whitley (the same

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brave man who fell at the battle of the Thames) took his Kentucky volunteers, and united them with men of the same description raised in Tennessee, and marched them, without any authority from the Government, against the Cherokees at the Nickajack towns, and conquered them, that any security was afforded to the citizens of Tennessee.

The present Chief Magistrate has been charged with inconsistency in this, that he has appointed members of Congress to offices after he had written a letter to the Tennessee Legislature, recommending a change in the constitution, so as to exclude them. Surely gentlemen ought to permit him to administer the Government upon the constitution as it is, not as he might wish it to be. His recommendation has not been acceded to; a majority of the people have differed from him in opinion, and it has become his duty to acquiesce in their decision.

A few words with the gentleman from Maine, (Mr. HOLMES) and I have done. He tells us he is always in a minority, and prefers to be so. This is matter of taste altogether. It is certainly the duty of a majority to carry on the Government, and do all the good for the country it can; and the understanding of that gentleman seems to be that the minority may and will annoy, vex, and harass the majority, by the use of all the means in their power. Now, if the disposition of any individual inclines him to mischief and evil, rather than good, I shall not quarrel with him for indulging his taste. The same gentleman has told us, that a gallant gentleman of the South, and a gay deceiver from the banks of the Hudson, are wooing and courting the West; and in time, a gentleman from New England may pay his addresses likewise.

I have often felt, painfully felt, my inferiority to those with whom I was contending. I seldom say any thing about it. The public will always discover it soon enough for my benefit. In a case, however, so striking as the present, I will at once openly and frankly admit my inferiority. It has been a long time since I have practised, or even thought of courtships. I never did excel. I never had at command those bewitching smiles, graceful attitudes, and enchanting words, which so much characterize and distinguish some gentlemen of my acquaintance; and how fortunate should I be, could I now borrow from that gentleman such aid as he could easily furnish, and have a great abundance left, while I discourse with him upon the subject which he has presented to our view. I will, however, without his assistance, endeavor to state how this matter has been, now is, and is to be hereafter. Some five or six years since, a gentleman of New England did pay his addresses to the West, and such were his importunities, and those of his friends, that they did extort from her a hesitating, dubious, and reluctant assent. She was not satisfied herself; and when the old people talked to her, and she had reflected fully upon the subject, she determined against the proposed union of the East and West; and in pursuance of the advice of her best friends, she married an individual, of whom I will give some account to the gentleman from Maine. He was born in South Carolina, in what is called the Waxhaw Settlement, a place remarkable for the production of great men, both of body and mind; there is an instance of it [pointing to Mr. BLAIR\*] in the Representative of that district. He studied law in North Carolina, and at an early period removed to the West, and there learned the rudiments of war, under General James Robertson, the founder of Nashville, and father of West Tennessee. He distinguished himself at the bar as an advocate, and at an early period was called to the supreme bench of the State, where he held the scales of justice between contending parties, with an even and steady hand. He was remarkable for his detestation of all fraud, and treated villany of every sort with severity. True, he is a little odd, but he is as

tough and sound—ay, as good old seasoned hickory! With him the West is contented and happy; and let it bring joy or grief to whom it may, no doubt need be entertained that next November two years, as an evidence of her attachment, she will, in presence of the good people of this country, again pass through the ceremony usual in such cases; nor should I be disappointed, if the State of Maine were found aiding and assisting at the celebration; and the gentleman himself would unite, I am sure, were it not for his unconquerable attachment to political consistency.

The Senate will excuse me for saying a few words in relation to the partnership made up by the Boston parson, during the last war, and now added to by the gentleman from Maine, which makes it to consist of James Madison, Felix Grundy, His Satannic Majesty, and John Holmes.

[Here Mr. HOLMES rose, and remarked that he had only said that, had the parson thought of him, he would have added his name at the end of the firm.]

Mr. GRUNDY proceeded. We will supply the ellipsis of the parson, and make him say what the gentleman supposes he would have said. I never speak irreverently of parsons, unless my duty compels me to do so; and, therefore, as to him, I will only remark, that I think his zeal was misdirected; but to the gentleman from Maine I have something more to say. I was honored too much when my name was inserted in the title of the firm. I never had, nor have I now, capital or capacity for business sufficient to entitle me to such distinction; and, therefore, in the new arrangement about to be made, my name will not be inserted, either in the title of the firm or upon the sign board. Mr. Madison has become old and rich, for an honest and well earned fame is a politician's wealth; he has retired from business, and Andrew Jackson has taken his place; and business will, hereafter, be conducted under the name and style of Andrew Jackson and company. Of this firm I will be an humble and unnamed partner. The gentleman from Maine will not assist in conducting the business of this firm, and the third person named has a violent antipathy to it. Therefore, the best thing that can be done is, to dissolve the partnership, and let the two characters last named establish a new firm, under the name and style of ——. [Meaning the Devil and John Holmes.] In making this division, great reliance is placed in the many excellent qualities and superlative virtues of the gentleman from Maine, which will enable him to keep the senior member of his firm in order, should he prove refractory. To this dissolution of the old firm, and the establishment of the two new ones, I call these Senators to bear testimony.

I wish to address the Senate seriously, upon another subject introduced into this discussion. I pretend not to prescribe rules to others: each Senator must judge of his own course for himself. I speak not in censure of the absent—of the late President of the United States and of his Secretary of State. I have spoken no evil, nor will I do so. If that is to be done, let those do it who have contended with, and conquered them. Theirs be the honors of the triumph, and all the spoils. I claim no share of either. I only ask my political friends to be permitted to aid them in diffusing and circulating, throughout the country, the beneficial effects of their achievement. This being the course I intend to pursue, gentlemen will excuse me for not feeling the influence of the remarks they have made concerning the present Secretary of State. Although I am willing to hear others, and indulge myself in much freedom of remark, when the conduct of a public officer is fairly before the Senate, I am unwilling to hear their names introduced and harshly treated, when there is no connexion between them and the subject under discussion. When I recollect that this individual has been a Senator in the Legislature of his own State; the Attorney General of the great State of New York; twice elected a Senator of

\*Mr. Blair is a gentleman of fine talents, and in size upwards of three hundred weight.

the United States; the Chief Magistrate of his State—the duties of all which he ably and faithfully discharged; and now the first constitutional adviser of the President of the United States; I must be excused for thinking him entitled to public confidence, until something be shown to his prejudice.

Another high officer has been alluded to in this debate, in a manner which may be calculated to do injustice to his sentiments. The Senator from Massachusetts [Mr. WADSWORTH] read extracts from the speech of the presiding officer of this body, delivered on the tariff of 1816, and from his report made to the House of Representatives on Internal Improvements, under a call from that body, with a view to justify the system which has since been adopted in reference to these important subjects. I do not stand here to apologize for any one; but justice compels me to say, that I consider such proofs as entirely fallacious. No proof of sentiment can be more unfair, usually, than partial extracts, without reference to subject or circumstances. And such, I have no doubt, is the case in this instance. The tariff of 1816 was in its nature different from those since adopted. It was for revenue, and not protection. It was reported from the Committee of Ways and Means, and not from that on Manufactures; and the rates of duties, as fixed by it, were not higher than the wants of the treasury required. It was, in fact, a reduction, not an increase of the then existing duties. It is true that many of its provisions were so modified as to afford protection, so far as was practicable in a system of revenue, to the manufactures which had sprung up during the restrictive measures and the war; and which, as they had been forced into existence by the policy of the Government, had a just right to its protection, as far as was consistent with its constitutional powers, and a just regard to other great interests. No one, the most rigid in the construction of the constitution, ever doubted but that protection might be afforded in that incidental mode; and it would be as little doubted, that, where a measure which proposed thus to protect them was before the House, the general benefit of home manufactures would constitute a legitimate topic of debate, in order to ensure the passage of the bill. But it would be doing great injustice to infer from general remarks, made under circumstances going to show that manufactures at home would render us more independent and secure in time of war, that he who delivered them was in favor of the protective system. The most that can be fairly inferred is, that he was in favor of protection as incidental to revenue. The character of the measure under consideration, to which the remarks referred throughout the discussion, shows that it was regarded in that light only.

Surely the Senator from Massachusetts, when he reflects on his own case, will not insist on a different view. He opposed the tariff of 1824, and supported the still stronger tariff of 1828, on a ground of change of circumstances in the short interval between them, and yet repelled the charge of inconsistency when applied to himself. With such a defence in his own case, he cannot but see how unjust it would be to rely on sentiments delivered on a tariff for revenue only, as a justification of a system based on the principle of protecting one branch of industry at the expense of others, without regard to revenue or any other of the constitutional powers of Congress. But the glaring injustice which may be produced by quoting partial extracts is still more strikingly exemplified in the case of that which the Senator from Massachusetts quoted from the report on Internal Improvements. He read, from the introduction of the report, some introductory observations on Internal Improvements, no doubt with a view to prove that the author was in favor of the constitutionality of the system in its broadest sense. Taking what the gentleman read separately, the inference which he wished to draw might seem to follow; but if the gentleman had taken the trouble to turn to the paragraph

next to the concluding one of the same document, he would have found it repelled. What he omitted to do, I will undertake to perform. The report was made under a call of the House, and of course did not involve the constitutional question; but, lest there should be a doubt on that question, it goes on to state: "In the view which has been taken, I have thought it improper, under the resolution of the House, to discuss the constitutional question, or how far the system of Internal Improvement, which has been presented, may be carried into effect on the principles of our Government; and, therefore, the whole of the arguments which are used, and the measures proposed, must be considered as depending on the decision of that question." Nothing can be more guarded; it requires no comment.

When I heard the gentleman from Massachusetts introduce the name of the presiding officer of this House, it struck me that there was something of indelicacy in it, as he is the only individual on this floor who cannot be heard in his own defence. I know that, were he permitted to be heard, none could defend his conduct and political course with more ability and effect. This I know, because I have seen his strength tested on many great and trying occasions.

Before I conclude, permit me to return my thanks to the gentleman from Louisiana, [Mr. JOHNSON] for his politeness and respectful treatment, in yielding me the floor, when he understood I had a wish to address the Senate; and although we cannot agree in all things, in one we will unite—in remembering with pride and pleasure, that it was on the banks of the mighty river of the West, and near his own great city, that the brave Louisianians, the gallant Mississippians, (commanded by their present representative, [Gen. HIXSON] who took them up to the very lines of the enemy, and there sported and played with danger as a harmless thing) the Kentuckians, always striving to be foremost where danger is to be met, the over-dutiful Tennesseeans, led on by the greatest captain of the age, met, fought, and conquered, the conquerors of the conqueror of the world. It was then, yes, it was then and there the American eagle took his loftiest flight, and uttered notes of highest exultation: thence winged his way to the South, to proclaim to Spanish Americans, then struggling for liberty and independence, what deeds of mighty daring and of valor freemen could perform, when fighting in defence of the beauty and booty of their country against an invading foe.\*

#### MARINE SERVICE.

The following resolutions, submitted on the 27th February, by Mr. BARNARD, were taken up for consideration:

"Resolved, That the Secretary of the Navy be directed to furnish to this House information on the following subjects:

"1st. Whether it is necessary to the armed equipment of a vessel of war that marines should compose a part of its military force; or whether marines may not usefully be dispensed with, and a portion of the seamen be instructed in the use of small arms, and perform all duties which can be required of marines, either in battle or in ordinary service.

"2d. Whether seamen are not now instructed and practised in the use of small arms; and, generally, any information which may elucidate the inquiry, whether marines can or cannot be beneficially dispensed with on board of our public vessels of war.

"3d. Whether the petty officers and seamen, who have been in service, but from age or slight disabilities are rendered unfit for the active duties of their calling, on ship-board, can be usefully and safely employed as guards at the navy stations, in lieu of the marines now assigned to that duty.

"And further, that the Secretary of the Navy obtain

\*The words "beauty and booty" was the watch-word of the British army at the battle of New Orleans.

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Marine Service.

[SENATE.]

from the officers composing the Navy Board, and other naval officers of rank now at the seat of government, their opinions, in writing, on the foregoing subject, to be transmitted with his report to the Senate."

Mr. SMITH, of Maryland, said he was opposed to this mode of obtaining information. He recollected that the policy and propriety of obtaining opinions from Heads of Department was discussed when Congress sat in Philadelphia. Some gentlemen were in the habit of, at that time, calling on the Secretary of the Treasury for his opinion on any favorite subject, relating to his Department, in order that they might be aided in accomplishing their object by the weight that gentleman's opinion bore in the legislative hall. It was then decided, that opinions of Heads of Department were unnecessary, as members themselves were as capable of forming as correct an opinion as they; and that they were improper, as tending to influence the discussion of the Legislature. Mr. S. said it was sufficient to require facts from the Departments and leave members to form their own opinions on those facts. For these reasons, he was opposed to the resolutions.

Mr. BARNARD said, the remarks made by the Senator from Maryland, [Mr. SMITH] in opposition to the resolution now under consideration, made it necessary for him briefly to state some of the views and reasons which influenced him in presenting it. It will be recollected [said Mr. B.] that, at the commencement of the present session, the President of the United States, in his message to Congress, recommended that the marine corps should be transferred to, and merged in, the army; and whatever marines might be required for naval service should be obtained by drafts from the army, as it was stated that no previous training was necessary for this service. The Military Committee of the Senate, upon the reference of the several parts of the President's message, considered this subject as coming in some measure before them: although of a mixed character, relating both to the army and navy, yet they conceived it entitled to their consideration. But it occurred to me, sir, that it was proper to settle a preliminary question before we could come to any satisfactory conclusion on the recommended transfer of the marine corps, and that was, whether either marines or soldiers were necessary as a part of the armed force on board of a vessel of war. If marines are indispensable on ship-board, then I am willing to admit that it will be better to retain the corps as it is, and cure any defect in its organization, if such should exist, by a re-organization, if necessary: for I can readily foresee difficulties that will arise in taking soldiers from the army to perform marine duty. I wish merely to mention one or two that have occurred to me. By the existing laws of Congress, punishment by stripes is expressly prohibited in the army of the United States. When a soldier, therefore, enlists in the service, it is under an implied agreement, if not express understanding, that this punishment shall not be inflicted on him for ordinary offences. If he is called on to perform marine duty, on board one of your vessels of war, is he to be subjected to the punishment usually inflicted on seamen, or is there to be two kinds of punishment, one for the marine, and the other for the sailor, on board of the same vessel? Every naval officer will tell you at once, that this distinction in punishments cannot exist. That, for the same offence, there must be the same kind of punishment, whether for marines or seamen.

There is another inconvenience [said Mr. B.] that has struck me will arise in taking soldiers. A company of soldiers consists of about fifty or sixty men, commanded by a captain and two lieutenants. If a draft is required for one of your smaller vessels, say a sloop of war, about half a company only will be required: for I believe the number of marines usually employed on board one of that class of vessels is between twenty and thirty only. If you then take this number, you divide the company, leav-

ing the captain on shore with one of his subalterns, while the other is sent in command of the detachment to serve at sea. It must be apparent, I think, that such a state of things would operate injuriously to the army. But my design is not now to go into an examination of the inconveniences that would result, by making detachments from the army for marine duty at sea. It is not necessary to the consideration of the resolution before us. I have merely stated one or two as they struck me. My object is to obtain from those competent to give it, the information asked for in the resolution: that is, whether marines cannot be entirely dispensed with on ship-board, and a portion of seamen trained to the use of small arms, to perform any duty that can be required of soldiers.

The Senator from Maryland objects to the resolution, because, he says, it is asking the opinion of the Secretary of the Navy, when we ought to ask for facts, and alleges that the Senate are just as competent to form opinions on this subject, as the Secretary himself. But the resolution asks for information, and from whom? Why, sir, not from the Secretary only, but from naval officers, whose long service and experience will enable them to give it. The resolution was purposely framed with a view to accomplish this object. But who can the Senate call upon for this purpose? Upon the officers themselves? No; but upon the Head of the Department, and, through him, upon the officers who are subject to his control. This is the only means that I am aware of by which we can officially obtain the information sought for.

I will acknowledge [said Mr. B.] that my impression has been, that marines are not indispensable for the sea service in our public vessels. I may be in error. I do not pretend to any practical knowledge myself on the subject, and therefore it is that I want to be informed by those who alone can give satisfactory information. If, when it is obtained, in the report of the Secretary, and the officers called on, it shall be found that marines cannot be dispensed with, it will show that I have been mistaken in my impression. I will, however, state a few of the reasons on which that impression has been founded: for I do not mean to go into an argument on the subject. It is well known that, in the British service, their seamen ever have been forcibly impressed, and compelled to serve on board their ships of war against their consent; and this, too, not for a few years only, but for life, or, at least, as long as they are fit for duty. It became necessary, therefore, to repress that spirit of mutiny which would unquestionably be found to exist in a crew thus violently torn from their friends and family, and forced into the service against their will. For this purpose marines, it is believed, were originally introduced on board of British ships, as much, if not more, to overawe and keep the seamen in subjection, than to assist in navigating or fighting the vessel. This duty, on the part of the marines, has produced a feeling on the part of the sailors towards them, if not of actual hate, certainly any thing but cordiality and good will. The dislike of the sailor for the marine is proverbial.

In our service [continued Mr. B.] marines cannot, it is presumed, be necessary to guard the seamen, and prevent mutiny. Seamen are voluntarily enlisted, and for a shorter period than marines themselves: they are not forced into the service, as in the British navy, but go into it of choice—it is their free act. Can it be possible, then, that they must be watched and guarded by soldiers to keep them to their duty? Such a belief is derogatory, it appears to me, to the character of our gallant tars. On one subject my mind is decided, that there should not be on board of the same vessel two jarring and distinct classes of men, who are in constant collision with each other, unless imperious necessity demands it. Those who are to act with effect, can best do so by a union of feelings, and a similarity of habits. Experience has taught this lesson. Sailors and

marines cannot, or, at least, have not, heretofore, assimilated, either in feeling or habit.

As the materials are then so discordant, can the service of the marines be dispensed with without injury to the service? Cannot seamen be trained to the use of small arms? I see no difficulty. Instead of marines, take the like number of young landsmen from the country, any where, and they can load and fire with as much effect as the best drilled marine. The Americans, generally, are accustomed from infancy to the use of fire arms; very little training will therefore be required to make them expert gun-men. Besides, sir, I am informed that, by the present structure of our vessels of war, marines can render but little service on deck, and that musketry is used with most effect from the tops. If this is the case, is it not better to have seamen than marines? They will be ready to throw down the musket and spring to the yards and rigging at any moment, when required by the exigencies of the ship. This may sometimes be of great importance. Nor do I conceive the objection urged by the Senator from Maryland as sufficient, that seamen will not keep their arms in order.

It is well known that, besides muskets, there are pistols, pikes, cutlasses, and other arms, on board of every armed ship: how are these kept in order? Not by marines. Muskets can be kept in good condition the same way, by the armorer, or whatever name is given to the person in charge of the arms. The objection raised, too, that the pay of sailors is greater than marines, loses part of its weight, when it is recollected that the marines are not only paid, but clothed by the Government, while the sailor purchases his own clothing from his pay.

There is another consideration which I think ought to have influence in determining upon this subject, and therefore it is that I am desirous of the information. It cannot be unknown to the Senate, that there is often a scarcity of seamen, and difficulty is experienced in promptly manning our vessels of war for sea: any measure calculated to remove or lessen this inconvenience, without injury to the service, ought therefore to receive the favorable regard of this body. One of our larger vessels of war, destined for a three years' cruise in the Mediterranean, Pacific, or elsewhere, will carry with her about a hundred marines; they will continue to serve as marines; and as marines, and nothing but marines, they will return to this country. Let, however, the same number of landsmen be sent instead of marines; let them be taught and exercised in the use of the musket, if necessary; but let them at the same time perform all the ordinary duties of sailors, and at the end of a three years' voyage they will return, not mere musket-men, but expert and able seamen: you will thus obtain an annual increase of seamen for your naval service, and that of the very best materials too—a matter of some consequence, I conceive, not only to the interests of the navy, but of the country. I have been led to these observations, sir, because of the opposition to the inquiry proposed by me, and in justification of my views; whether wrong or right, I must leave for others to judge.

While I am up, I will say a few words with regard to the last branch of the inquiry: whether seamen cannot be employed in lieu of marines at our naval stations. The marine corps, as at present established, is both a naval and military body. When at sea, it is subject to the regulations made for the navy; when on land, it is subject to the rules and articles of war for the government of the army; so that its character depends on whether it performs duty on land or water. Now, sir, when on shore, at a naval depot, it is governed by army discipline; when on ship-board, by naval discipline. We know that our navy yards are entrusted to the charge of a naval officer of rank, generally, I believe, if not always, a post captain; marines are detailed to perform garrison duty, in guarding and protecting the public works and property. But, sir, in consequence of marines being soldiers on land, they are

not, as I understand, subject to the orders of the commandant of the station, and details for duty are therefore made by request, not by command of this officer. Two separate and independent commands, then, exist at the same place, with no common superior. This is inconsistent with my ideas of military subordination and regulation. But why may not seamen, whose age or infirmities, from long and faithful service, have rendered them unqualified for active duty on ship-board, serve as guards at these naval depots, instead of marines? They have been accustomed to strict discipline, and it is conceived would be equally vigilant in the discharge of any duty imposed on them; their tried fidelity at sea would furnish a guarantee for their faithful conduct on shore. I wish to know from naval officers if they can be trusted with this duty? If they can, sir, it will furnish an asylum for these hardy veterans of the ocean, much better suited to their tastes and wishes than any naval asylum. They will be rendering service to the Government for their support, and will find a resting place in their more advanced years, after the dangers and vicissitudes of an active sea life.

It is known that there are now at the seat of Government many distinguished and experienced officers of the navy. I have availed myself of the circumstance to make the call at this time. The information, when received, will be valuable; no possible injury can grow out of obtaining it; we shall be possessed of light which we do not now possess, to guide us in any measures that may be deemed necessary, with respect to the marine corps. I trust, therefore, the Senate will adopt the resolution.

Mr. B. concluded by saying he wished it to be understood that he had no unkind or unfriendly feeling to the corps in making this inquiry; very far from it. He was actuated by different motives. I have the pleasure, said he, to be acquainted with several of its officers, who have heretofore signalized themselves in the service of their country, and will do so again, whenever their country needs their services. But if they are necessary to the navy, let them be subject to naval control, whether at sea or on shore.

Mr. JOHNSTON suggested that the resolution was unnecessary, as the Committee on Naval Affairs had the same power to call on the Secretary of the Navy for this information, through their chairman, that the Senate had. If every committee were to pursue this course, and come to the Senate with resolutions to obtain information which could be as well obtained without any reference to the Senate, it would be constantly engaged in long debates, and the necessary business of the Senate would be obstructed; and a discussion is got up, which shows that gentlemen possess the very information required. The gentleman from Pennsylvania [Mr. BARNARD] had convinced the Senate that he is already in possession of all the information required in his resolution.

After a few observations from Messrs. WOODBURY, and SMITH, of Maryland,

Mr. BARNARD observed that, when he offered this resolution, he did not apprehend that any circumstances would arise which could possibly lead to a discussion; and, therefore, the remarks of the gentleman from Louisiana were not applicable to him. Farther, as the President of the United States had recommended the reorganization of the marine corps, it being of a mixed character, we may naturally presume that all the facts on which this paragraph was predicated were in his possession, and may now be obtained from the Secretary of the Navy.

Mr. HAYNE suggested that, as the subject had relation to two Committees—those on military and naval affairs, he thought it proper that the gentlemen would designate the one to which he would refer the answer, when received. If left between two committees, it might fall through.

Mr. BARNARD said he had no hesitation in naming

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the committee to which he would refer the answer to his resolution. He was willing to refer it to the Committee on Naval Affairs.

The resolution was then agreed to.

TUESDAY, MARCH 2, 1830.

## MR. FOOT'S RESOLUTION.

The Senate resumed the consideration of Mr. FOOT'S resolution.

Mr. KNIGHT said it was not his intention to make a speech, but merely to reply to a remark made by the Senator from South Carolina, and also by the Senator from Tennessee who last addressed the Senate, on the subject now pending. It is not my purpose [said Mr. K.] to say any thing of the resolution under consideration, but to endeavor to sustain my State, and to save her from being sacrificed here by the gentlemen, the one on my right, and the other on my left. I had hoped, sir, that, in this unprofitable business of bringing other's sins before the world, the little State from whence I come would have been overlooked, or rather not seen on the map of this controversy, and would have remained unscathed and untouched to pursue the noiseless tenor of her way in the arts of peace, industry, and mechanism. But in this I have been disappointed—"men's virtues we write in water, but their vices are engraven on brass." However unnecessary or uncalled for, such is the fact, that the aberrations of some of the citizens of my State are held up here, and emblazoned to the world, not for the purpose of admonishing others of the fatal rock on which they had been wrecked, but it seemed to me with exultation, and as much as to say, stand off, avaunt, for I am holier than thou. To me, sir, it seemed unkind, and the more so from the quarter it came. I had thought that friendly intercourse and common feeling, as well as other considerations, would have forbid the remark of the gentleman from South Carolina. Had he considered that it was by the aid of one of the sons of Rhode Island he is entitled to a seat on this floor, I am sure it would have been spared. There was a time when South Carolina was prostrated by internal enemies and a foreign foe: her situation was seen and felt throughout this land. This son of Rhode Island [General Green] went forth—he stretched forth his sinewy arm—he met the foe—they fought—he conquered, and Carolina thenceforth was free. On that occasion she was just to her benefactor. She amply paid him with her generous love. I had hoped that the kind feelings of those days were still cherished in the bosoms of her sons; that they would not upbraid the place of his nativity, his friends, his connexions, nor aid to tarnish their fair fame. If they could not cast the mantle of charity over them, they would leave their vices and their virtues to repose in the bosom of their Father and their God.

Let us look at the accusation. Sir, it was stated that at a certain time, South Carolina opened her ports, and invited all the world to a city of refuge; that a number of ships, purporting to be from Rhode Island, entered the port of Charleston with aliens on board; they were discharged, and the freighters received their passage money, as they had a legal right to do by the laws of South Carolina. It was also legalized by the nations of Europe, and sanctioned by custom. Now, sir, can it be believed that these unlearned mariners intended injury in taking these persons from a state of barbarism to a land of liberty and of law? To a land where all are born equal, where all have inalienable rights, such as liberty, property, and the pursuit of happiness, proclaimed by the sages and patriots of '76? They had seen it in the newspapers, read it in their spelling books, and believed it true. I say, sir, were it possible for such persons, under such circumstances to have imagined that, by their act they were perpetuating misery and bondage on the human family for ever? I say, sir,

could they have understood this, they would have considered their latter end, and turned from wrath to come. But, sir, if there were any among them, who knew and believed they were entailing slavery on their fellow men, I do not stand here to palliate their offence—let justice fall on them. I will not protect nor shield them from the condemnation of the good and virtuous—they will need more powerful aid than mine, to absolve them from the iniquity of such transgressions—"there is a worm that never dies." I would that all such should turn to Him who alone is able to pardon and to save.

But, sir, Rhode Island is not the only sister of our Union that has been seduced from the path of rectitude and of virtue, and then had to endure the taunts and jeers of her seducer. Others have experienced similar fate, and (like the daughters of Jephthah) have wailed on the mountains, pities by the humane and charitable, but scorned and condemned by those who betrayed, seduced, and participated in their crimes. Such, sir, is the situation of Rhode Island. And now she is accused here of entailing perpetual bondage on the poor untutored and unlearned African. That she has done it as a State, I deny. She absolved the bonds of master and slave with her independence. She acted out what she professed. Whoever breathes in her atmosphere, breathes the air of liberty. It was there civil and religious freedom was first given and secured to man, and there it has been maintained and enjoyed to the letter, full, free, and complete, to the present day. To her sons she can give but little patrimonial estate, for she has it not—but she gives them freedom: they are found in every clime, and in every sea; whether on the lakes or on the ocean—wherever their country and their duty call, they obey; there you will find them.

Sir, whatever may have been our mutual transgressions, I will henceforth cast them into oblivion; and whether slavery is wise, necessary, and just, in South Carolina, is not my province to inquire—it is her business alone, not mine; she has full power over the subject, and to her I leave it. I do not arraign her before the Christian world; she will manage her own concerns in her own way. My friends, my countrymen, are domiciled in South Carolina; they are received with kindness and hospitality; our commercial intercourse is extensive; we are great consumers of her productions; we manufacture her raw material and send it to a market. We esteem her citizens for their chivalry, hospitality, and intelligence, and we are disposed, through good report and evil report, in weal or woe, to extend to them the hand of fellowship and of brotherly kindness, and hope it may be brightened and cherished for the benefit of all, now and forever.

To the gentleman from Tennessee, I will say as was said of a Roman Governor, near two thousand years ago, Felix by name: "Had he obtained more exact knowledge of us, he would not have made this accusation, and would not thus have condemned us without a hearing." Although he passed sentence on us, and handed us over, (not to Festus nor Agrippa) but to the people of this nation, to be punished, yet I will speak to him the words of truth and soberness—nothing in malice, but all with temperance, justice, and forbearance.

Sir, why the gentleman, with his gigantic power, should have thrown himself over the Alleganicas, and thrust his war knife into the heart of the smallest, weakest sister of this Union, is to me inexplicable. It could not be to display his power and bravery in combat, or in unprofitable war: for the brave are always generous, and would not attack the weak and unoffending; to vanquish so inferior an opponent would entwine no laurels around his brow. Was it to display his gallantry? Surely it could not be for this: for, to push his weapon into the bosom of the innocent, the unsuspecting, and the unprotected, would be no confirmation of his well earned fame. Rhode

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Island had taken no lot nor part in the debate; she had accused no man nor combination of men, nor had given cause of offence; why should she be accused? Why this attack upon her?

Sir, my object only is to repel the imputations cast on that State, which has so long and so often honored me with its confidence, and on the yeomanry of that State, whose immediate Representative I am: for their occupation is my occupation; we are tillers of the ground from our youth up; with them I meet upon the level; republicans in fact and in deed; not only in profession, but practice; no landlord and tenant, no master nor slave, but all of us independent freemen and freeholders, cultivating our own soil with our own hands. We care but little who administers this Government, if it is done with wisdom, discretion, and on the principles of the constitution. We preferred Mr. Adams, but we do not oppose General Jackson; we are his friends, but not his partisans; we will give him our support when he is right, but will not when wrong; and if deserved, will hail him with the plaudit of "well done, thou good and faithful servant," as readily and as willingly as any others. It does not follow that, if we are friendly to one, we must therefore oppose another without reason. These, sir, are the men in common with all others of my State that I mean to defend from all unjust imputations; and these are the persons accused here of severing husband and wife, mother and child, and rending asunder all the ties that bind man to man. Perhaps the gentleman did not intend his accusation as censure, but as praise: for he asserted that slavery was justified by the principles of Christianity. If so, I have misapprehended the allegation: for I hold whatever is commanded and supported by Christianity is for the happiness and well being of man here and hereafter. If the forcible separation of husband and wife, mother and child, and keeping them in ignorance and bondage, is justified by the divine law, then I confess my error; but until he shows this, I shall cherish my own opinion, and call it slavery still.

Sir, the gentleman exclaimed, "go to the East, go to Rhode Island: she can tell you how slaves came here." Sir, if slaves are found in the West, I know not how they came there, nor does Rhode Island know; they must have been carried there by force, and held by force, otherwise they would not be slaves. The native Indian roamed the wilderness as he pleased; he was as free as the mountain air he breathed; he acknowledged no master; he had no master. If slavery exists there, it was not found there.

Sir, when we are told to go to a State for information, we understand it to mean the State in its sovereign capacity; or at least a majority of that State.

[Mr. GRUNDY desired to explain. Sir, [said Mr. G.] I did not say that Rhode Island had done it; but that certain individuals of that State, tempted by their cupidity, had brought slaves here. The moral sense of that community is against it.]

Sir, [said Mr. K.] had I so understood the gentleman before, I should not have made the remarks I now have; and will not now say what I intended to have done; and only add, that if the gentleman knows any individuals in Rhode Island who have aided him in making slaves in the West, he may arraign them, try them, and, if found guilty, punish three of the ringleaders under the "second section," so much alluded to here and elsewhere; not forgetting those who tempted, those who held forth the provoking gold, not in a bag, but in the open palm, and set them on. But, sir, it is hoped the gentleman will extend his mercy so far as to let them have the benefit of the statute of limitation.

I repeat, it was the State I intended to defend; and if the gentlemen does not accuse, I have no defence to make.

Mr. CLAYTON then rose, and addressed the Senate until after three o'clock.

WEDNESDAY, MARCH 3, 1830.

The Senate was principally occupied this day in the consideration of Executive business.

THURSDAY, MARCH 4, 1830.

## MR. FOOT'S RESOLUTION.

Mr. CLAYTON concluded the observations on this subject which he commenced on Tuesday. They were as follow:

If I need an apology (Mr. C. remarked) for discussing topics not strictly relevant to the subject of the resolution before us, I shall find it in the example of honorable gentlemen, who, in going before me, have availed themselves, by general consent, of an opportunity to debate, on this motion, the full merits of other questions of momentous interest to our country. While the argument was of a sectional character, and chiefly calculated to excite personal and local feeling, I desired no participation in it. But, although generally averse to any deviation from the ordinary rules of parliamentary proceeding, and unwilling to originate any new subject of controversy even in the boundless latitude given to this discussion, I cannot be silent while principles are boldly advanced and pressed upon us, (no matter how inapplicable or inappropriate they may appear) which, in my judgment, are subversive of the interests of this nation, or hostile to the spirit of the Federal constitution.

The resolution of the honorable Senator from Connecticut has nothing imperative in its character. It lays down no new principle, and proposes no new course of legislation; but simply asks an inquiry into the expediency of either hastening the sales of the public domain, or of stopping the surveys for a limited period. The committee to whom the inquiry is proposed to be entrusted is composed of five members,\* all of whom are Representatives of States within whose limits are contained large portions of the public lands. Seeing in this fact a sufficient refutation of the objection that this inquiry may create unnecessary alarm in the West; entertaining the same confidence in the honorable members of that committee which others have professed; believing that the subject proposed to be referred to them is important to the country, and that, by the adoption of the resolution, we may be furnished with an interesting document in their report, my own vote will be given against the motion for indefinite postponement. I agree with my honorable friend from Massachusetts, (Mr. WADSWORTH) that the committee may investigate the whole subject without any express instructions. By the rules of the Senate, they already have full jurisdiction over the matter. But, after all the discussion which has been elicited by the mere proposition to instruct them to inquire, it is not probable that the committee will do so without some further intimation from the Senate that a report on this subject would be acceptable. I cannot agree with the honorable Senator from New Hampshire, (Mr. WOODBURY) that the motion to postpone is calculated or intended to prevent a distinct expression of opinion on the subject; on the contrary, the postponement of the resolution, after discussion, would announce to the committee our indisposition to have the inquiry made during the present session. The Senator from Connecticut, (Mr. FOOT) who desires this information, and whose deportment here is distinguished for courtesy to others, may be indulged, without any apprehension of exciting unnecessary alarm in the West, while our refusal to adopt any measure to throw light on the subject may, possibly, create suspicion in other parts of our country, that we are wasting this portion of the nation's treasure, and are afraid that our profligacy may be exposed by this investigation.

\*Messrs. Barton, of Missouri, chairman; Livingston, of Louisiana, Kane, of Illinois, Ellis, of Mississippi, and McKinley, of Alabama.

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I proceed, now, sir, to a brief examination of what I conceive to have been the origin of this protracted and discursive debate. We have a bill on our files, entitled a bill "to graduate the prices of the public lands, to make provision for actual settlers, and to cede the refuse, upon equitable terms, and for meritorious objects, to the States in which they lie;" the same, sir, which has been alluded to by the Senator from Missouri, [Mr. BEXFORD] under the designation of "my graduation bill." When the gentleman from South Carolina [Mr. HAYNE] first addressed the Senate on the resolution before us, I understood him to have pressed it as a measure of expediency, that the public lands should be sold to the States within whose limits they are situated, for a nominal consideration. The gentleman afterwards corrected this impression, when his colleague [Mr. SWIFT of S. C.] declared that he also so understood him. Sir, the gentleman has the right to claim of us all that his statements should be properly represented. I afterwards understood him to say that his proposition was not to cede away these lands for a nominal consideration, but to sell them on such liberal terms that revenue shall not be even a secondary object in the sale. He urged, with his usual ability, the impolicy of even considering them as a source of revenue. Sir, if I now comprehend all this doctrine, it has for its object to make impressions which shall secure a favorable vote on this same graduation bill; and if so, I dissent from the doctrine *to lo calclo*.

Whether this were or were not the great object of the debate, with the gentleman from South Carolina, it was plainly avowed to have been a motive for it by the Senator from Missouri, [Mr. BEXFORD] in the view which he took of the subject. The bill referred to proposes to limit the prices of these lands at once, to one dollar per acre, and then gradually to reduce those prices at the rate of twenty-five per cent. per annum, until the lands shall be offered, after the expiration of the third year, at twenty-five cents per acre.

It further proposes to sell lands to actual settlers, whether trespassers or not, at gradually reduced prices, until, after the expiration of the third year, they are to receive them at five cents per acre. If that miserable pittance be not then paid, it proposes to cede eighty acres to every such settler, "without the payment of any consideration, and as a donation;" and finally, by the terms of it all the lands which shall remain not disposed of by these means, at the end of five years, are to be given to the States in which they lie, upon these conditions merely—that they shall apply them to the promotion of education and Internal Improvement at home, and refund to the Government the expenses of the surveys of the lands so ceded, at the rate of two hundred and sixteen dollars for each township of twenty-three thousand acres. In consequence of the enactment of such a law, probably very little would be bought until the expiration of the third year, when, if the interference of these States, with a view to secure the whole to themselves for nothing, should not prevent the sales altogether, the lands would be purchased at a nominal price. Such a measure, sir, would not only be unjust to the citizens of the old States, but highly injurious to the Western settlers who have heretofore bought lands at a full and fair consideration. The value of property is merely relative, and is either enhanced or diminished by the estimate placed upon other property of the same kind. If a hundred millions of acres be thrown into market at twenty-five cents per acre, and a large quantity of land be offered to actual settlers at the same time at five cents per acre, the value of that which has been bought by fair purchasers at two dollars, or at one dollar and twenty-five cents per acre, is at once, other circumstances being equal, sunk to a level with the selling price of all the lands around it. We well know the operation upon our real property, in all parts of the Union, of the exposure at public sale of any very considerable portion of real property adjoining it. We know

that if a great landed proprietor sells me a tract in the midst of his possessions at fifty dollars per acre, and then, from pecuniary embarrassment or from any other cause, exposes the residue to sale, by which he realizes only five dollars per acre for lands of equal fertility and advantages, my land, as an effect of this, is reduced to his last selling price. When he puts a million of acres around mine into market at a nominal sum, he equally diminishes the selling value of mine by the act, whether his motive for doing so be to augment population, and improve the country, or wantonly to effect my ruin. And should this bill become a law, the former purchasers who have paid full value would, in consequence of the depreciation of their property occasioned by the enactment, have a better equitable right to remuneration for losses by the Government, than many claimants whose demands are annually liquidated here without our hearing a note of remonstrance against them. This bill has been pending here for the last four years; and the disposition evinced to entertain it as a subject for future decision has cherished expectations which are sedulously encouraged by rumors in the West, that its provisions will eventually be adopted. If my information be correct, and Western gentlemen near me can bear witness that it is so, anticipations have been too generally indulged that these lands will, before long, be offered for nothing. This must tend to impede our sales, and perhaps to some extent to suspend the settlement of our Western frontier—a result I suppose to be deprecated by none more deeply than by the gentleman from Missouri, [Mr. BEXFORD] himself. In the mean time, without the final action of Congress on the subject, the illusion is every year increasing; and, to add to the evil, we have now a new doctrine, which has been already adverted to in this debate—that these lands of right belong to the new States within which they are situated. The gentleman from Missouri, in reference to the charge of hostility to the West, to prove or disprove which I would not myself now offer a single remark, has chosen to inform us that he has never obtained here more than a single vote for his graduation bill from the Representatives of all the States northeast of the Potomac—and he adds, that vote was given in 1828, by a former Senator from the State which I have the honor in part to represent. For this good deed, the gentleman from Missouri proceeded to pronounce a panegyric on that Senator, which was merited on stronger grounds. Though readily according in the justice which imputes the most correct motives to that gentleman, who is my neighbor, and with whom I live on terms of friendly intercourse, excruciating as he doubtless did his conscientious judgment on the case, yet, with my views, thus briefly explained, I am constrained to say that I cannot vote for this bill. According to my mode of considering it, it is a proposition to give away the birthright of our people for a nominal sum; and I am yet to learn that the citizens of the Middle States have indicated any feeling in regard to it differing from that expressed in the vote referred to, when, with a single exception, all the Senators representing States North of Mason's and Dixon's line opposed the measure. They do not look to these lands, as has been unjustly stated, with the eye of an unfeeling landholder who parts with his acres as a miser parts with his gold. They view the new States as younger sisters in the same family, upon an equal footing with themselves, and entitled to an equal share of their patrimony; but having children to educate, and numerous wants to be supplied, they will think it ungenerous, unjust, and oppressive, should these younger sisters take away the whole. Sir, it is the inheritance which descended from our forefathers, who wrested a part of it from the British Crown, at the expense of their blood and treasure, and paid for the rest of it by the earnings of their labor. It is not for me to say what are the feelings of the people of the Middle States on this subject. But it is their privilege to speak for themselves, and they will



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doubtless, when they think it necessary, exercise that privilege. Yet I will say that, if they entertain the sentiments of their fathers, they will never consent to cede away hundreds of millions of acres of land for a nominal consideration, or gratuitously relinquish them to any new State, however loudly she may insist on the measure as due to her rights and her sovereignty, or however boldly she may threaten to defy the Federal Judiciary, and decide the controversy by her own tribunals, in her own favor. Those who are conversant with our revolutionary history, will remember that the exclusive claims of Virginia and other members of our political family to the public lands, were warmly resisted by the States of New Jersey, Delaware, and Maryland, as soon as those claims were avowed, after the rupture with the mother country. The articles of confederation were not signed on the part of New Jersey until the 25th of November, 1778, although she had bled freely in the cause of American liberty from the commencement of the struggle. One of the principal objections which caused this delay in the ratification of those articles, will be found in the able representation of her Legislature, presented by her delegates to Congress, before she acceded to the Union. "The ninth article," said they, "provides that 'no State shall be deprived of territory for the benefit of the United States.' Whether we are to understand that by territory is intended any land, the property of which was heretofore vested in the Crown of Great Britain, or that no mention of such land is made in the confederation, we are constrained to observe that the present war, as we always apprehended, was undertaken for the general defence and interest of the confederating colonies, now the United States. It was ever the confident expectation of this State, that the benefits derived from a successful contest were to be general and proportionate; and that the property of the common enemy, falling in consequence of a prosperous issue of the war, would belong to the United States, and be appropriated to their use. We are therefore greatly disappointed in finding no provision made in the confederation for empowering the Congress to dispose of such property, but especially the vacant and unpatented lands, commonly called the Crown lands, for defraying the expenses of the war, and for such other public and general purposes. The jurisdiction ought, in every instance, to belong to the respective States within the charter or determined limits of which such lands may be seated; but reason and justice must decide, that the property which existed in the Crown of Great Britain, previous to the present revolution, ought now to belong to the Congress in trust for the use and benefit of the United States. They have fought and bled for it in proportion to their respective abilities; and therefore the reward ought not to be predilectionally distributed." And when, in November, 1778, the Legislature of New Jersey determined to attach her to the Union, they did it, as they then expressed, "in firm reliance that the candor and justice of the several States would, in due time, remove the subsisting inequality," yet still insisting on the justice of their objections then "lately stated and sent to the General Congress." So too, Delaware and Maryland, for the same reasons, refused to join the confederation until a still later period—the former ratifying the articles on the 22d of February, 1779, and the latter on the 1st of March, 1781. The State which I have the honor in part to represent here had, on the 1st of February, 1779, adopted the following resolutions to authorize her accession to the Union.

*Resolved*, That this State considers it necessary for the peace and safety of the State, to be included in the Union; that a moderate extent of limits should be assigned for such of those States as claim to the Mississippi or South Sea; and that the United States, in Congress assembled, should and ought to have power of fixing their Western limits.

*Resolved also*, That this State considers herself justly

entitled to a right, in common with the members of the Union, to that extensive tract of country which lies to the westward of the frontiers of the United States, the property of which was not vested in or granted to individuals, at the commencement of the present war; that the same hath been or may be gained from the King of Great Britain or the native Indians, by the blood and treasure of all, and ought, therefore, to be a common estate, to be granted out on terms beneficial to the United States."

But, after the accession of Delaware with this protest, Maryland still persevered in her refusal to join in the confederation, solely on the ground "that she might thereby be stripped of the common interest and the common benefits derivable from the Western lands." She still insisted that some security for these lands was necessary for the happiness and tranquillity of the Union; denied the whole claim of Virginia to the territory Northwest of the Ohio; and still pressed upon Congress "that policy and justice required that a country, unsettled at the commencement of the war, claimed by the British crown, and ceded to it by the treaty of Paris, if wrested from the common enemy by the blood and treasure of the thirteen States, should be considered as common property." In February, 1780, New York made her cession to accelerate the Federal alliance, and declared the territory ceded should be for the use and benefit of such of the United States as should become members of that alliance, and for no other use or purpose whatever." And although Virginia attempted for a while to vindicate her claim, yet, other States, feeling a strong attachment to Maryland, and conscious of the justice of her representations, disliked a partial Union, which would throw out of the pale a people standing, as Marylanders have always stood, among the bravest and most patriotic of our countrymen. The ordinance of Congress then followed, in October, 1780, declaring that the territory to be ceded by the States should be disposed of for the common benefit of the Union; and, on the second of January, 1781, Virginia, in that spirit of magnanimity which has generally prevailed in her councils, yielded up her claim, for the benefit of the whole Union. It is a remarkable circumstance that Maryland did not actually join the Union until after these cessions had been made by New York and Virginia, declaring, at the very moment, and by the very terms of her accession, that she "did not release, nor intend to relinquish, any part of her right and interest, with the other confederating States, to the Western territory." These facts, which have now become a part of the familiar history of the country, furnish curious reminiscences in these latter days, when a new light has broken in upon us to show that the new States have title to all the lands within their chartered limits, and when we are told it would be most magnanimous and becoming in us, who claim to have imbibed the spirit and sentiments of our forefathers, to cede away our patrimony for a nominal consideration. Let it be remembered that the feeling on this subject manifested by the two States of Delaware and Maryland, preventing their accession to the confederation until so late a period, was with difficulty repressed, even by that ardent attachment to the cause of liberty for which they were then so much distinguished, and in which they have never been surpassed. Their troops went through the whole contest together, flanking and supporting each other in battle; commonly led on by the same commander; generally the first to advance and the last to retreat; their bayonets, like the pikes of the Macedonian phalanx, glittering in front of one and the same compact mass; and when they fell, they slept in death together, on the same part of the blood-stained field. It was that same spirit which prompted the combined exertions of these people in the American cause, throughout the whole struggle, which also united them in resistance against every attempt on the part of any single section of the country to appropriate for its exclusive benefit the territory which they were

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striving to conquer from the British crown. Sir, I think they will now combine again; I think they will, when considering this subject, bestow some reflection upon the millions which have been expended in the subsequent purchase of the Southwestern portion of our public domain; on the sums which have been profusely lavished in making and carrying into effect our treaties for the extinguishment of the Indian title; in making the surveys of these lands, and in the payment of officers and agents for the maintenance of our land system. From the feeling which formerly actuated them, I judge that their co-operation on this subject will be such as to resist every effort to bribe them with promises, or to sway them, by means of political excitement, to give up that which could not be wrested from them by appeals to their strongest attachments in the darkest days of their adversity. They will claim, I think, sir, an equal portion of this territory, under the plain letter of the grants referred to. They may claim a large portion of it by the paramount title of the right of conquest, which has never been by them relinquished; and by that title they can successfully defend it. Whatever foundation there may be for the imputation of motives, in other sections of the Union, to flatter and to woo the West, by the offer to her of this splendid dowry, if she will transfer her influence to a candidate in a Presidential election, we, I believe, shall not take part in any such bargain. The gentleman from Tennessee [Mr. GAUVIN] says the West has been already wooed and won. It may be so; but we are not, and, I think, shall never be, *sub potestate viri*; and if we could be bought for any consideration to sign this release of our birthright, we should never agree, like Esau, to sell it for a mess of pottage.

I come now, sir, to consider a subject which has been discussed in connexion with this—the right of a State to regulate her conduct by the judgment of her own self-constituted tribunals, upon the validity of an act of Congress in opposition to the solemn decisions of the Supreme Court of the United States: and my remarks upon it will be chiefly in reply to gentlemen who have gone before me. I confess I do not discover why the power of deciding any, and every question, growing out of any circumstances in which a State may conceive her sovereignty impugned, is not translated to her own tribunals by the same train of argument which induces the conclusion that she may nullify an act of the Federal Legislature without the aid of the Federal Judiciary. We know—we are so taught by memorials on our files—that the doctrine is very current in some States of the West, that the public territory within their limits is their own; and we have been threatened that, when the population flowing Westward has transferred the balance of power beyond the Alleghany, or when, as one in this debate has phrased it, “the sceptre has departed from the old thirteen forever,” we shall find the rights of the new States asserted and maintained, if not by the force of numbers here, at least by the force of arms at home. In that case, too, it is said, that to us distance will be defeat. State sovereignty and State rights constitute the very war cry of a new party in this country. I would myself be among the last to infringe upon the constitutional powers of the States. But how far will the new doctrines on the subject carry us? Some who have engaged in this discussion have avowed the opinion that our claim to the public lands is inconsistent with the paramount rights of the Western States, and that, upon the fundamental principles of Government, the domain within their chartered limits is the property of these new grantees. Others, who stand among the boldest champions of the principle that a sovereign State may constitutionally and lawfully enforce her declarations against the validity of an act of Congress, and nullify it whenever by her judgment it is “deliberately, plainly, and palpably unconstitutional,” repudiate the whole doctrine of State supremacy, and State title, when

we touch these claims to the public lands. The rule works badly then. The two positions assumed by the same reasoner are repugnant to each other. You cannot claim by virtue of your State sovereignty to nullify an act of Congress, and yet deny to another State the right, by a similar operation, to tear out of your statute book the leaf containing the Virginia grant, as well as that which bears upon it the act of Congress declaring the uses of that grant. By the grant and the act, the estate ceded is “for the common benefit.” The new sovereigns, within whose dominions the estate is situated, asserting their power to decide all questions which, in their judgment, touch their sovereignty, may nullify both, and make the land theirs; or, if they cannot, how can any other of these sovereigns nullify a tariff law, or an act for internal improvement, which the Federal Judiciary adjudges to be valid? The gentleman from Tennessee says that he will admit that the Supreme Court is the final arbiter in all cases in law and equity arising under the constitution, and the laws of the United States made in pursuance of it. But I am not satisfied with this limitation. The words of the constitution are, “the judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress may, from time to time, ordain and establish.” Then this general transfer of power is explained by the second section of the same article: “The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.” All these words of the deed are in full force, except so far as it has been altered by the single amendatory article to prevent suits against one of the United States by citizens of another State, or by citizens or subjects of any foreign State. The instrument then contains no qualification of the judicial power restricting its exercise to cases arising out of laws made in pursuance of the constitution. The reservation is an inadvertent interpolation in the instrument, and the power granted extends to laws of the United States, whether constitutionally or unconstitutionally enacted. It will be seen, too, that the United States must “be a party to controversies” concerning a tariff law, as well as to those which affect the right to the public domain, or any other question touching State sovereignty; and that, if there be no authority in the instrument by which the judicial power can be extended to the former class of controversies, there is none to extend it to the latter class, or any case which a single State may consider as presenting an infraction of her own powers. The gentleman from Kentucky, [Mr. HOWARD] and other Senators, have contended that a State cannot surrender any portion of her sovereignty, and we have been asked to produce an instance in which sovereignty has submitted itself to any judicial tribunal. Those who formed the constitution, in their recommendatory letter, signed by Washington, on the 17th of September, 1787, inform us that “it is obviously impracticable in the Federal Government of these States to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all.” The gentleman from Tennessee, in order to explain and construe the constitution, referred to the brief enumeration contained in this letter, of the specific objects which made it necessary to establish this Government. I refer to the same authority to overthrow the doctrine which regards all the rights of independent sovereignty in each of the States

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and to prove that some of those rights were, in the view of the convention, ceded to provide for the general welfare. States are not self-existent; they are created by the people for their benefit. Those who have conferred State power can take it away; and for their own good they have transferred a portion of this mysterious principle of sovereignty, which troubles gentlemen so much, to another place. They have transferred a portion of the judicial power to the Supreme Court, which acts as an impartial umpire, and not as an adversary party deciding his own cause, as is erroneously supposed by some reasoners here. The gentleman from Tennessee says the Federal Judiciary is, when a question of State rights is before it, a portion or part of one of the parties, created by the Legislative and Executive branches of the General Government, responsible to that Government alone, and liable to the imposition of destructive burthens by that party. Even if all this were correct, it would be a sufficient answer to it, when discussing this question, to reply that the States had agreed that the arbiter should be thus created and thus responsible, having signed the arbitration bond deliberately, and with a full knowledge of the consequences. But when we look into the instrument, we find that the States, by their Representatives in the Senate, must first consent to the appointment of the arbiter, or he is not lawfully chosen. They can challenge for cause, and they can challenge peremptorily. By refusing to consent to appointments, they might in time vacate every seat on the whole tribunal. By the Legislative power of their immediate Representatives in the Senate, responsible to the States as their only masters, they can always prevent the imposition of oppressive burthens on their common arbiters. They alone can try these arbiters on impeachment for misbehavior, and without impeachment those arbiters cannot be removed from office. The Senator from Kentucky objects to the Federal Judiciary, that a majority in Congress may by law increase the number of judges, and thus oppress the minority when they please. It has been said, too, that large States, with a great representation in Congress, such as New York and Pennsylvania, combining with others, may, by their superior vote, so far increase the number on the bench as to oppress and destroy the sovereignty of the lesser States. If the objection has any weight, it is one which could be made to our whole system of republican government. We are ruled by majorities; and if the majority of this nation should become radically corrupt, I admit that the Government will soon fall. But I have sufficient reliance on the virtue and good sense of the people, whether living in large or small States, to believe that no attempt will ever be deliberately made by a majority in either, to destroy the independence and legitimate powers of the other. And I feel no apprehensions on this subject, for other reasons. Let us inquire into the mode of operating. Supposing now, (to make out the gentleman's case) that the large States wickedly conspire to ruin the small ones. New York, Kentucky, Ohio, Pennsylvania, Virginia, and North Carolina, being (as would be so probable!) united for this end, carry a bill through the other House to double the number of judges. Suppose, too, that they had by their votes elected a President who would second their views. When the bill comes before the Senate, if the small States understand your object, they, having an equal representation here, secured by the only provision in the constitution which numbers can never change, vote you down at once; and your combination (as other combinations may be) is consigned to

— "that same ancient vault,  
Where all the kindred of the Capulets lie."

But suppose the Senators representing the small States here, not suspecting mischief, but relying on your integrity, suffer the bill to pass. Your President being in the plot, as we will, for the sake of argument, suppose, it becomes a law. What then? The bench is not yet filled.

The *modus operandi* requires that he should nominate, and we should consent, to the appointment of the men who are to adjudge away our independence. We might be slow to suspect our old friends of dishonest purposes, but we can learn some things if you give us time. When you bring out your nominations, we cannot fail to understand your plan. You are caught at once, *flagrante delicto*, and we check you in the Senate, by rejecting all nominations which do not please us. We have two chances to put an effectual veto on your plot, and our veto is a very different affair from your State veto on an act of Congress. However thankful, therefore, we may be for the kindly apprehensions expressed for our welfare, we say that we are not yet alarmed. We cannot see, with the honorable gentleman from Tennessee, that the States have been guilty of either folly or weakness in creating such a tribunal as we conceive the Supreme Court of the United States to be—nor do we think with him, that, by the easiest operations imaginable, this creature is so competent to the destruction of its creators.

But whatever may have been the opinion of honorable gentlemen, the folly of the people of these States in creating such a tribunal, or however incompetent it may appear to decide these matters, the question still recurs, is there any other forum established with co-extensive or with appellate powers? If so, what is it? There ought not to be a wrong without a remedy; and the interest and safety of all require the existence of some arbiter to decide controversies. We are warned, however, that if, by the constitution, there be not some express grant of power for this purpose, the States and the people still reserve it. On the other hand, if the grant to the Federal Judiciary be express, the States have not reserved it, and can create no other without forming a new constitution or violating this. Sir, I listened with deep interest to the development of what I thought was announced as a new discovery on this subject. I will consider that adverted to, and recommended, by the gentleman from Tennessee, [MR. GIBBS.] After conceding to the Federal Judiciary the powers of a common umpire, to decide on the constitutionality of all congressional enactments made in pursuance of the constitution, he informed us that there was another tribunal to which a State might resort, when oppressed by what she considered to be a plain, palpable, and dangerous violation of the constitution, without throwing herself out of the Union. He admitted that the Legislature of the State was not this tribunal. That might be misled. He beats the ground, then, which was occupied by the gentleman from South Carolina, [MR. HAYNE] but himself takes a new position, not less dangerous. For he informed us that a State convention might be called, and that might nullify the oppressive law; after which, he thought Congress must acquiesce by abandoning the power. The amount of this is, that one State is to govern all the rest, whenever she may choose to declare, by convention, that a law is unconstitutional. The end of this, we say, is war—civil war. We admit that a State convention may pronounce any law to be unconstitutional, as the Legislature of Virginia did in '98. But the mere declaration comes to nothing, unless it can be enforced. You may declare a law unconstitutional, and so can I. But what of that? It amounts only to this: we have full freedom of speech in this country, may advocate what opinions we please, and peaceably endeavor to impress them upon others. But the gentleman says this doctrine does not lead to war. If Congress will not submit to the State, he thinks there is still a complete political salvo in another tribunal, and that is a convention of the States, to be called under the provisions of the constitution. The State, then, must exert herself until Congress, two-thirds deeming it necessary, under the fifth article, shall propose amendments to the constitution; or, on the application of the Legislatures of two-thirds of the several States, shall

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call a convention for proposing amendments, which, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths of them, shall be valid to all intents and purposes as part of the constitution. So far this does not contravene the doctrine which we advocate, and which the Senator from New Hampshire, if I rightly understood him, after much preface, and with some "slips of prolixity," finally settled down upon as a part of the true orthodox creed. The right to amend the constitution has never been denied. This was a part of the political platform upon which my honorable friend from Missouri [Mr. BARTON] invited you to come and stand with us. If the convention of the States should assemble and decide by a majority of three-fourths against the State, the gentleman from Tennessee says the State must submit. But if they decide otherwise, or do not decide at all, Congress must submit to the State. Without assenting to this last conclusion, which appears to be arbitrarily assumed, I will only inquire, if this be so, how is this tribunal to save us from civil war? The answer is, only by so amending the constitution as to warp it to suit the declarations of the State convention. This is an excellent remedy for the complaint of the State, but rather difficult to procure. If this is the sovereign panacea which the honorable Senator from Tennessee has discovered for healing the diseases of the South, sir, I fancy she will agree with me in commending her physician for his ingenuity in finding out the ingredients of the bolus, but she will still think they are too hard to be obtained to render the prescription valuable to her. With less experience, I would recommend to a State groaning under the operation of a law which she deems unconstitutional, to apply first to the Federal Judiciary, where she will generally obtain relief, if her complaint be not hypochondria or imaginary ill. If she fail there, let her pour her complaints into the ears of her sisters, and use all constitutional means to procure a repeal of the obnoxious law. A bare majority of Congress will be sufficient to give her relief in this way. Do you object that Congress will probably persevere in their course, and refuse to repeal the law they have enacted? It may be so; and if so, their constituents, being a majority of the people, must concur with them, that the law is not only constitutional, but salutary, or they would, by the exercise of the elective franchise, remove such unworthy agents of their sovereign will. If they do concur with their Representatives, and uphold them in their refusal to repeal the law, no matter how often by any other power than the Federal Judiciary declared to be unconstitutional, in my humble judgment you will hardly persuade three-fourths of them to assemble for the purpose of altering their constitution, and depriving their own agents of the power of acting on the subject.

It comes at last, then, to this—that we have no other direct resource, in the cases we have been considering, to save us from the horrors of anarchy, than the Supreme Court of the United States. That tribunal has decided a hundred such cases, and many under the most menacing circumstances. Several States have occasionally made great opposition to it. Indeed it would seem that in their turn most of the sisters of this great family have fretted for a time, sometimes threatening to break the connexion and form others; but in the end, nearly all have been restored, by the dignified and impartial conduct of our common umpire, to perfect good humor. Should that umpire ever lose its high character for justice and impartiality, we have a corrective in the form of our Government, but if it is to be had only by a calm and temperate appeal to the judgment and feelings of the whole American people, it can never be obtained by such addresses and resolutions as those of Colleton or Abbeville. Reason receives not in place of argument violent denunciations or furious appeals to party and passion. During a

period of four or five years past, the complaints of the South have, for this reason, met with a cold reception in almost every other section of the Union. They have been loud and deep; but they have been evidently regarded as the transient effusions of party feeling, coming, as they too often did, couched in language of bitter vituperation, with the now stale and despicable charges of "coalition, bargain, and corruption"—that vile and putrescent stuff which has at length, as the Senator from Massachusetts truly stated, sloughed off and gone down into the kennel forever. The course pursued was exactly that which was best calculated to make the whole alleged grievances, if real, irremediable. Those who loved and admired the character of the Statesman of the West, indignant at the calumnies with which he, as they saw, was so unjustly assailed, often regarded the complaints which came with them as mere secondary considerations, brought in to aid a personal attack. On the other hand, many of those who affected to accredit these calumnies for political effect, in their hearts never sincerely believed any part of the story of Southern sufferings, thinking perhaps that they knew best what weight was to be attached to the political falsehoods which commonly accompanied them. However different their objects, they were really on the same chase; but to the Southern huntsman the game taken has been of no benefit. From a recent demonstration, we perceive that the Southern complaint is now not even deemed worthy of a hearing. Sir, when I witnessed the manly and candid manner in which the honorable Senator from South Carolina on my right [Mr. SUMTER] spoke of the grievances of his constituents, when I saw him evidently soaring above mere party feeling, menancing none, denouncing none, and touching with all the delicacy which characterizes him, the subjects in difference between us, the reflection forced itself irresistibly on my mind, how different might have been the reception of these complaints, had they always come thus recommended. South Carolina, though erring in a controversy with her sisters, would by all have been believed to have been honestly wrong; and if, under such circumstances, she should ever throw herself out of the pale of the Union in consequence of such a misconception of the constitution as we have endeavored to prevent, I would rather see my own constituents stripped of the property acquired under the protection furnished by the Government to their honest industry, than compelled by any vote of mine here to drive the steel with which we should arm our citizens into the bosoms of that gallant people. And I will now say, without meaning to express any further opinion on this delicate subject, that, for myself, whenever pounds, shillings, and pence, alone, shall be arrayed against the infinite blessings of the Union, I shall unhesitatingly prefer the latter, for the simple reason that I can never learn how to "calculate its value."

The honorable member from New Hampshire, in the progress of his very ingenious remarks, discussed, in connexion with the constitutional power of the Judiciary, the whole doctrine of Internal Improvement, as well as the Tariff. He denounced both as aggressions of the Federal Government on the rights of the States, as measures evincive of and flowing from a disposition, on the part of some, to claim for that Government unlimited powers; and endeavored to make it appear that these acts for internal improvement were, and ever had been, federal heresies, while the opposite and restrictive tenets, limiting us to the strict exercise of certain enumerated and specific powers, had always distinguished your genuine democrat and only true republican. The honorable member informed us that, by the prevalence of this strict construction of the constitution over the latitudinarian doctrines, the great political revolution of 1800 was effected, and that his mode of construction had ever since remained "the watch word of democracy" and the strongest "test of political orthodoxy." He showed us by these means how "the matchless spirit

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of the West," the great advocate of the principles so denounced, had always been a federalist, while on the other hand he barely intimated that a matchless spirit in the South had perhaps been misrepresented on the same subject. The intimation that the views of one statesman had been misunderstood, was accompanied by the admission that there might be differences, and possibly honest differences, on the same subject, in the same party. This was all well, and my only reason for adverting to it is to express my regret that so charitable a *salvo* was not extended beyond the party line. But we were afterwards told by the honorable member, that the resemblance between the political character of the opposition and administration parties, in 1798, 1812, and 1828, confers upon him, and his political friends, "a title to old fashioned democracy, as the same democratic States, with one or two exceptions only, are found, [he says] at each era, side by side, in favor of Jefferson, Madison, and the hero of Orleans. On one side, Virginia and Pennsylvania, Carolina and Georgia, Tennessee and Kentucky. On the other, Delaware and Massachusetts, Connecticut and divided Maryland." I shall hereafter take leave to present to the view of the honorable member some coincidences much more striking than that which here appear to have caught his fancy. Keeping in view now the position assumed by him in regard to the federalism of the Western Statesman, and other advocates of Internal Improvement, I would inquire into the title to "old fashioned democracy" of Georgia, Carolina, and other Southern States, here designated by him, on the 14th of March, 1818, when twenty-one of their Representatives in the other House carried the resolution which fully established this "federal" heresy—declaring "that Congress has power, under the constitution, to appropriate money for the construction of post roads, military, and other roads, and for the improvement of water courses."

Four of the seven Representatives from South Carolina, Mr. Lowndes, Mr. Simkins, Mr. Middleton, and Mr. Erwin, voted for this resolution, the two first named gentlemen advocating, in the debate to which it gave rise, the power of Congress to construct roads and canals. When the resolution was adopted, Mr. Lowndes declared that the decision then made had settled the whole question. Two thirds of the Georgia delegation, Mr. Abbott, Mr. J. Crawford, Mr. Terrill, and Mr. Forsyth, now an honorable Senator from that State, supported the same resolution. Did Carolina and Georgia then forfeit their "title to old fashioned democracy?" Shall we not try them, too, as well as Delaware and Massachusetts, by the "strongest test of political orthodoxy?" If Delaware is here to be put on trial, she will stand his test admirably. Though generally federal until 1826, when the new parties were formed, she was almost uniformly represented in this Senate, up to that period, by federal gentlemen, holding on this subject the very tenets of the honorable member himself, always confining the powers of the Government to the specific and enumerated objects; and opposed alike to these acts for internal improvement and tariff laws. In 1827 and 1828, she was represented here by two able statesmen of the opposite and latitudinarian creed, both of whom had been federalists; but at that time, sir, they were dyed in the wool by the Jackson process, and, of course, were genuine republicans, as the honorable member will admit. They neither changed nor concealed their opinions. Were they not "orthodox?" One of them standing conspicuous for his talents in the ranks of the orthodox party, now, by their appointment, represents us at the proudest court in Europe. It cannot be necessary to follow out the inquiry further, to try the truth of his test by a reference to musty records and by-gone events. If the honorable member will pursue it, he will soon find himself, by the aid of such a test, involved in the mazes of a labyrinth, from which he could not escape in safety, even with the thread of an Ariadne to guide him. Sir, the whole of this part of

the gentleman's ingenious argument is admirably calculated *ad captandum*, as it makes all our canals, rail roads, and turnpikes, which have required the assistance of Congress, the works of that anathematized "peace party in war," which, as we have been told here, has been thus struggling, since the earliest period of our history, to confer upon our rulers absolute power; and I will now dismiss it, that it may perform the duties of its mission, with this single remark, that you may perceive, peeping through its foregone conclusions, how the bent of the gentleman's mind, in condemning Southern vices, is evidently at this time inclining with a breeze to the north northeast—though I still suppose that, "when the wind is southerly, he will know a hawk from a hand-saw."

So far as the State which I have the honor in part to represent here, can furnish evidence to illustrate the title of the honorable member, and his political associates, to "old fashioned democracy," by the fact that a party odious to them has always prevailed there, he is welcome to the evidence for his own uses. It will never redound to her discredit. It can never be a cause of exultation to any man who knows the history of his own country, and values his own reputation, to find her always arrayed against him. And as the honorable member has called my attention to the subject, I will remind him what kind of a "peace party in war" we have always had in Delaware. We have ever had such a party there as "beware of entrance to a quarrel," but, being once engaged in it, puts forth all its energies of body and soul in the controversy, and for the love of peace fairly fights out of it. We had a party of this kind at the bloody era of the American Revolution, contending against the usurpations of the British Crown—a party which supplied more warriors in the cause of American liberty, in proportion to our limited means and population, than were furnished by any other State in the whole confederation. The bones of many of that old party were buried on Long Island, and at White Plains, at Princeton, at Brandywine, at Germantown, at Camden, at Guilford, at Eutaw, and at Yorktown; and your pension rolls now show but fourteen of them alive and dependent on your bounty. Many of that party were at Fort Mifflin too; and the gentleman from Maryland, [General SMITH] the father of the American Senate, [himself one of the most distinguished patriots of the Revolution] who commanded there, when referring in debate a few days since to the conduct of one of them, Captain Hazzard, bore testimony to that kind of peace-loving disposition in war which we cherish, when, almost overpowered by the emotion caused by a recurrence to the sad history of the sufferings of his gallant comrades, he described our old peace party troops as soldiers than whom better or braver had never existed. I am told that we had federalists who opposed the declaration of the last war, but those very federalists, like their brethren of the opposite party, supported the cause of their country through the whole war, with unbending firmness and devoted patriotism. We have national republicans, I am now told; but as they are made up of the same kind of materials which compose the peace parties I have been describing, I shall be pardoned if I defer to other judgment than that of the gentleman from New Hampshire, and say that I am proud to represent them here, even though, by so doing, I am placed in opposition to an administration which claims to be exclusively democratic, and yet appoints more federalists to office than all its predecessors have done since the revolution of 1801—always, nevertheless, keeping steadily in view this indispensable qualification, that every federalist so appointed must be of the Jackson stamp. I shall ever feel attachment for that party which seeks in peace to prepare for war, by extending the beneficent action of this Government to increase the means of our defence, makes roads and canals to transport our munitions in time of need, fortifies our coast, improves our harbors, protects our commerce,

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and has already built up a navy which is the glory of our country and the admiration of the world.

Sir, I must be pardoned for dwelling at length in reply to other remarks of the honorable member from New Hampshire, whose opinions and reasoning are regarded by some of his political friends here as laying down the law, and fixing the standard of political orthodoxy. When he had closed his remarks, the Senator from Missouri near him, [Mr. BENTON] arose in his place, and pronounced the honorable gentleman to be his Peter, the rock on which he would build the great democratic church.

[Mr. BENTON having risen to explain, Mr. CLAYTON gave way for the purpose.

Mr. BENTON—I did not say, “this is my Peter.” I said, “yes, this is Peter, and this Peter is the rock on which the church of New England democracy shall be built.” This is what I said aloud, and what the Senate heard. What I said in a lower tone, and not intended for the Senate, was this: “and the gates of hell shall not prevail against him.”]

Mr. CLAYTON resumed: Sir, I accept this modification, and wish to present fairly, not only all the words, whether spoken on a high or a low key, but the action which was so admirably adapted to them. The gentleman from Missouri, then, in the face of the Senate, extended his right arm over the head of the gentleman from New Hampshire, with all the majesty of a Cardinal, or a full robed Bishop about to pronounce a benediction on a new monarch, or to instal a new incumbent of the Papal See, and, as he now says, did not merely declare him to be his Peter, but announced him to the world as the great Pontiff of New England democracy; and, of course, I suppose, (as that, by his former admissions, is as good as any) of all other democracy under the whole heavens. Sir, I had the right to suppose that he who thus inducted him to office had full powers, or he would not have performed the ceremony. Give me leave to say, that, when I heard the new Pontiff lay down his law in conformity with my old fashioned notions of the powers of the Judiciary, abjuring, as a political heresy, all the new “Carolina doctrine,” though seemingly endorsed by the Senator from Missouri himself, I thought that I should stand at least one of the new “tests of political orthodoxy,” and I sincerely hoped that, on this subject, nothing might prevail against him. When he issued this, his first bull, I felt disposed to register all his rescripts, and I certainly have preached the very doctrine which it inculcated. But when I heard the American System denounced as a mere federal measure; when I heard, too, from the same source, that a good officer ought to be removed before the regular expiration of his term, for party motives, or personal aggrandizement, and the whole proscriptive system of the new administration thus justified and extolled, then, sir, I confess (meaning nothing irreverent by my allusions) that I became a Dissenter and a Protestant, and, although I expect indulgence for such transgressions, I strongly suspect that I shall carry my abominable heresies to the grave.

The Senator from Missouri [Mr. BARTON] having, in the range of this debate, invited the concurrence of others in certain fundamental principles and important objects, enumerated among the number the preservation of the freedom and purity of elections, unawed by official punishments, and uncorrupted by official rewards, in opposition to removals from office for the exercise of the great elective franchise, or to make room for the reward of partisans in our Presidential elections, by the bestowal of public employments. He submitted that the power of removals from office by the President was a high legal trust to be exercised for the public benefit, in sound discretion, for cause relating to the official conduct or fitness of the incumbent; that the Senate of the United States had restraining powers in the matter of displacing, as well as of appointing Federal officers: and that, by the constitu-

tion, the Executive power could never be arbitrarily exercised. He advocated “the freedom of inquiry into the exercise of Executive discretion and official trust in opposition to Executive irresponsibility and unsearchableness, and to the suppression of free inquiry into our political affairs.” The Senator from Maine [Mr. HOLMES] merely adverted to the general proscription in New England. In reply to these gentlemen, the Senator from New Hampshire says he will not accept the invitation of the Senator from Missouri, [Mr. BARTON] to stand on his new political platform, composed, as he considers it, of articles of opposition to the present administration; defends the whole course of that administration, as “democratic and constitutional,” and informs us that, in the principle of removal from office, for even political motives, their policy only follows up the doctrines of the great revolution in 1800. He speaks of these removals as mere rotation in office, first made by the people themselves, in the highest office in the land, the Chief Executive of the Union, for political cause, then inquires, triumphantly, if the same cause should not affect the active deputies and subordinates, as well as the principal. “Whatever disappointments and suffering by removal [says he] some individuals may sustain, yet they knew the legal tenure of their offices.” He, therefore, thinks the agents of the people cannot fear the cry of cruelty or persecution, because the power of removal, as now exercised, only “changes one good man,” (that is, for political opinions) “for another good man,” and, therefore, does no injury to the public. He then proceeds to say these agents need not dread the discussion of the constitutionality of their exercise of this power, thus plainly avowed by him to have been levelled at the right of opinion. Sir, the honorable Senator from Tennessee, [Mr. GARNETT] if I rightly understood him, avowed the same opinions: for he denied the right of the Senate to inquire into the causes of removal, and insisted that the present administration had not gone beyond his principles on this subject. He contended that the Senate would transcend their constitutional power, and thus violate the instrument which it is their interest to preserve, by examining into and judging of the propriety of removals from office, or by controlling the Executive in the discharge of this branch of his authority. He entered into a full discussion of the rights of the President with great ingenuity, and manfully challenges us “to come out boldly, and discuss this subject with his friends freely and frankly.” The honorable gentleman is a formidable antagonist. He wields a long knife, with a strong arm, in defence of his friends; but when he throws down his gauntlet to what is here called the Opposition, and defies us to a contest with these principles of this administration, he will be met freely, frankly, and boldly too.

Another year has rolled away. Our Ides of March are come. This day, which is the anniversary of the Chief Magistrate's inauguration, brings with it some strange reminiscences of the past, and some still stranger anticipations of the future. On the last 4th of March, and about this very hour of the day, the American Senate followed the American President in the progress of his stately triumph to that scene where, in the presence of assembled thousands of his countrymen, he proclaimed to the world the principles upon which he intended to administer the government. Independently of the fact, that the whole subject has been thrust into this debate, as I have stated, there seems to be some propriety in devoting a portion of the passing hour to the consideration of the extent and influence of Executive authority. These, on this day, would be proper subjects of reflection for the Chief Magistrate himself; and as we are his constitutional advisers, exercising, in one sense, a portion of the Executive power, we may learn our own duty better by the temperate examination of his. I concur with the gentleman that, in discussing this, or any other subject, involving a question of con-

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stitutional law, passion and feeling are to be regarded as poor auxiliaries. We should go for nobler game than mere party interests. Principles are to be first settled here; but then the application of them must be fearlessly made. The first inquiry ought to be, what are the true principles, not what is the interest, of any party? It will be found that my view of these principles differs as much, in some respects, from those of some to whose judgment I usually defer, as it does, in others, from those of some who profess to be politically arrayed against me.

The power of removal is nowhere expressly conferred by the constitution, except in the section which provides that all civil officers of the United States shall be removed from office on impeachment for, or on conviction of, treason, bribery, or other high crimes and misdemeanors. A judge, the tenure of whose office is *dum bene se gesserit*, is removable only by this means. But where good behavior is not the tenure of office, the power of removal is properly and generally incident to, and a consequence of, the power of appointment. The power to destroy is ordinarily implied from the power to create. It is a common axiom of our jurisprudence, that the authority to dissolve a thing must be as high as that which formed it. The Legislature which has the express power to pass a law for raising revenue, for example, has the necessary power to repeal it. The Governors of many of the States enjoy, by express provisions in their respective constitutions, the power of appointment to office, and yet exercise, by construction and by implication only, the power of removal from it, their State constitutions being silent on that subject. The Postmaster General, who, harmonizing with this administration, has removed, within the last year, his thousand deputies, agents, and clerks, though vested by law with the express right of appointing them, can point you to no statute conferring upon him the right to remove one of them. The numerous clerks and agents appointed under express legal provisions, by other Heads of Departments here, are removable only by the same construction. The law has conferred upon the Supreme Court the power of appointing its clerk, and, although considered removable by it, yet no law has thus limited the tenure of his office in express terms. But then this authority, thus derived from implication and construction, if kept within the spirit of the constitution and the laws, instead of being used arbitrarily or tyrannically, can be exercised only for the public welfare.

In two classes of cases, the power of appointment is exercised by the President alone: first, where Congress have, by law, vested in him the appointment of such inferior officers as they thought proper; and, secondly, where he is empowered to make appointments by virtue of the last clause in the second section of the second article. There are some peculiar considerations growing out of the manner in which the power of removal, in the first of these classes, has been exercised, which it is unnecessary to enter into now, as they are not immediately connected with the executive rights of the Senate. Appointments of the second class are temporary only by the express provisions of the clause which authorizes them. "The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session." With these exceptions, the second section referred to expressly confers the power of appointment upon the President and Senate, by the words "he shall nominate, and, by and with the advice and consent of the Senate, shall appoint."

Although the constitution has thus recognized the Senate as an essential component part of the appointing authority, yet the power of removal has been uniformly exercised by the President alone, since the constitution was established. This, then, has been a deviation from the

general principle that the right to remove can be exercised only where the right to appoint exists. But I do not concur with the honorable gentlemen who have viewed this power as unlimited by the spirit of the constitution, and, having arrived at the conclusion that *sic volo* is the legal tenure of office, would leave it to become the sport of a spirit not less arbitrary and tyrannical than that of absolute despotism. Every administration, preceding this, has professed to exercise this power within certain established constitutional limitations, regarding removals as expedients to be resorted to by the President only for the purpose of securing a faithful execution of the laws, or when really necessary for the general welfare. And if a single instance can be shown in which any President before this has ever prostituted this authority to party uses, or for personal aggrandizement, it will be found that he has, at least in terms, assumed the virtue of administering the Government on different principles, and denied that he intended to invade the right of opinion, or pervert his power from its legitimate object. The history, as well of the precedent on which the Senator from Tennessee so much relies, as of others to which he has not adverted, shows that this constructive power would have never been acknowledged, if it had not been supposed to have been strictly limited and distinctly defined.

When the bill "for establishing an Executive Department, to be called the Department of Foreign Affairs," was under the consideration of the House of Representatives, during the first session of Congress after the adoption of the constitution, the debate to which the gentleman from Tennessee has referred arose upon one of its provisions, granting to the President the right of removing the Secretary to whom our foreign relations were to be principally entrusted. That provision was then so modified as not to carry with it the appearance of a grant of something not before given, but to recognize a constitutional power of removal already subsisting in the President. The power was strongly denied by Mr. Gerry and Mr. Roger Sherman, and maintained by Mr. Madison and Mr. Baldwin. These gentlemen had all been members of the convention that made the constitution, and yet were thus equally divided in opinion on the construction of the very instrument which they had, so recently before that, assisted in forming. The point, then, was regarded as extremely doubtful. There were others, who had not been members of the convention, who engaged on different sides, with equal zeal in the contest, until at length, a construction implying the existence of the power was established, so far as a tribunal which had no jurisdiction over the subject could do it, by a vote of thirty-four to twenty. It has often been observed, and I apprehend it is unquestionably true, that the character of Washington, then President of the United States, had great influence in producing this decision. Add to this, too, that the question arose in the very strongest case which could have been presented for the advocates of the Executive—the case of a Secretary, between whom and the President it was absolutely necessary that the most confidential relations should subsist. These supporters of Executive authority were then, as men will ever be, influenced, in some degree, by the circumstances immediately around them. The statesmen of the day literally vied with each other in expressions of their high confidence in the man who then filled the Chair of State, beloved by all, and distrusted by none; and it is but too evident, from the arguments advanced on this occasion, that they were beguiled by the imagination that none but beings of such exalted virtue and spotless purity would ever be elected to succeed him. They reasoned from an illusion to which human nature is at all times liable. Under such circumstances, a principle was decided, which forms a distinct exception to an established general rule; and, it cannot escape observation, that, under other auspices, a very different result

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would probably have been produced by the deliberations of 1789. The discussion to sustain this power mainly rested on these brief positions: that the constitution had conferred upon the President the Executive power; that the general concession of Executive authority embraced removals as well as appointments; that the power granted to the Senate, being an exception to this general provision, ought, therefore, to be construed strictly, and could not be extended beyond the express right (with its necessary incidents) of negating appointments; and, above all, that the President, being bound to "take care that the laws be faithfully executed," must therefore remove, whenever the public interest imperiously requires it. The last position, aided by all the extraneous considerations referred to, was successful. Every reasoner dwelt upon it as the key-stone of the argument. It was not then contended, by the fathers of the republic, that the general grant of Executive power was to be construed alone by the strict specifications of it, subsequently entered in the same instrument. True, our modern reasoners revolt at the thought of extending the powers of Congress beyond the specific enumeration of them, by a general grant of "all legislative power;" and although the honorable gentleman from New Hampshire has informed us that the friends of this administration, claiming the authority to remove, in its utmost latitude, need not dread the discussion of their right to do so, yet he has, in this very debate, stoutly denied a construction to the general delegation of power to Congress in the constitution "to provide for the general welfare," similar to the one placed, in 1789, upon the general delegation of Executive power, "to take care that the laws shall be faithfully executed." Without this latitudinarian interpretation, the power of removal would have remained forever, on the general principle, in the President and Senate. But it was not urged, in 1789, by any man, that this constructive power was unlimited and absolute; on the contrary, gauging it by the strict standard of the rule which defined while it conferred it, they declared that it was given to the President only for the purpose of "securing a faithful execution of the laws," as an incident to his great prerogative to preside over his country for his country's good. They pointed out the very cases for its proper exercise: they said it was necessary to remove a traitor from office, "to secure a faithful execution of the laws;" they urged that an officer who should become insane, corrupt, disabled, or in any manner, or by any means, unfaithful or disqualified to serve the public to the public advantage, ought to be, and was, of right, removable, in order "to secure a faithful execution of the laws;" and, having thus measured and marked down the length, breadth, and the depth, of the whole principle recognized by them, they doubtless little expected that any opinion given, or precedent set by them, would ever be adduced to sanction the exercise of uncontrolled and despotic power. The honorable gentleman from Tennessee, who has filled the office of a judge with great credit to himself, says, that he loves precedents; and, having informed us that "Mr. Madison understood the constitution and structure of our Government as well as any man that ever lived," holds up the Congressional Register of that day, points to the opinion of that able statesman there given, and triumphantly announces that there we may see his doctrines, and there his constitutional lawyer. Sir, we may venture here, I think, to meet the gentleman on his own grounds. I say, too, that, like others from the schools of forensic disputation, I love precedents; and that Mr. Madison, on this subject, is also my constitutional lawyer. But then, when I like the opinion of a constitutional lawyer as well, I take the whole, and not merely a part of it. I do not gratuitously reject one-half of it, while I rely so much upon the other. I read from the same volume, Mr. Madison's words, uttered on that same occasion, that "the

dismissal of a meritorious officer was an abuse of power above his conception, and would merit impeachment." Again, he qualifies the power he advocates, and explains it thus: "The danger then consists in this: for the President can displace from office a man whose merits require that he should be continued in it. What will be the motives which the President can feel for such abuse of his power, and the restraints to operate to prevent it? In the first place, he will be impeachable by this House, before the Senate, for such an act of mal-administration; for I contend that the wanton removal of meritorious officers would subject him to impeachment and removal from his own high trust." Our constitutional lawyer, then, thinks your President ought to be removed from office, if he has acted on the principle avowed by his friends here, and says, the kind of power you contend for is above his conception. This does not seem to work well; and perhaps you may now think our constitutional lawyer, "who understood the constitution and structure of the Government as well as any man that ever lived," in an error. Then let us look into the opinions of others, expressed on the same occasion, who were aiding in the establishment of this precedent, admired so much. Mr. Laurence, though an advocate of the same power, denied that, according to his understanding of it, it was ever to be exercised "in a wanton manner, or from capricious motives;" and, with a view to silence the apprehensions of those who were alarmed lest it might be exercised without restraint, he put to them the question which had been answered by Mr. Madison: "Would he (the President) not be liable to impeachment for displacing a worthy and able man, who enjoyed the confidence of the people?" Mr. Vining, on the same side, remarked "that, if the President should remove a valuable officer, it would be an act of tyranny which the good-sense of the nation would never forget." Such were the views of all the prominent advocates of this right, at that time. Do I go an inch, then, beyond your own authority, when I infer, from the opinions of the very men upon whose judgment you now build, that the system of removing meritorious officers, before the regular expiration of their terms of service, for either personal or party motives, is hostile to the spirit of the constitution, an "impeachable mal-administration" of the Government, and a "tyrannical" encroachment on the liberties of the people?

But when we trace the history of the same bill in its progress through the Senate, it seems not to admit of a doubt that, but for the extraordinary concurrence of extraneous circumstances then co-operating to produce this construction, the right of removal would never have been recognized. While that bill was under consideration in this House, on the 18th July, 1789, a motion was made to strike out of the clause, implying the existence of the right, the words "by the President of the United States;" the object of which was to deny that right altogether. The Senate then sat with closed doors, and we have no account of the discussion. But we see from the records how the vote stood. Mr. Madison's constitutional opinions were then unpopular in Virginia, as being too latitudinarian; in consequence of which he had lost his election to the Senate, that State being, at the period referred to, represented here by William Grayson and Richard Henry Lee. Both those gentlemen voted against the power, and in favor of the motion to strike out; and I suppose that the doctrine of strict constructions of Executive power was at that time, as it often since has been, the prevailing sentiment of the State. Georgia, South Carolina, and New Hampshire, were all united against the power, and they were supported by Johnson, of Connecticut, and Maclay, of Pennsylvania. Among the friends of the motion we find Johnson, Few, of Georgia, Butler, of South Carolina, and Langdon, of New Hampshire, who had all been members of the Federal Convention. Nine voted for



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the striking out, and nine against it; and Mr. Adams, the Vice President, having given a casting vote in favor of the power, the words were retained. So the honorable gentleman from Tennessee will perceive that he owes the whole of his favorite precedent at last to that same "elder Adams," the "tendencies of whose opinions" were, if we are to rely on his friend from New Hampshire, "to consolidation and monarchy." I do not call his attention to this fact, however, because I concur in any of these sweeping denunciations of that great patriot. The same question arose again in the Senate on the 4th of August, 1789, on a motion to strike out of the bill "to establish an Executive Department, to be denominated the Department of War," the words, "and who, whenever the said principal officer shall be removed from office by the President of the United States;" and again, on the same day, pending the bill "to provide for the government of a territory Northwest of the Ohio," which contained a clause recognizing the right to remove the Governor of the territory. Similar decisions followed in each of these cases; so that the question was, within three weeks, thrice decided here; and these decisions form the grounds upon which the power, under its proper constitutional restraints, has ever since been claimed for the Executive. These facts, I submit, leave not a shadow of a doubt that, without the influence which the character of the Father of his Country was calculated to produce upon the minds of the Senators, many of whom were his old compatriots and most intimate friends, and without the powerful co-operation of Mr. Adams, the decisions would have been different. Under such circumstances, I would pause to inquire whether it is reasonable to suppose that the understanding of those Senators, who so established this power, was, that the President, upon whom it was conferred, was to exercise it without limitation? Is it probable that uncontrolled and absolute authority would have been acknowledged then, and that, too, by a body of men whose patriotism and devotion to the cause of liberty have never been surpassed?

The opinions of Mr. Adams, on this subject, are probably in a great measure attributable to a belief which he had indulged, in opposition to the Federal Convention, that the power of the Senate, in regard to appointments, ought to have been entrusted to "a council selected by the President himself at his pleasure"—in fact, a mere privy council, without the authority to check him. He thought that the people would be jealous that the influence of the Senate, if it were entrusted with appointments, would "be employed to conceal, connive at, and defend, guilt in Executive officers, instead of being a guard and watch upon them, and a terror to them." These opinions are disclosed in a correspondence which took place between him and Roger Sherman, in the summer of 1789. With these opinions, thus known to have been entertained by him at the very time when he decided by his casting vote, he went far, we now find, to destroy the rights of the Senate, and to reduce it to a mere privy council, without any effective power. In that correspondence Mr. Sherman, who had been a member of the convention, urged against such opinions the views of that convention, which ought to have been decisive in favor of the rights of the Senate. "But," said he, "if the President was left to select a council for himself, though he may be supposed to be actuated by the best motives, yet he would be surrounded by flatterers, who would assume the character of friends and patriots, though they had no attachment to the public good, no regard to the laws of their country, but, influenced wholly by self-interest, would wish to extend the power of the Executive in order to increase their own; they would often advise him to dispense with laws that should thwart their schemes, and in excuse plead that it was done from necessity to promote the public good; they will use their own influence, induce the President to use

his to get laws repealed, or the constitution altered to extend his powers and prerogatives, under pretext of advancing the public good, and gradually render the Government a despotism. This seems to be according to the course of human affairs, and what may be expected from the nature of things." The views of Mr. Adams on this subject appear to have been different from those of any other man who participated in the decisions of 1789, of which we have any information now, as well as from those of the Federal Convention itself.

It is true that Washington exercised this power during his administration. The gentleman from Tennessee produced nine cases as the result of his industrious researches, which had occurred during the whole eight years in which Washington presided, to justify the hundreds which have been made in the first year of this administration. But in every instance, Washington's removals were made (and it will not be denied) only when necessary for the public good, exactly complying with the rule which had been established. In announcing the exercise of this right to the Senate, he used the word "superseded" instead of "removed," or "dismissed," which were subsequently adopted by his successors. But whether he did or did not consider the removals as provisional, and dependent on the future action of the Senate, we have no distinct information. On all occasions he manifested the highest respect for its concurrent powers in the business of Executive appointment, and prescribed a duty for a President, which has certainly not been regarded as such by one of his successors, when, in his message of the 9th of February, 1790, containing a few nominations to supply vacancies which had been temporarily filled in the recess, he says, "these appointments will expire with your present session, and, indeed, ought not to endure longer than until others can be regularly made."

The gentleman from Tennessee informed us of twenty-three cases in which Mr. Jefferson had removed; and then read, to justify the immense proscription now made, his answer of the 12th July, 1801, to a remonstrance of the committee of the merchants of New Haven, on the appointment of Samuel Bishop to the office of collector at New Haven, then lately vacated by the death of David Austin. That letter was doubtless written under some excitement, caused by the memorial itself, and the fame of Mr. Jefferson is rescued from the imputation now attempted to be cast upon it by better evidence. Yet even in this answer, he places his removal upon the ground that it was for the public good, and to secure the necessary co-operation with the Government; expressly stating, too, that his general object was to remedy the very evil now complained of. "During the late administration," says he, "the whole offices of the United States were monopolized by a sect." He considered that the former incumbents had been appointed merely for party and personal aggrandizement, and not for the public welfare. Try the present abuses of power by the standard of that letter, and you find yourselves standing on the very doctrine which he repudiated, and the deleterious effects of which he says he endeavored to correct. "I shall correct the procedure; but, that done, return with joy to that state of things when the only question concerning a candidate shall be, Is he honest?—is he capable?—is he faithful to the constitution?" The last administration removed no man for party motives, before the regular expiration of his term, and even went beyond the line prescribed by Mr. Jefferson, by regularly re-appointing political opponents when their offices had expired. You now rest, therefore, on the principles which Mr. Jefferson attributed to the elder Adams, and your policy, as avowed here by the Senator from New Hampshire, does not "follow up the doctrines of the great revolution of 1800." This construction of the answer to the New Haven remonstrance makes Mr. Jefferson consistent with himself. In his let-

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ter to Mr. Gerry, of the 29th March, 1801, he says: "Officers who have been guilty of gross abuses of office, such as marshals packing juries, &c. I shall now remove, as my predecessors ought in justice to have done. The instances will be few, and guided by strict rule, and not party passion. The right of opinion shall suffer no invasion from me. Those who have acted well have nothing to fear, however they may have differed from me in opinion." In other parts of his correspondence we see the same view taken of his constitutional power. On the 6th of July, 1802, in a letter to David Hall, then Governor of Delaware, he acknowledges the receipt of communications containing two addresses, the one from a democratic republicans meeting at Dover, and the other from the grand and general juries of the circuit court of the United States, both of them praying a removal of Allen McLane, the father of our present minister to England, from the office of collector of the customs at Wilmington. It appears that Mr. McLane was objected to by them, on the ground of personal dislike, and for the alleged warmth of his federal opinions. Mr. Jefferson, in this letter, replying to those addresses, refuses to remove the incumbent for such reasons, "lest he should bring a just censure on his administration." He says, "we are not acting for ourselves alone, but for the whole human race. We must not, by any departure from principle, dishearten the mass of our fellow-citizens." He then lays down the very principle on which this power can be constitutionally and properly exercised. "If Colonel McLane has done any act inconsistent with his duty as an officer, or as an agent of this administration, this would be legitimate ground for inquiry, into which I should consider myself free to enter." He takes a distinction between refusing to appoint a political opponent, and removing him during his term, the last of which he refuses to do: thus leaving your thousand removals from the Post Office and other Departments of the Government under the full reprobation of the "doctrines of 1801," upon which you have attempted to justify them.

The next President, whose removals were referred to by the gentleman from Tennessee, was Mr. Madison, our "constitutional lawyer," under whose opinions we have already seen there is no shelter to be found for this administration. Then came Mr. Monroe, who not only disavowed such policy as is now pursued, but practised political tolerance in its widest signification. He had a great constitutional lawyer to advise him—one whose precepts ought to be now adhered to, even as strongly as the gentleman from Tennessee grasped those of Mr. Madison. That constitutional lawyer, sir, was Andrew Jackson, whose advice on any question should not be slightly passed over by the gentleman from Tennessee, and especially when we are considering the special force and efficacy of the second section of this article in the constitution. On the 12th of November, 1816, before Mr. Monroe's election had been officially announced, he gives this magnificent view of the duties of a Chief Magistrate: "In every selection, party and party feelings should be avoided. Now is the time to exterminate that monster, called party spirit. By selecting characters most conspicuous for their probity, virtue, capacity, and firmness, without any regard to party, you will go far to, if not entirely, eradicate, those feelings which on former occasions threw so many obstacles in the way of Government, and perhaps have the pleasure and honor of uniting a people heretofore politically divided. The Chief Magistrate of a great and powerful nation should never indulge in party feeling. His conduct should be liberal and disinterested, always bearing in mind that he acts for the whole, and not a part of the community. By this course, you will exalt the national character, and acquire for yourself a name as imperishable as monumental marble. Consult no party in your choice: pursue the dictates of that unerring judgment, which has so long and so often benefited our coun-

try, and rendered conspicuous its rulers. These are the sentiments of a friend; they are the feelings, if I know my own heart, of an undissembled patriot." It may be said, sir, that this constitutional lawyer has since abandoned these views as unsound. But I ask, when? Why, as late as May, 1824, he maintained the same moral and mental elevation, confirming the same opinions, and imprinting them more deeply by the increased authoritative sanction of his own great name. In a letter to the Honorable George Kremer, of that date, so far from retracting them, he says, "my advice to the President was, that he should act upon principles like these: consider himself the head of the nation, not of a party; that he should have around him the best talents the country could afford, without regard to sectional divisions; and should, in his selection, seek after men of probity, virtue, capacity, and firmness; and, in this way, he would go far to eradicate those feelings which, on former occasions, threw so many obstacles in the way of Government, and he enabled perhaps to unite a people heretofore politically divided." Those who delight to view the result of the last Presidential election as a verdict rendered by the people on an issue joined, can best inform us how far these sentiments and constitutional opinions should be viewed as having formed a part of that issue, and how far they were sanctioned by the then expression of popular approbation.

These opinions and precedents of great constitutional lawyers lead us to other reflections upon the general expediency of the two doctrines, and the probable reasoning of those who made our constitution. By the old articles of confederation, the power of appointment was vested in Congress. Under the present constitution, the same power was transferred to the President and Senate. The House of Representatives, chosen biennially, was not entrusted with any portion of this important power. Why not? Honorable gentlemen have strongly pressed the importance of what they call the principle of rotation or change in office, to comply with the popular will. The House of Representatives being entirely subject to the mutability of popular opinion, would be most apt to change with every popular breeze, and give effect to that opinion. Did this escape the intellects of the fathers of the republic? Sir, if we are to accredit their contemporaneous expositions of the constitution, and the very writings which procured its ratification, their reason for not investing the Representatives with this power, was to prevent the removal of valuable officers with every popular change, and to give stability to the administration of the Government. Moreover, when the gentleman from New Hampshire states here, that the same political causes which induce the people to change their Chief Magistrate, should operate upon all the subordinates, agents, and deputies, he forgets that the popular attention never is, and never can be, while absorbed by the consideration of the merits and demerits of contending candidates for the first office in their gift, sufficiently diverted to decide upon all the officers in the country. In a State or a small Territory, where the people know all their officers, they may act with a view to them. But hundreds of thousands voted, during the last great political contest, for men politically opposed to officers whom they had never seen, and of whom they knew nothing—nay, to their dearest friends, whom they neither wished nor expected should be removed. You cannot justify your course, then, by saying it is the popular will, and especially when your President, with his election in full view, and with a knowledge of the effect of the sentiment on the public, told us that "the Chief Magistrate of a great and powerful nation should never indulge in party feeling." Under such circumstances, is it not fair to conclude that, if his election must be regarded as any expression of popular will, in regard to subordinate officers, that will was in favor of his sentiment, and against the indulgence of party feeling to

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remove them. Still I admit that, although the great mass of the nation know little, and care less, in the election of a President, about the qualifications of inferior officers, yet they have in recent practice been too much guided in their choice by the hopes of Executive patronage, and the love of office. And it is time to lay before them the true principles of their constitution, which teach that, for the gratification of personal ambition, or the mere elevation of a party, for private pique or for personal vengeance, and the free exercise of the right of opinion, for hatred or for favoritism, or for any other cause than to secure a faithful discharge of public service for the public good, Executive power cannot be legitimately exercised; and shall now and forever after be effectually and fearlessly restrained. The expectants for "dead men's shoes" will then disappear. The elective franchise will be restored to its pristine purity. Executive patronage will no longer teach us at the polls that "power over a man's support is power over his will," and the action of our Government will, by thus cleansing the very spring from which it flows, become, henceforth, refined, healthful, and vigorous. But if these principles be now disregarded, despised, and prostrated, our people will be converted into office hunters, the contest for power will be everywhere conducted without reference to principle, the elective franchise will sink under the influence of personal hopes and personal fears, universal corruption will be substituted for that virtue without which a republic cannot exist; and at the expiration of every four years the tumult will swell, and the venality will fester, until, the depravity of the whole system of government being no longer tolerable, disgusted and dispirited by the complete failure of our attempt at self-government, we shall sink into the arms of the first Cæsar who shall be willing to strike a mortal blow at the liberties of his country. Let me not be told, then, that the most sacred of our constitutional privileges is to become the victim of any slovenly draughtsman of a commission or a statute, confounding Executive power with Executive pleasure. By the paramount law of the land, a President can officially know no pleasure but the people's interest; and when you suffer him to sink the officer in the man, you violate its simplest and most salutary restrictions.

With this view of the duties of a Chief Magistrate, and of his constitutional power, it must occur that, as his authority to remove can be exercised only for cause, there must be some tribunal to inquire into and ascertain that cause. I regard this right, though denied by the gentleman from Tennessee, as a necessary incident of the advisory power of the Senate. We know well that there is a great dividing line between us in this body. One party here denies our constitutional right to put such troublesome questions or to test any part of the groundwork of our "great and glorious reform." We want to learn a little of the *rationale* of this operation. We have been all along, as you tell us, benighted and in the dark. Give us light, then, we say. We consider ourselves bound to advise the Chief Magistrate in his appointments. We are not restricted to a mere expression of consent to, or dissent from, his nomination. We may, say, must, go farther. If you ask me whether I will consent to a choice which you alone can make, I may answer, yes. But if you ask me whether I will advise you so to choose, I might point you to a better. The words advice and consent are not synonymous—their meaning is essentially different. Consent is the mere agreement of the mind to what is proposed by another. Advice ordinarily implies the recommendation of some opinion, or the offering of some information worthy to be weighed and acted upon by another. The gentleman from Tennessee, expressing an opinion current, as we all know, among his political friends here, denies the constitutional right of the Senate to examine into and judge of the propriety of removals from office, and declares that our power is con-

fined to the question of the fitness or unfitness of the person nominated to succeed. Now, if A be removed from office, and B nominated to supply the vacancy, were only our consent asked on the appointment of B, we might possibly, adopting his construction, vote, say, when, if we are asked whether we would advise as well as consent to the appointment, we might answer, "no, we know a thousand better men, though we do not think the nominee absolutely unfit. We think the man removed is a better man." It is said, however, that we must restrict our advice to the nomination before us, and that, if we go beyond that, it is advice unasked. I answer that even if I am, as his adviser, to consult the interests of the President alone, I cannot always know whether B will really suit his purposes, until I learn why A has been removed, and thus ascertain what his purposes are. He may be deceived either in the character or qualifications of his nominee; and we knowing, perhaps, more about them than the President, if bound to look to his interests alone, ought to advise him of his error. Is it our object to advise him to appoint such persons as will aggrandize himself, or sustain his party? He may have recommended one of the opposite party to supply the vacancy created by the removal of his own party man. With a view to his interest, then, as his adviser, we ought, I suppose, to tell him so. Well, I inform him of it, and he tells me, in reply, that he knew that, but has dismissed his old friend because he has lost his influence. Then, if I know it to be a fact that his nominee has lost his influence too, I should tell him so; should I not? How, then, even according to the views of those who think the President is to consult his own pleasure, can we be faithful advisers, without asking, in our confidential way, here, what that pleasure is, or ferreting out the causes of his removals? On the other hand, if I am to advise with an eye single to the public good, which I take to be my true standard, I ought not to advise him to appoint B when I know that A, whom he has removed, and can re-appoint, is a better man for the office. Is it not then expedient for us, say, is it not sometimes absolutely necessary to the proper discharge of our advisory duties, to learn why our servants have been dismissed? And if so, where is the clause in the constitution which limits us in the exercise of these duties? If we have, as gentlemen say, no constitutional right to inquire into the causes of these removals, we have no power to investigate the propriety of the appointments to fill vacancies; for the first of these principles being conceded, the other will flow as a consequence from the concession. This makes the President independent of the Senate in his appointing power, and of course of any other tribunal established by the constitution. And the Senator from New Hampshire has reminded us, in discussing another topic of this debate, that Mr. Jefferson's "axiom of eternal truth in politics" was, "that whatever power in any Government is independent, is absolute also." I apprehend, too, that this new restrictive construction of our constitutional duties differs entirely from that adopted by all our predecessors. True, their Executive records show that the subject has not been moved on every nomination; yet the right to exercise the power appears not to have been denied before; and those records show us that the Senate has often inquired into the propriety of nominations, and of removals also. When Robert Purdy memorialized this body on the 15th of January, 1822, representing, as he did, that his removal from the army had been improperly made, and even charging, expressly, that favoritism, with the President, "had superseded the claims of merit," the Senate, instead of deciding against their own power, or branding it as *inquisitorial*, appointed a committee to investigate the whole subject; and on the 13th of April afterwards, they, by resolution, called for the report of the board of general officers, upon which the reduction and new arrangement of the army had been

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predicated. When Mr. Monroe nominated Gadsden as adjutant-general, and Towson and Fenwick as colonels, the Senate looked behind the nominations, and took cognizance of the fact, that other officers were superseded and disbanded as supernumeraries; and although, as appears by the able reports of the committee which investigated the causes and the legality of the arrangement, they did ample justice to the merits of these gallant officers, and admitted them to be fully competent for the stations to supply which the President had named them to the Senate, yet the nominations were not confirmed. Gadsden and Towson were rejected here, on the 16th of March, 1822, and the nomination of Fenwick was then withdrawn. The President afterwards re-nominated them to the Senate, when the same investigation was again made; the committee called on the War Department for more full information; the President assigned all his reasons in an elaborate message to the Senate; the committee reported against those reasons, with a full argument to refute them, and the Senate a second time rejected all these appointments, on the ground that other persons were entitled to them. Here was no cry of inquisitorial power; nor did the Senate consider, as the gentleman from Tennessee now does, that their power was confined to the question of fitness or unfitness of the nominees. On the 10th of April, 1822, the Senate, by resolution, instructed the Secretary of the Navy, among other things, to communicate to them, in Executive session, "in what situations, and for what reasons, acting appointments for officers were made in the Navy Department." It will not be pretended that the mere fact that the call was not directly on the Chief Magistrate, impairs the force of the precedent, as a demand of the causes of Executive action. Cases in which the Senate has inquired into the causes of appointments have often occurred. On the 4th of January, 1826, the Senate, by resolution, called "for any information tending to show the propriety of sending ministers to Panama;" and it does not appear by the Journal that the majority, so much reproached for their defence of the then administration, made any objection to the resolution; but it does appear that the resolution was on that day offered by Mr. Macon, and was immediately adopted. In the case of William B. Irish, who was nominated by Mr. Monroe as marshal of the Western district of Pennsylvania, the Senate called, by resolution, on "the President of the United States, to cause to be laid before them all such letters and petitions, or other papers, as were presented to him, relative to the appointment, as those which opposed his appointment, as those which requested it," and the President complied with the call, without complaining against the Senate for having exercised power unconstitutionally or improperly. The first President of the United States, who was also the President of the convention that made the constitution, considered the Senate as entitled to the utmost latitude of inquiry. When they rejected his nomination of Benjamin Fishbourne, for the place of naval officer of the port of Savannah, Washington, in his message, nominating Lachlan McIntosh for the place, says, "Permit me to submit to your consideration, whether, on occasions where the propriety of nominations may appear questionable to you, it would not be expedient to communicate that circumstance to me, and thereby avail yourselves of the information which led me to make them, and which I would with pleasure lay before you." A committee was then appointed to wait on the President, and confer with him on the mode of communication proper to be observed between him and the Senate, in the formation of treaties and making appointments to offices. This committee, by their chairman, Mr. Izard, on the 21st of August after, reported the very rule of the Senate now to be found in our Manual as No. 36, which, with a view to give time for these inquiries, provides that, when nominations shall

be made, a future day shall be assigned, unless the Senate unanimously direct otherwise, for taking them into consideration; prescribes the form of arrangement, when the President shall meet the Senate to give or to receive information, and even directs their own attendance at any other place where he may convene them for such purposes. With this history of that rule, which has been carefully preserved by all our predecessors, but appears now to be forgotten, who can doubt that, in their opinion, the utmost latitude of inquiry was to be allowed to the Senate on all Presidential nominations? We have high authority in favor of our constitutional right to inquire, in the report of the Committee on Executive Patronage, made in this body on the 4th of May, 1826—a committee which then thought, as they informed the world, that they were "acting in the spirit of the constitution, in laboring to multiply the guards, and to strengthen the barriers, against the possible abuse of power." The second section of the second bill reported by that committee provides, "That, in all nominations made by the President to the Senate, to fill vacancies occasioned by an exercise of the President's power to remove from office, the fact of the removal shall be stated to the Senate, at the same time that the nomination is made, with a statement of the reasons for which such officer may have been removed." Now, sir, would that committee\* have reported an unconstitutional provision for the adoption of the Senate? The proposition in it was to exercise the right of inquiry in every case, and thus by one sweeping clause to supersede the necessity of any future resolutions for that purpose in particular cases. Why now consider the doctrine unconstitutional which was thus supported? So highly were the principles of this report then approved, that six thousand copies were ordered to be printed, and the arguments contained in it were then declared to be unanswerable.† These inquiries were all right, then, and the thought that it was wrong "to establish a court of inquiry" did not occur to the committee. So, too, the House of Representatives, in the exercise of its legislative powers, has scrutinized the motives of the heads of Executive Departments. That House demanded, by resolution, on the 8th of May, 1822, from the Secretary of the Treasury, "a particular and minute account of each transfer of the public money from one bank to another, which had been made after the 1st of January, 1817, and the reasons and motives for making the same;" and in March, 1822, they obtained the information demanded, in a report. By us the right to look into the causes of Executive action is not claimed as an incident of the mere legislative power of the Senate, but of its Executive authority, and therefore stands on much stronger grounds.

In 1821, the Senate, thinking a *chargé des affaires* not a proper representative of this Government at Rio Janeiro, interfered to recommend the appointment of a minister. Their opinion on that subject had not been requested, when, by their resolution of the 3d of March of that year, they advised the President to appoint such a minister. The act was voluntary and gratuitous. They did not then regard it as an objection that their advice was unasked, nor consider themselves confined to the fitness or unfitness of the *chargé des affaires*. They did not feel bound to remain silent, like the slaves around the throne of a despot, and answer only when spoken to. And it appears to me, that on subjects connected with either treaties or appointments, they have considered themselves, in the spirit of the constitution, and under the solemn obligation to advise the President which it imposed upon them, equally bound to

\* The names of those who composed the Committee on Executive Patronage, are, Messrs. Benton, (chairman,) Macon, Van Buren, White, Fuldny, Dickerson, Holmes, Hayne, and Johnson, of Kentucky.

† By Mr. Randolph.—Notes by Mr. S.

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warn him of approaching danger to the country, and to consult with him on the means of averting it; equally bound to give him information which could tend to increase the welfare and prosperity of that country, and to discuss with him the means of securing and promoting it, whether he had or had not first asked their advice. Would you, sir, regard him as a faithful adviser, and a true friend, who should never warn you of danger, or give you information until you asked him to do so? And if not, are we acting in the spirit of the constitution, when we restrict our advice to the President to the mere fitness or unfitness of his nominee?

The treaty making, as well as the appointing power, is vested in the President and Senate. The advice and consent of this body is an indispensable prerequisite to the ratification of all treaties, and is an essential component part of the power to make them. It necessarily looks as well to the annulled as to the annulling stipulations with other nations; has always rejected new treaties, when preferring old ones; and though indulging the utmost latitude of inquiry into all the reasons, and all the facts connected with both, it has never yet met with objections to the most ample exercise of these powers.

It is well understood, sir, that, within the year of which this day completes the circle, a great revolution has been effected in the public offices, by the discharge of the former incumbents, and that the Representatives of many of the States are anxious to spread upon the records here, for the benefit of posterity, as well as of the present age, the latent cause of this great Executive reform. We have another motive to make the effort to effect this. We desire that the simple facts should appear, in justice to all those who have been dismissed from the public service without charge or accusation against them. We consider this necessary as an act of justice, not only to the sufferers, but to their families, their friends, and their posterity. We seek to distinguish the innocent from the guilty; to exhibit to public view, among the searching operations of this Government, how many have been removed on the representations of secret foes, or vindictive political opponents; how many have been dismissed on suspicion, and how many without suspicion; and how many have been condemned without having been suffered to learn the nature of the accusations against them. If rumors, founded in many cases on the statements of the victims of the proscriptive system, be true, many have been hurled from stations which they have filled with honor to themselves, and with advantage to the public, without the assignment of any reason for the act; and in many instances, it is said, the files of departments here have been filled with foul calumnies, by aspirants to office, and their secret agents, without giving the accused even the formality of a trial. If this be so, here is a real inquisition, to rack and torture, not the bodies indeed, but the characters of men. Is it more than an act of justice to the victims, that the truth should appear? The accusations against them, though strictly *ex parte*, are yet the avowed foundation of official acts of departments here, and are matters of record on file, in those departments, which may be resorted to, by all future generations, to blacken the memory of these men, and to disgrace their families when they shall be laid in their graves. In a government of laws properly administered, the discharge of a public servant, without any assigned reason for the act, must ordinarily cast some imputation upon his character. No matter how innocent he may be, no matter whether any charge has or has not been preferred against him, yet the existence of such charges will be presumed. Under such circumstances, the breath of calumny is sure to stain his reputation, even though acquired by a long life of faithful public service, and exemplary private conduct. The hiring libeller, the prostituted wretch, who may have gained the very office from which he has been removed,

will sound the tocsin of slander, and if the press has been generally subsidized by the Government, surmises of official delinquency will be carefully propagated, as "prevailed on file," until the victim loses character as well as office, by the action of Executive vengeance. To what tribunal then should he appeal for justice? I answer, to the Senate of his country—a party to the contract by which he was employed; and which, by fairly showing the causes of his dismissal, may repel the imputations resting on his reputation, and "set history right;" thus forming a barrier against the influence of the spirit of malevolence, which, in these latter days, as we have seen, can pursue a man to his grave for vengeance on his posterity. No good or honorable man will dismiss a faithful servant from his private employment, without furnishing him at his request with a certificate of his fidelity. The same justice, which we dispense in private life, should be yielded to a faithful public servant, when dismissed from public employment; and unless as public men we intend to abandon those principles which govern us in our social and domestic relations, we are, in my humble judgment, bound to entertain these inquiries. They can do no injustice to the Executive. If its power has not been wantonly abused, the conduct of the Government will be presented to the people in an unexceptionable point of view. But, on the other hand, if the President's authority has been perverted, entirely to party and personal purposes, are we not bound to correct the evil? And, should we refuse to present him to this nation in his proper character, at the expense of the reputation of all our fellow-citizens, who have been trampled under foot by the arbitrary and despotic exercise of power, will it not be said, that, by shrinking from the investigation, we have distrusted his integrity, and have shown a belief that his security was in concealment? If all has been rightly done, do we not treat him ungenerously by refusing him an opportunity of presenting the evidence for his acquittal at the bar of public opinion?—ay, sir, at the bar of public opinion: for at that bar he must stand and await his sentence; and his direct foe could not wish him a more certain condemnation than inevitably awaits him, unless he is heard in his defence.

If I am right in my views of the constitutional powers of the President and Senate, thus far presented, the former can never properly remove an officer before the expiration of his term, but for cause connected only with the public interest; while the latter can investigate that cause, and ascertain by the facts how far the constitution has been complied with; and, if this authority has been abused, or extended beyond its constitutional limits, the House may impeach the author of such abuses before the Senate, and the Senate may remove him and all his minions. An impeachment, however, requiring a majority of the House to prefer it, and two-thirds of the Senate to sustain it, can rarely, perhaps never, prevail against the exercise of Executive patronage directly on Congress and the influence of party spirit. Then suppose that a President, regardless of his duty, and of the consequences either of exposure or impeachment, should remove all our public servants who would not consent to his usurpation of the sovereignty of the people, and fill their places with favorites and parasites who should seek to robe him with the imperial purple? We have been told that such a case may occur; that Aaron Burr was once on the verge of this high office, and it has been said that he would have filled every office in this way. I do not say so myself, nor do I pretend to decide upon that. But the question now arises, what checks have the people upon an usurper, who should do these things for his own advancement, immediately after his accession to the Presidency? It is certain that, until the expiration of his four years' term, a period long enough for the achievement of a revolution, the people have no check upon him except through the instrumentality of the Senate; and in such a case the question,

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What control has the Senate upon this power? becomes one of intense interest to the American people.

We have seen that, by the terms of the constitution, the President is authorized to fill up all vacancies happening in the recess of the Senate, by granting commissions, which shall expire at the end of their next session. When a vacancy is created by a removal, the question arises, Can the officer removed be reinstated by the direct action of the Senate?

There are many who maintain the affirmative of this question. Some for whose judgments I feel great deference, and with whom I usually act here, have so expressed themselves; and there are certainly strong opinions to support them. That of Alexander Hamilton, expressed in the 77th number of the *Federalist*, is urged with much force as being in accordance with this construction. After enumerating there, as one of the advantages to be expected from the co-operation of the Senate in the business of appointments, that it would contribute to the stability of the administration, he adds, "the consent of that body will be necessary to displace, as well as to appoint." It is insisted that the displacing, here referred to, is indicated by the context to be, not a temporary removal by a temporary appointment, amounting only to an "attempt to change," but that the power denied by him to exist in the President alone, was such a displacing power as could defy the "discontinuance of the Senate," and that, therefore, this great statesman pressed it upon his countrymen as one of the highest recommendations of the constitution, that "a change of the Chief Magistrate would not occasion so violent or so general a revolution in the officers of Government as might be expected, if he were the sole disposer of offices. Where a man in any station has given satisfactory evidence of his fitness for it, a new President would be restrained from attempting a change in favor of a person more agreeable to him, by the apprehension that the discontinuance of the Senate might frustrate the attempt. Those who can best estimate the value of a steady administration, will be the most disposed to prize a provision which connects the official existence of public men with the approbation or disapprobation of that body, which, from the greater permanency of its own composition, will, in all probability, be less subject to inconstancy than any other member of the Government." The weight of Hamilton's opinion is here set in full array against the advocates of constructive power; and it is true that his exposition of the constitution was contemporaneous with its ratification; that it was then given to, and pressed upon, our countrymen, for the purpose of effecting that ratification; that it was viewed at the time as obviating all objections to the extent of Executive influence; and that, perhaps, the only censur which has ever been cast upon his political writings, charges that he was too much disposed not to curtail, but to extend and increase the powers of the Federal Government. Yet, his doctrine, at least to the extent contended for, was not recognized by the House of Representatives in 1789; and, if the decisions of that day, which have been referred to, are to be regarded as obligatory upon us, the Senate has no direct action upon the removals of the President. The question recurs, then, by what constitutional mode can it maintain any check upon these abuses of Executive power?

I take the true difference, between the present advocates of that power and myself, to consist in this—they consider the Senate as standing in the relation of a *quasi* privy council to the President, who may or may not abide by their advice, as to him shall seem most expedient. They deny the doctrine of Hamilton, that "the constitution connects the official existence of public men with the approbation or disapprobation of the Senate." They deny the whole and every part of it. They deny it in every view which can be taken of it. I consider the Senate as possessing certain Executive powers, to be exercised in

co-operation with the President, when they approve of the administration of his co-ordinate powers, or in opposition to, and as a salutary check upon him, when he has abused such powers; and that, as officers of a certain grade cannot be appointed without their advice and consent, so, if those officers be removed to reward partisans, or for any other unjustifiable purpose, the Senate can reject nominations to supply the vacancies thus occasioned, and thus either compel the President to reinstate those removed, or leave vacancies which he cannot supply after the expiration of their session. If this view be sound, the Senate, by its legitimate, though indirect action upon every removal, has a check upon the abuse of power, which, if exercised when the public interest really demands it, will destroy the motives for that abuse, and may hereafter save the republic in her hour of greatest peril. The objects to be attained by an ambitious and designing President, through the instrumentality of these removals, will be to displace the real friends of the people, and to fill up the vacancies with his own creatures, subservient to his will, and independent of all other control; and if the Senate have the virtue to reject his propositions to effect these ends, he may be compelled to retract his removals, or to leave the places vacant. This right of rejecting appointments, with the express design of acting upon the removals, should be exercised whenever the removing power has been abused—because every such abuse is an act of tyranny, and the first approaches of usurpation, or oppressive and arbitrary power, should be repulsed by those who ought to stand as the most vigilant and intrepid among the sentinels of liberty. Ordinarily, he who accepts an appointment to fill a vacancy occasioned by such an abuse of power, is cognizant of the facts, and consenting to the abuse. Moreover, this check should be interposed whenever the public interest demands the restoration of a meritorious officer, whether removed through inadvertent error or intentional injustice. The Senate thought it important to exercise this right in the cases of the military nominations in 1822; but the privilege becomes inestimably valuable whenever the removing power of a President is exerted for the purposes of personal ambition, and in utter contempt of the public interest. It is infinitely better to go without an officer than to submit to "an act of tyranny" in any shape. We have no right to originate bills for raising revenue—we cannot nominate or propose in the first instance the sums to be levied on the people; but when the other House sends here such bills, we can amend or reject them. Now, whenever we believe that the sum to be raised is destined for any purpose which is tyrannical or oppressive, or not really necessary for the public interest, we are bound to negative the whole bill, if we are not allowed to amend it to suit that interest. We should, doubtless, refuse any appropriation of public money if we believed it destined to advance the interests of an usurper, although satisfied at the same time that a real evil might grow out of the want of funds to disburse the ordinary expenses of Government. In these and all similar cases, the question must be weighed and decided, whether the object to be achieved is worthy of the sacrifice it may occasion; and so long as the spirit of our ancestors dwells within these walls, we shall rarely think any sacrifice too great, if made in a successful resistance to the oppressive exercise of arbitrary power.

But there are some here who maintain that we have no such check on the Executive, and that the President is authorized to fill all vacancies existing in the recess of the Senate; so that, when we have rejected such appointments as have been proposed to us, and, having been informed by the President that our services are no longer necessary here, shall have adjourned without day, he may fill the vacancies then existing. If this be true, he can fill such vacancies as well with one person as another, and of course can, and will generally, re-appoint the very man whom we

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have rejected; or, he may entirely dispense with future nominations to the Senate, granting, on the day after each session, commissions, which shall expire with the next, and thus take away from this co-ordinate branch of power even the miserable subordinate privilege of the old French Parliament, whose only glory was to register the mandates of the sovereign.

The commentator on Justinian, who has been alluded to, as a jurist, in terms of high commendation, in the range of this debate, [Mr. Cooper] after animadverting upon the removing power as formerly exercised by the Governor of Pennsylvania, says, the analogy between the rights of the Governor and those of the President, in this respect, will not hold, "considering that, under the constitution of the United States, the exercise of the right of removal is subject to the formidable check of the Senate's concurrence in the successor of the President—a difference so important as to destroy the force of all reasoning from the one to the other. A power, in every instance controlled in its exercise by the Senate, cannot be compared with a power in every instance uncontrolled, and exercised as the caprice of the Governor for the time being, heated by recent opposition, and goaded by revenge, may dictate." The distinction lies here: every vacancy existing in the recess is not a vacancy happening within the true construction of the second article. The appointments to supply such vacancies must be made "by granting commissions, which shall expire at the end of the next session," not after the expiration of that session. The commissions granted during the last recess expire, *eo instanti*, with the termination of the present session; and if the offices are not filled by the concurrence of the Senate, vacancies will exist at the moment we adjourn, not in the recess—for that moment can with no more propriety be said to be recess than session; and those vacancies will not exist by reason of any casualty or happening not provided for, but by the expressed will of a co-ordinate branch of the appointing power. It has never been pretended that the President alone could fill, by one of these temporary appointments, a vacancy happening during the session. In the celebrated report of the Committee on Military Affairs, made here on the 25th of April, 1822, which, as I have already stated, met with the sanction of the Senate in the rejection of the military appointments, it is urged that "the word 'happen' relates to some casualty not provided for by law. If the Senate be in session when offices are created by law which were not before filled, and nominations be not made to them by the President, he cannot appoint after the adjournment of the Senate, unless specially authorized by law, such vacancy not happening during the recess." The same construction was evidently adopted by Congress, and by the President himself, when, in the act of the 22d of July, 1813, they thought it necessary to insert an express provision in the second section, to confer upon the President the power to appoint collectors of direct taxes and internal duties during the recess, if not before made by and with the consent of the Senate. Every vacancy existing in the recess is not therefore a vacancy "happening in the recess." In the third section of the first article of the constitution, touching the appointment of Senators, it is provided that, "if vacancies happen by resignation or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments, until the next meeting of the Legislature, which shall then fill such vacancies."

These temporary appointments by the State Executive are analogous to temporary appointments by the National Executive. How, then, has this clause in the constitution been construed? The first case which occurred, to test its construction, was decided on the 28th of March, 1794, on an appointment by the Executive of Delaware, which appears to have undergone a full investigation. The re-

port of the committee appointed to examine it, sets forth, that a Senator from that State resigned his seat upon the 18th day of September, 1793, and during the recess of the Legislature; that the Legislature met in January, and adjourned in February, 1794; that, upon the 19th day of March, and subsequently to the adjournment of the Legislature, another was appointed by the Governor to fill the vacancy occasioned by the resignation. With these facts, a resolution was reported by the committee, and adopted by a vote of twenty to seven, that the appointee was not entitled to a seat here, "because a session of the Legislature of the said State had intervened between the resignation and the appointment," and among those who sustained this resolution, we find the names of Langdon, King, Ellsworth, Martin, and Butler, who had been members of the convention. Such was the determination on this question, going the whole length of the principle we seek to establish.

In the case of Mr. Lanman, a Senator from Connecticut, the Senate, on the 7th of March, 1825, went still farther. His term expired on the 3d of March, 1825; after which, he produced here a certificate of appointment by Oliver Wolcott, then Governor of the State, dated the 8th of February, 1825; and although the Legislature of the State was not in session at the time, and did not sit until May, yet the Senate decided that there was not in this case a vacancy happening by any casualty not provided for, and therefore Mr. Lanman was not entitled to a seat. We find among the distinguished names then recorded in favor of this construction, those of Messrs. Benton, Berrien, Dickerson, Eaton, Gaillard, Hayne, Jackson, (now President) King, Lloyd, of Maryland, Macon, Tazewell, and Van Buren. It is not for me to pronounce upon the correctness of a decision thus established; but if it was right, it not only covers, but goes beyond my position. It is true that, in some similar cases, Senators have been permitted to sit here, but they all passed without consideration, except that of Mr. Tracy, who was held entitled to a seat, by a party vote, in a period of high excitement—all those who were called federalists voting for, and all those who were called democrats against him. *Tempora mutantur*. However we may be branded as the federalists of this day, our doctrine appears to have been the republican doctrine of that period. The constitutions of each of the States, in the cases referred to, provided that their Governors should see that their laws were faithfully executed; and their laws directed those Governors "to fill up all vacancies, happening in the recess" of their respective Legislatures, by temporary appointments; so that there exists no ground upon which to build up a construction in favor of the power of the Federal Executive, which does not equally sustain that of the State Executive, in each of these instances. Without further discussion of the principles connected with this subject, we might regard it as never to be shaken while the constitution lasts, that the President alone cannot fill any vacancy occasioned by the refusal of the Senate to concur in his nominations; and that if he, having had a fair opportunity to consult his constitutional advisers, should refuse or neglect to do so in any case where their consent to the appointment is required, he has no power to supply the vacancy existing at the expiration of their session.

Before I close my remarks upon the constitutional rights of the President and Senate, suffer me to say, sir, that there cannot be, in a free Government, a more dangerous principle than that of implied Executive power. To control it, we cannot keep too steadily in view, that delegated authority should always be either strictly construed, or distinctly defined, and that, by the terms of the constitution, power, not expressly ceded, is reserved to the people or the States. I shall be gratified to see some farther evidences than any yet developed, to make good the remark of the gentleman from Tennessee, when he express-

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ed his pleasure at beholding the administration majority of the American Senate "contending against all those doctrines which are calculated to increase the authority of men in office." We have also been informed, that we live in an age when State rights are the great objects of regard; when a predominating party has taken them into its special keeping; when the President himself is their grand protector; when our hearts shall be gladdened, and our eyes blessed, with the glorious vision of a party in power no longer warping the constitution from its legitimate construction, to increase the strength of the Federal head, but paring down all forced implications of authority, and restoring to their pristine purity and vigor the sovereign and independent powers of the twenty-four States.

Such, we are told, sir, is the primary object of modern reform. But the example of this administration is a sad commentary on so fine a text; and the principles advanced in this debate to sustain it, sap the whole foundation of these lofty pretensions. Reverencing, as I sincerely do, the constitutional rights of the States, I view the avowed principles of the Executive as subversive of the most important powers of that very body where alone the States, as such, are represented. Rob the Senate of these, and of what avail is their mere legislative authority, when the very laws themselves are to be passed upon by judges, and executed by officers, in whose appointment they have substantially no concern? An English King boasted that, while he could appoint the bishops and judges, he could have what religion and laws he pleased; and it was the opinion of Roger Sherman, in advertising to that remark, that, if the President was vested with the power of appointing to and removing from office at his pleasure, like the English monarch, he could render himself despotic. A blow at the rights of the States is a blow at the liberties of the people; and whenever the period shall arrive for destroying the latter, the first aim will be to prostrate the powers of the former, in the Senate. Those who framed the constitution foresaw this, and, so far as human wisdom could guard against the evil, they provided for it, by ordaining that no State shall ever be deprived of her equal suffrage, in this body, by any change of constitution. *Hic murus aheneus esto.* Here lies the bulwark against consolidation of the Government—the barrier for the protection of the States against the encroachments of Executive power; and the American who shall succeed in breaking down this defence will bury in its ruins the liberties with the constitution of his country. The effort to destroy it, in order to be successful, will never be made in open and avowed hostility; but the first approaches of the enemy will be gradual, crafty, and disguised. Many a Sempronius will thunder "war to the knife's blade" against the foe whom he secretly encourages, until, by successive restrictions upon the rights of the Senate, the salutary powers of the States are stolen imperceptibly away, and most probably under this very pretence of enabling the Executive to see that the laws are faithfully executed.

Let us now, sir, briefly, in conclusion, while we commemorate the day which inducted our Chief Magistrate to office, review his administration of the past year, apply to it the test of these principles, and calmly inquire whether any constitutional interposition of the Senate be requisite to check the abuses of power. This anniversary recalls the pledges of the inaugural address: to keep steadily in view the limitations as well as the extent of the Executive authority; to respect and preserve the rights of the sovereign members of our Union; to manage, by certain searching operations, the public revenue; to observe a strict and faithful economy; to counteract that tendency to private and public profligacy which a profuse expenditure of money by the Government is but too apt to engender; to depend for the advancement of the public service more on the integrity and zeal of the public officers than on their numbers; and particularly to

correct those abuses which, it was then charged, had brought the patronage of the Federal Government into conflict with the freedom of elections, and counteract those causes which had placed or continued power in unfaithful or incompetent hands. The lateness of the hour warns me that I ought not to trespass on your attention, by inquiring how far all these pledges have been redeemed; and the examination of all the topics presented by such a general inquiry might lead me beyond the "cuius fine," within which I am admonished that an American Senator should confine himself, when speaking of an American President. But it is true, and ought to be observed on this day, that our public officers are increased in number, and not diminished in salary; that the promised retrenchment has terminated in a recommendation to establish additional bureaus, with more public agents, and increased demands on the treasury, to swell to an almost boundless extent the influence of the Executive by a general extension of the law which limits appointments to four years, and by the establishment of a Government bank; and that a general system of proscription for a manly exercise of the right of opinion, under the pretence of rotation in office, has brought the patronage of the Executive into full conflict with the freedom of elections. Turning from the investigation of minor subjects, which might by possibility be considered as mere topics for partisan effect, and with a nobler purpose than to subserve the petty interests of any sect, or any party, our attention is forcibly arrested by some instances, in which these pledges have been so violated that their tendency, if not immediately, at least consequentially, and by the force of example, is subversive of the dearest interests of our people, and of the most sacred institutions of our republic.

When we look to the manner in which the pledge to observe a strict and faithful economy has been redeemed, we find the expenses of Government increase, through the instrumentality of these rewards and punishments for political opinion. Outfits, salaries, and all the incidental expenses attending the recall of nearly the whole of our diplomatic corps, and the appointment of others to supply their places, have caused large drafts upon the treasury, and laid the foundation for increasing demands upon it. But without dwelling to estimate how many tens or hundreds of thousands of dollars have been expended in punishing opponents, or inquiring how profusely the public bounty has been lavished upon favorites, we have something more important to consider. We know that, if funds for such purposes have been taken from the strong box, without appropriations, the President must have dipped his hands into the nation's treasure in opposition to the constitution, which it is our duty to support. Money cannot be drawn from the treasury except in consequence of appropriations made by law; and the radical act of the first of May, 1820, after limiting the powers of the President in relation to transfers of appropriations in the army and navy, provides, in the fifth section, "that no transfers of appropriation from or to other branches of expenditure shall thereafter be made." May we not inquire now, from what fund the money has been drawn to defray the greatly increased expenses of our foreign missions? These expenses were not provided for, during the last session of Congress, by any law: for they were not foreseen or anticipated. If then the diplomatic fund was insufficient for these purposes, either the nation has been brought in debt to accomplish them, or the constitution and the law have been violated by unauthorized drafts on the treasury. It is certain that we are now called upon to appropriate largely, either to pay a debt incurred, or to supply a deficiency in some other fund not appropriated for these expenses. If the Executive can recall our foreign agents for party purposes, or to promote friends, even where no legislative appropriation has been



made for these objects, Congress has virtually no control over our foreign intercourse, and we may hereafter expect that our ministers abroad will be withdrawn on the accession of every new incumbent of the Presidency; that new men will be sent to supply their places; and that the whole relations of the country with foreign Powers will be changed, or thrown into confusion, at the end of every four years. Admit the power of the Executive, without appropriation, to recall and to appoint ministers, and by the operation to bring the nation in debt, for the public good; yet show us how the public good required this increased expense. Take a case for example, and let some ingenious advocate of the administration assign a reason why our late minister near the court of St. James was recalled. Mr. Barbour had acquitted himself faithfully in every public trust which had ever before been confided to him, and was at the time of his recall discharging, with honor to himself and his country, the high duties of his mission. In what respect was he thought to be either incompetent or unfaithful? Was any new policy to be adopted in our relations with England which he would not espouse? Take another case, and inform us why the gallant Harrison, the hero of Fort Meigs, the victor at Tippecanoe and the Thames—a veteran in council, as well as in the field—distinguished for his virtues in all the relations of the citizen, the soldier, and the statesman; why, I ask, was he proscribed as unfit to represent his country abroad, and withdrawn from Colombia, to make room for Thomas P. Moore? He had scarcely arrived at Bogota—the ink was still fresh on the Executive record which informed the President that it was the advice of the Senate that he should represent us there, when the order for his removal was announced. This could not have been done for any official misconduct. There had been no time to inquire into that. Was his fidelity distrusted, then? Or how did the public good require his dismissal? Think you it will tell well in the annals of history, that he who had so often periled life and limb, in the vigor of manhood, to secure the blessings of liberty to others, was punished for the exercise of the elective franchise in his old age? Sir, it was an act, disguise it as we may, which, by holding out the idea that he had lost the confidence of his country, might tend to bring down his grey hairs with sorrow to the grave. But the glory he acquired by the campaign on the Wabash, and by those hard-earned victories for which he received the warmest acknowledgments of merit from the Legislature of Kentucky, and the full measure of a nation's thanks in the resolutions of Congress, can never be effaced; and any effort to degrade their honored object will recoil on those who make it, until other men, in better days, shall properly estimate his worth, and again cheer his declining years with proofs of his country's confidence and gratitude. If, then, these acts, and others of a similar character, be hostile to the spirit of the constitution, can we regard the expenditure of public money they have occasioned as a proper redemption of those pledges which, on this day last year, so much delighted us, "to observe a strict and faithful economy, and to keep steadily in view the limitations as well as the extent of the Executive power?"

The pledge to preserve the rights of the sovereign members of our Union, as well as the defence of the administration, made by the gentleman from Tennessee, lead us to the reflection that more members of Congress, who were friendly to the election of the present Chief Magistrate, have been appointed to office by him, within the compass of a single year, than have been appointed by any other President during the whole course of an administration of eight years. The consequences of this were foreseen and deprecated by the founders of our Government, but the provision which they inserted in the constitution to prevent them has proved inadequate to its object. Such was the opinion of a favorite constitu-

tional lawyer, who, in an address to the Tennessee Legislature, on the 7th of October, 1825, explained this subject so fully that I shall be pardoned for producing a large extract from that valuable state paper, especially after the gentleman from Tennessee has adverted to it, and made an argument upon it.

"With a view [says he] to sustain, more effectually, in practice, the axiom which divides the three great classes of power into independent constitutional checks, I would impose a provision, rendering any member of Congress ineligible to office under the General Government, during the term for which he was elected, and two years thereafter, except in cases of judicial office. The effect of such a constitutional provision is obvious. By it, Congress, in a considerable degree, would be free from that connexion with the Executive department which at present gives strong ground of apprehension and jealousy on the part of the people. Members, instead of being liable to be withdrawn from legislating on the great interests of the nation, through prospects of Executive patronage, would be more liberally confided in by their constituents; while their vigilance would be less interrupted by party feelings and party excitements. Calculations, from intrigue or management, would fail: nor would their deliberations, or their investigation of subjects, consume so much time. The morals of the country would be improved, and virtue, uniting with the labors of the Representatives, and with the official ministers of the law, would tend to perpetuate the honor and glory of the Government. But, if this change in the constitution should not be obtained, and important appointments continue to devolve on the Representatives in Congress, it requires no depth of thought to perceive that corruption will become the order of the day; and that, under the garb of conscientious sacrifices to establish precedents for the public good, evils of serious importance to the freedom and prosperity of the republic may arise. It is through this channel that the people may expect to be attacked in their constitutional sovereignty, and where tyranny may well be apprehended to spring up, in some favorable emergency. Against such inroads, every guard ought to be interposed; and none better occurs than that of closing the suspected avenue with some necessary constitutional restriction."

It is interesting to examine how far this administration has actually practised on these maxims. Why, within the very first year, six members of the Senate,\* being one-eighth of the whole body, as it was composed during the twentieth Congress, have been appointed to some of the most important offices within the gift of the Executive. As yet, the message of this session reiterates the principles of the Tennessee letter, with a slight reservation, by way of covering the case as it now exists. By that letter, judges alone might be selected from the members of Congress. By the late message we are informed that "the necessity of securing in the cabinet, and in diplomatic stations of the highest rank, the best talents and political experience, should, perhaps, (even here we have a *querre*) except these from the exclusion." If it be, "perhaps," necessary to change the constitution to save us from doing wrong, why not do right without the change? The new reservation is a flat departure from the maxims of 1825; and still even that does not cover the acts of the Executive: for we have not only diplomatists and cabinet ministers (important officers!) chosen from the members of Congress, "within the term for which they were elected, and two years thereafter," but important appointments of a very different character, even in the post office and the customs, continue to devolve on them, convincing those

\* Mr. Van Buren, Secretary of State; Mr. Branch, Secretary of the Navy; Mr. Berrien, Attorney General; Mr. Eaton, Secretary of War; Mr. McLane, minister to England; and Mr. Chandler, collector at Portland.

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Mr. Foot's Resolution.

[SENATE.]

who have become proselytes to the Tennessee doctrine, without any great depth of thought, that corruption may become the order of the day, and that, under the garb of conscientious sacrifices for the public good, evils of serious importance to the freedom and prosperity of the republic may arise. But the gentleman from Tennessee, who called our attention to the letter, and without whose notice of it I should hardly have adverted to it, says—

[Here Mr. GRUNDY explained. He stated that he had alluded to the letter in reply to the Senator from Indiana, Gen. NOBLE.]

Mr. CLAYTON continued. Sir, the honorable gentleman's reply was, that the people ought to have changed the constitution, but that, without some constitutional restraint, the President was under no obligation to practise what he formerly preached. However valid that defence may appear, it is not the opinion of my constitutional lawyer: for, in that same letter, he says, "it is due to myself to practise upon the maxims recommended to others." These and similar pledges obtained for him thousands of votes, during the canvass of 1828, and ought to have been redeemed.

"When the blood burns, how prodigal the soul  
Lends the tongue vows."

Moreover, it will require much "depth of thought" to convince us that a President cannot do what he thinks right, without some constitutional restriction to prevent him from doing what he knows to be wrong; or that a man of sound mind and good disposition cannot avoid the destruction of his own family unless you treat him like a madman, by tying his arms and depriving him of the means of doing injury.

There was, however, no pledge in the inaugural so striking or so important, as the recognition of that obligation, then said to be inscribed on the list of Executive duties, by the recent demonstration of public sentiment, to counteract those causes which brought the patronage of the General Government into conflict with the freedom of elections. Sir, your Postmaster General, wielding the patronage of his Department over clerks, deputies, contractors, and agents, in numbers amounting to nearly eight thousand men, has, for political effect, removed from public employment, in pursuance of a general system, so vast a proportion of the old and faithful public servants connected with that immense establishment, that its resources and its energies are impaired, public confidence is diminished, and suspicion, darkening this great avenue to light, as she spreads her dusky pinions over it, whispers that some of its recesses have been converted, for political purposes, into posts of espial on the private intercourse of your citizens. The public press, too, by the instrumentality of which alone this republic might be prostrated; by the influence of which a President might be swelled into a monarch; has been—not shackled by a gag law—no, sir, but subsidized, by sums approximating to the interest on a million of dollars, granted in the way of salaries, jobs, and pensions, to partisan editors, printers, proprietors, and all the host, directly and indirectly, connected with and controlling it. The appointment of editors to office is not casual, but systematic; they were appointed because they were editors. In the days of the French Revolution, when the press was bought up with the public funds, the country was flooded with venomous effusions from the jacobin prints. The post of profit was then erected in the kennel, where a venal pack bayed, like bloodhounds, for murder. Marat was distinguished, as the editor of a revolutionary journal, for violence and vituperation; and, having published his demand of two hundred and sixty thousand heads, as a sacrifice to liberty, was soon elevated to one of the highest offices of the republic, where, as a member of the infernal triumvirate, which deluged France in tears and blood, he combined

the cunning malice of Robespierre with the native ferocity of Danton. He was a compound of the vices of both his coadjutors; of all that on earth was flagitious, mean, inhuman, and inexorable: for he came from the schools of a faction which trained its disciples to cry havoc without mercy, when bounty lured them up the path to blood and death. The examples of that day teach us how easy is the transition from the hiring libeller to the brutal murderer; and that he whose habits have long accustomed him to live upon the ruins of private reputation, would shed the blood of his victim with pleasure, if paid to do the deed of death. An independent, able, high minded editor is an honor to his country, and to the age in which he lives. He is the guardian of the public welfare, the sentinel of liberty, the conservator of morals; and every attempt to allure or to coerce him to desertion from his duty should be regarded as an insult and an injury to the nation whose interests he is bound to defend. It is less manly in an assailant, and not less indicative of hostility, to bribe the sentry on the walls of your citadel, than to gag him and hurl him from its battlements. It is more dangerous to corrupt the press by the prospect of office, than absolutely to silence it by seditious laws; because, although by the latter course it may be destroyed, yet by the former it may be made the engine of tyranny. The charge of an undisguised effort to subdue its energies in the days of the elder Adams, brought down upon the heads of all who were friendly to the seditious act the full measure of public condemnation; and it yet remains to be seen what will be the effect produced by an attempt to buy and prostitute it. We have a pack in full cry upon the trail of every man whose integrity of purpose will not suffer him to bend before power; and friends, and character, and happiness, are torn from him by them, with as little remorse as was felt by the bloodhounds of the old French litter. Can all these things be justified by the examples of the illustrious Jefferson? Sir, his real friends will at all times spurn the imputation which the very question conveys. They will remind you that the first prominent act of his administration was to disembarass and untrammel the press; to disengage that "chartered libertine" from the shackles of authority, and leave him free as mountain air. They will tell you that the great maxim he adhered to till the latest period of life, was, that "error of opinion should always be tolerated while reason was left free to combat it;" that he rewarded the office hunting libeller who had slandered his predecessors with a view to gain by his election, with his un concealed and unmitigated scorn and contempt; that he bought no man's services with gold, adopted no system of pensioning presses with office, offered no lures to libellers, employed no assassins of character. Three years ago, when the great Western Statesman, who has, for his independence, been hunted like a wild beast, filled, with honor to his country, the office of Secretary of State, he became an object of the bitterest vituperation, by discharging some half dozen printers from the petty job of publishing the laws; and although the whole extent of this exercise of patronage, as it was then called, did not amount to more than a few hundred dollars, yet it was considered as an exertion of power vitally dangerous to the country—as tending to establish a Government Press. Such a press was said to be more alarming to the liberties of the people than a palace guard of six thousand men; and the acts of the Secretary were denounced as being calculated to "sap the vigor, degrade the independence, and enfeeble the vigilance, of the sentinels on the watch-tower of liberty, whose bescon lights should blaze with pure and undying lustre." But now, when so many of those very sentinels have been subsidized by office, and the new stipendiaries have formed in battalions about the throne, presenting their pikes, in close array and fort deep, for its defence, the lofty eloquence of these patriot

orators is heard no more within our walls; their harps hang on the willows; and instead of ringing an alarm through the land, they are hushed into the deepest silence and the most tranquil repose.

In this brief and hasty review of the prominent characteristics of the first year of this administration, [said Mr. C.] we have observed those acts which, in the opinion of the honorable member from Tennessee, will have no more effect upon the American public than "an attempt to agitate the ocean, by throwing pebbles on its surface." We find, however, that the removals to which he referred have not amounted only to the dismissal of a "few subordinate officers," but to a thorough revolution among the most important and most faithful functionaries of the Government; and it ought to be remembered that even the subordinate officers alluded to were freemen. I may know less of this world than the able and experienced member from Tennessee, but I still think this nation will look to an act of tyranny, which tramples a faithful servant under foot, or turns him out with scoffs and contempt, however humble his condition may have been, with feelings very different from those manifested by the advocates of power. They may not care for the little salaries, but they will look to the principle of Executive action—to the motive which makes that action dangerous. Does the honorable gentleman recollect the reason for which John Hampden refused to pay the ship money? The sum for which he contended amounted only to a few pence, yet the claim of a British monarch to it was resisted to the utmost, and the feelings of an English public were agitated like the ocean in a storm, not on account of the sums to be paid under the illegal exaction, but because it was an encroachment on their rights, and an abuse of power. Every genuine American republican carries the spirit of John Hampden in his bosom. Surely the honorable member's own high estimate of national character will not suffer him to entertain the degrading idea that an English public, under an English monarch, cherished a loftier sense of liberty, or a more determined spirit of resistance to the abuses of authority, than his own countrymen. Has he forgotten the reason which induced our ancestors to resist the tea duties and the stamp tax? Was it only the sum to be levied which set this continent in a flame, or was it the oppressive principle upon which those claims were founded? If the mal-administration of Executive power has been such as even to "exceed the conception" of that great patriot, whose opinions we both reverence so highly, why is it that the honorable member views with such contempt the sum of the salaries awarded to Executive partisans, and all the distress and anguish inflicted on the sufferers by proscription, while he overlooks the principles which have been violated, and the constitution which has been trampled under foot? Here is the ground on which we have arraigned your administration; and although its friends may laugh its victims to scorn, they should recollect that what is theirs to day may shortly be in the power of another; though they now consider this as a mere gossamer, floating in the political atmosphere, and have even told us it is a feather, which can weigh nothing with the people, they should recollect that this feather is torn from the plumage of the American eagle, and that the transgression which they now regard as so venial, may be a precedent to sanction the usurpation of power for the destruction of the liberties of the people.

Having closed my remarks in reply to honorable gentlemen, suffer me now to say, sir, that it has been no part of my object to embitter the feelings of my associates by personal allusions to them, although I have intended, upon the challenge of the gentleman from Tennessee, to speak out as "boldly, frankly, and freely," as he might reasonably desire. But if any luckless arrow of mine, inadvertently shot, rankles in the bosom of any member here, he is welcome to send it back with his best force, provided

he does not poison its point. My objects, I trust, however, have been above such warfare. I have endeavored to preserve unimpaired the rights of the tribunal established by our forefathers as the only common umpire for the decision of those controversies which must arise in the best regulated political families, and to show that, without the aid of such a tribunal, we must sink back into that anarchy which, among all other nations, and in all former ages, has been the sure harbinger of tyranny. I have labored to sustain what I believe to be the right and duty of the Senate: to interpose a barrier against the improper exercise of Executive power, which now controls, either directly or indirectly, nearly every avenue to every station, whether of honor or profit, within the gift of twelve millions of people. But, if the sentiments which have been avowed by gentlemen of the majority on this floor should be supported by the American people, their giant party, which has already borne upon its shoulders a weight greater than the gates of Gaza, will, in the overthrow of both these objects, wrench the very pillars of the Government from their foundations. Then we shall find how dreadful are the consequences of such doctrines. Upon their construction of Executive power, should our, possessed of the temper and ability which have so often characterized the consuls and chiefs of other republics, obtain the Presidency—such a man as Napoleon meant to describe when he spoke of the Russian "with a beard on his chin"—exercising, as he may, in the spirit of oriental despotism, perfect command over the army, the navy, the press, and an overflowing treasury, the merest driver may foresee that our liberties will fare like the "partridge in the falcon's clutch." The very sentinels of our freedom will be bribed by him, with our own gold; and even many of those who have so triumphantly borne aloft the stripes and stars, amidst the thunders of battle, will be compelled to "beg bitter bread," or to turn the steel, which we have placed in their hands, against our own bosoms. He will readily gain to his purposes a flock of those voracious office hunters, whom we have seen brooding over the spoils of victory, after a political contest, like so many vultures after a battle, perched on every dead bough about the field, snuffing the breeze, and so eager for their prey that even the cries of the widow and the orphan cannot drive them from the roost. It has been said, and I believe truly, that we can never fall without a struggle; but, in the contest with such a man, thus furnished by ourselves with "all appliances and means to boot" against us, we must finally sink. For a time our valleys will echo with the roar of artillery, and our mountains will ring with the reports of the rifle. The storm of civil war will howl fearfully through the land, from the Atlantic border to the wildest recesses of the West, covering with desolation every field which has been crowned with verdure by the culture of freemen, and now resounding with the echoes of our happiness and industry. But the tempest must subside, and be succeeded by the deep, calm, and sullen gloom of despotism; after which, the voice of a freeman shall never again be heard within our borders, unless in the fearful and suppressed whispers of the traveller from some distant land, who shall visit the scene of our destruction, to gaze in sorrow on the melancholy ruin.

[Here the debate closed for this day.]

FRIDAY, MARCH 5, 1830.

#### ABOLITION OF DUTIES, TAXES, &c.

The Senate, on motion of Mr. BENTON, proceeded to the further consideration of the bill, introduced by himself, for the abolition of sixteen millions of duties, &c. &c.

[When this subject was last under consideration, a question, of order was raised by Mr. FOOT, of Connecticut, whether, on account of a section of it, which proposed to raise the duty on certain articles, this bill was within the

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*Georgia and the Cherokees.*

[SENATE.]

constitutional power of the Senate to originate it; which question, the Vice President not choosing to exercise his prerogative of deciding, had submitted to the decision of the Senate.]

Mr. BENTON declined saying any thing on this question, his only object being to have a decision one way or the other, that his bill might be advanced so as to take the usual course of bills thus introduced.

The yeas and nays having been required, and ordered to be taken, on the question of order—

Mr. WEBSTER suggested that it could hardly be expected that, if a question of this importance, in a constitutional view, was to be gravely decided upon a point of order, it could be so without some discussion. This discussion, he thought, might well be spared, at present, by the gentleman's withdrawing his bill, or modifying it so as to take out the feature excepted to.

The VICE PRESIDENT said that the bill might be withdrawn by the gentleman who introduced it, with the unanimous consent of the Senate, but not otherwise.

Mr. BENTON then asked leave to withdraw the bill. No objection being made, the bill was withdrawn by Mr. BENTON from the table of the Senate.

SATURDAY, MARCH 6, 1830.

The Senate was chiefly occupied this day in discussing some provisions of the bill making appropriations for the support of Government for the year 1830.

MONDAY, MARCH 8, 1830.

## GEORGIA AND THE CHEROKEES.

Mr. FORSYTH made the following motion; in doing which he said that he considered the documents therein referred to necessary to a full examination of the question concerning the laws of Georgia and the Indian tribes residing within that State:

"That the remonstrance of the State of Georgia against treaties previously formed by the United States with the Indians in that State, and against the intercourse law of 1796; and the report of the House of Representatives of Georgia, of the 11th February, 1786, be printed."

Mr. FRELINGHUYSEN moved an amendment, the object of which was to include also the laws of Georgia, recently passed, extending jurisdiction over the Cherokee Indians.

The PRESIDENT observed that he was informed by the Secretary that these laws were not on the files of the Senate.

Mr. FRELINGHUYSEN said he supposed that the Secretary could obtain them.

Mr. FORSYTH said he had no objection that the laws of Georgia should be printed, but he presumed that all the laws of all the States having relation to the same subject, ought also to be printed. He said he would accept the proposition of the gentleman from New Jersey as a modification of his resolution, if the objects of it were extended so that it should embrace the laws of all the States in which Indians have resided, concerning their relations.

Mr. FRELINGHUYSEN said that this amendment would cause too much delay. To wait till the Secretary had procured and printed all these laws would be to wait till the session of Congress had closed. The only tendency, then, of this proposition, would be to defeat the object he had in view. It appeared strange, that, when a question is to be discussed in relation to the laws of Georgia, the materials which are deemed necessary for that discussion will not be given to us. It cannot, [said Mr. F.] be disguised, nor denied, that the principal question we have to decide, is in relation to the right of Georgia to legislate as she has done. If that question is settled, all will be at an end: but until that question is settled, how are we to decide on the right of Georgia to pass those laws? How can we decide on their policy or expediency, until

those laws are before us? How are we to illustrate the issue between this nation and the State of Georgia and the Cherokees, without the laws of Georgia, which materially belong to it? And how will that issue be illustrated by the laws of Delaware, Maine, New Hampshire, or of any other State? If gentlemen wish to have the laws of the other States, he, [Mr. F.] had no objection; but he wanted to see the laws of Georgia, to assist him in the argument which this important question will necessarily bring on; and he hoped that the Secretary would be able to furnish them. Some time ago, [said Mr. F.] I moved a resolution that the Secretary of War furnish information to the Senate, stating the progress which certain Indian tribes had made in the mechanic arts, their advance to a state of civilization, and their condition as regards agriculture, &c. The gentleman from Georgia [Mr. FOSBERG] then moved an amendment to the resolution I offered, and I objected to it, because it tended to defeat the object I had in view. I wanted information to aid me in a due investigation into the situation of the tribes of Indians particularly claiming our consideration; but the resolution as amended embraced all the Indians in the several States. The amendment of the Senator from Georgia prevailed, and the Secretary of War was thus asked to give information as to all the Indians within the United States. I have now waited seven weeks for this information, and, as far as I know, we are no nearer it now than we were when the resolution passed. So it will be with this resolution, if its objects are made as comprehensive as the gentleman's amendment proposes. Why branch out this resolution, when the question which we have to consider refers simply to the right of Georgia to legislate as she has done? Why embarrass it with asking for the printing of all the laws of the States relating to the Indians, from the commencement of this Government? My object is to bring the legislation of Georgia towards the Cherokees to the view of the Senate, to enable me to decide the issue between them. Will the laws of other States [Mr. F. asked] give us any assistance in deciding this issue? The laws of New York, of Massachusetts, or Rhode Island, or of any other State, [he said] had no connexion whatever with, or any relation to, the question the Senate is called upon to discuss. Mr. F. hoped the Senate would keep the call for the laws of the several States, if they desired to have them, separate from his proposition, which could be accomplished in a week, whereas that of the gentleman from Georgia would produce much delay.

Mr. FORSYTH, in reply, stated, that the first objection of the gentleman to his amendment was, that the postponement of the information which it would cause, would be so long as to render it useless. He supposed [said Mr. F.] that it will be necessary to make an extensive search, and to print volumes before the information can be laid before the Senate. Having examined this subject attentively, I can assure the gentleman that the information can be procured without the delay he anticipates, and that the printing of it will not occupy more than ninety pages, as a friend of his in the other House, after a minute examination, had estimated. It can be had in proper time also. But the gentleman says that such information is not necessary, and that the laws of Georgia only are required. What was the question to be considered? The gentleman has said it was as to the right of Georgia to legislate, in the exercise of jurisdiction, over the Indian tribes residing within her limits. Are the laws of Georgia alone important to a due consideration of this question? The gentleman talks of the policy, of the expediency, and of the humanity, of these laws extending jurisdiction over the Indians? Were these questions to be submitted to the Senate when the right of the State to legislate in this matter was admitted? If the right is in Georgia to pass these laws, the manner of executing them is not to be discussed here. The Senate—the Congress of the United States—is not the place where the

State of Georgia is to be arraigned for the exercise of her admitted rights. But, if the question is to be debated here as to the policy, the expediency, and the humanity of her laws, and those laws are therefore to be called for, why not include also the laws of other States? Is any difference to be made between Georgia and Alabama, Georgia and Mississippi, Georgia and Massachusetts, or any other States? The right exercised by Georgia, we claim she has a power to exercise; and when a question as to this right is made, we will appeal to our sister States, and demand to be judged by their acts. And when the manner in which the laws have been executed is questioned, we will appeal to the same examples, and will show that we have acted towards the Indians with more humanity—more justly, more kindly, and more generously, than any of them. Mississippi has been more generous than any of the States, for she has extended to the Indians all the rights of citizenship. But, with this exception, Georgia has been more just, more humane, and generous, in her policy towards the Indians, than any State of the Union, whether in the East, in the North, in the South, or in the West. If I am willing to gratify the gentleman from New Jersey, why does he refuse to consent also to the printing of the laws I propose? The gentleman says, the question to be discussed here is confined to the Cherokees, Georgia, and the United States. I think differently: I think it involves the case of all the Indians residing in all the States, however small or large their numbers may be.

The gentleman [said Mr. F.] alludes to a resolution he offered some time ago, and to the decision of the Senate on it, and on the amendment I offered to it. He complains that the information desired has not been presented to us, and has not arrived in time to suit his purpose. Was the amendment I offered the cause of this delay? The gentleman asked for information respecting the condition of the Cherokee Indians, who are at least six hundred miles distant from us. Suppose the information he sought for was not in the department to which he applied, where could it be found but among the Cherokees? And from whom could it be procured unless from the agents of the Government who reside amongst them? Some time must, therefore, necessarily be occupied in transmitting it to us, and he hoped the information would be had in proper time to enable us to use it to the best advantage. As to the laws of Georgia which are wanted, the only advantage they can be of, will be, to afford gentlemen an opportunity to address themselves to the passions and prejudices of members of the Senate, and of the people out of it. They can be used with effect for such a purpose, and this I anticipated when the subject was first agitated. Therefore, I wish to be put in possession of materials to repel the insinuations, should any be made, against the conduct of the State of Georgia. The gentleman can have the laws of Georgia for his own use without this resolution, but if he wishes to be supplied with them in the more formal manner, I am perfectly willing, provided they alone are not singled out for the theme of his investigation. All we ask is a fair development of the subject, and a full examination of its details; and then the decision of this branch of the Legislature and of the other will not fail to be satisfactory to the people of the United States, as well as of the State of Georgia.

Mr. FRELINGHUYSEN said that, so far as respected the anticipations of the gentleman that the laws of Georgia would be made a theme for enlisting the prejudices or exciting the passions of any one, he hoped the gentleman would be disappointed, and, [said he] as to the manner in which he supposes I intend to use them, I know he will be disappointed. If the interests of the Indian tribes are not to be protected but by the aid of the prejudices and passions of the Senate, and of the people out of the Senate, I hope their interests will fail. If no-

thing addressed to the honest understandings of the Senate and of the people will produce a conviction of the rights of the Indians in this question, I hope their rights will fail to be sustained. I disclaim [said Mr. F.] the aid of all such arguments, and I cannot but express my surprise at the anticipations of the honorable Senator. I hope that the rights of the Indians will be fully and fearlessly examined on this floor. I know they are but a poor and feeble people, and that the State of Georgia is a great State. But, poor and feeble as they are, I will raise my voice in support of whatever may appear to be their just-claims. It is for the reasons I have stated before, that I wish to have the laws of Georgia printed which have produced the excitement throughout the country, and the discrepancies between the departments of Government, of which we have had evidence. It is said, if Georgia possesses the right to legislate on this subject, we have no occasion to look at her laws. For aught that appears, it may be as the gentleman maintains, that Georgia has afforded the Indians within her territory more protection than any other State. The gentleman says she has been more humane in her policy, and more conciliating in her conduct towards them than any of her sister States. If so, let us [said Mr. F.] have the proof. Let us see her laws, and we will be the better enabled to speak of her generosity.

Public rumor has informed us that Georgia has acted unkindly towards the Indians, and it is said that the law which has been passed concerning them, and which has produced so great an excitement, will go into operation on the 1st of June, 1830. We are called upon to decide the right of Georgia to pass such a law. Rumor, I have long learnt to know, has a thousand tongues, not one of which may report the truth; and it may be, so far from these reports being true, that the laws of Georgia actually afford that protection and kindness to the Indians which the gentleman claims for them. Grant [said Mr. F.] the simple abstract right of Georgia to legislate over all her citizens, and to extend her jurisdiction over the Cherokees, yet what can this avail, if, as rumor speaks, she does, in exercising it, come in direct collision with treaties made between the Cherokees and the United States? Why, then, embarrass the amendment I have proposed for obtaining information on this very point, by encumbering it with all the laws of all the other States relating to the Indians? The gentleman asks, why not include the laws of Alabama, &c. in the amendment? It is because neither Alabama, nor any of the other States, has passed a law which will go into operation next June, and which has been the cause of so great an excitement as the law of Georgia which is in question. All I want, then, is the law of Georgia; and if gentlemen wish to have other laws, which will occupy eighty or ninety printed pages, and take some time to collect, let them make a distinct proposition for them. I do not wish that a resolution calling for information, directly connected with the scene in which this question originated, should be embarrassed with extraneous inquiries. As to the resolution I heretofore offered, and the delay of the information it called for, which the gentleman has attempted to explain the cause of, by stating that it had to be obtained at a distance of six hundred miles from this, I would ask him whether the amendment he then offered tended to expedite it. If the information was to be procured from a source six hundred miles distant in one direction, would a proposition tend to accelerate it which required additional information from Maine, Rhode Island, &c. a thousand miles of distance in an opposite direction? Mr. F. trusted that his amendment would meet the views of the Senate, and that the laws of Georgia, which are to undergo consideration here, and which have produced an excitement throughout the country, would be furnished for the information of the Senate.

MARCH 9 TO 15. *Heirs of Robert Fulton.—Louisville and Portland Canal.—Mr. Foot's Resolution.*

[SENATE.]

The question was then taken on Mr. FORSYTH'S amendment to the amendment of Mr. FRELINGHUYSEN, and agreed to—21 to 20.

The question on the amendment to the resolution as amended, was then put, and decided in the affirmative; and the resolution, as amended, was agreed to.

TUESDAY, MARCH 9, 1830.

On motion of Mr. LIVINGSTON, the Senate resumed the consideration of the resolution heretofore offered by Mr. FOOT, and Mr. L. addressed the Senate till 3 o'clock, when he gave way for a motion to adjourn.

WEDNESDAY, MARCH 10, 1830.

The Senate were this day principally occupied in the consideration of Executive business.

THURSDAY, MARCH 11, 1830.

## HEIRS OF ROBERT FULTON.

The bill to recompense the heirs of Robert Fulton, deceased, was read the third time.

The question being on the passage of this bill, which proposed the grant of a township of land to the heirs of Robert Fulton, in consideration of benefits rendered by him to the country, the yeas and nays thereon were required by Mr. FORSYTH, with the view that the decision, involving a question of much importance on constitutional grounds, should be a solemn one.

Whereupon arose a debate of much interest, and, in a constitutional view, of much importance. The gentlemen who engaged in the debate, were, Mr. FORSYTH, Mr. LIVINGSTON, Mr. BROWN, Mr. BARTON, Mr. TAZEVELL, Mr. SMITH, of Md. Mr. JOHNSTON, of Lou. Mr. HAYNE, Mr. SMITH, of S. C. Mr. SANFORD, and Mr. NOBLE.

The question being finally taken on ordering the bill to be engrossed for a third reading, it was decided as follows:

YEAS—Messrs. Barton, Chambers, Dudley, Johnston, Knight, Livingston, Robbins, Sanford, Willey—9.

NAYS—Messrs. Adams, Barnard, Bell, Benton, Brown, Burnet, Chase, Dickerson, Ellis, Foot, Forsyth, Frelinghuysen, Grundy Hayne, Hendricks, Holmes, Iredell, Kane, King, McKinley, McLean, Marks, Naudain, Noble, Ruggles, Seymour, Smith, of S. C. Sprague, Tazewell, Troup, Tyler, White, Woodbury—33.

So the bill was rejected.

FRIDAY, MARCH 12, 1830.

## LOUISVILLE AND PORTLAND CANAL.

The bill to authorise a subscription of stock on the part of the United States, in the Louisville and Portland Canal Company, was taken up, and, after considerable debate, in which the bill was advocated by Messrs. HENDRICKS, JOHNSTON, and ROWAN, and was opposed by Messrs. TAZEVELL and HAYNE, it was ordered to be engrossed for a third reading by the following vote:

YEAS—Messrs. Barnard, Barton, Benton, Burnet, Chambers, Chase, Dudley, Foot, Grundy, Hendricks, Johnston, Kane, Livingston, McLean, Marks, Naudain, Robbins, Rowan, Ruggles, Seymour, Silsbee, Smith, of Md. Willey—23.

NAYS—Messrs. Adams, Bell, Brown, Dickerson, Ellis, Forsyth, Frelinghuysen, Hayne, Holmes, Iredell, Knight, Smith, of S. C. Sprague, Tazewell, Troup, Tyler, White, Woodbury—18.

[The bill directed an additional subscription, on the part of the United States, to the stock of the company, for one thousand shares, at one hundred dollars each.]

Adjourned to Monday.

MONDAY, MARCH 15, 1830.

## MR. FOOT'S RESOLUTION.

The Senate resumed the consideration of the resolution offered by Mr. FOOT; when Mr. LIVINGSTON concluded his speech, commenced on the 9th instant.

[The following is a full report of it.]

The important topics that have been presented to our consideration, [said Mr. L.] and the ability with which the questions arising out of them have been hitherto discussed, cannot but have excited a very considerable interest; which I regret exceedingly that I shall be obliged to interrupt, and greatly disappoint those who look for a continuance of "the popular harangue, the tart reply, the logic, and the wisdom, and the wit," with which we have been entertained. For, sir, you can expect nothing from me but a very plain, and, I fear, a very dull exposition of my views on some of the subjects comprised in this excursive debate, unembellished by eloquence, unseasoned by the pungency of personal allusions. For I have no accusations to make of sectional hostility to the State I represent, and, of consequence, no recriminations to urge in its behalf, no personal animosity to indulge, and but one—yes, sir, I have one personal defence to make; a necessary defence against a grave accusation; but that will be as moderate as I know it will be complete, satisfactory, and, I had almost said, triumphant.

The multiplicity and nature of the subjects that have been considered in debating a resolution with which none of them seem to have the slightest connexion, and the addition of new subjects, with which every speaker has thought it proper to increase the former stock, has given me, I confess, some uneasiness. I feared an interruption of the Cherokees, and was not without apprehensions that we should be called on to terminate the question of Sunday mails, or, if the Anti-Masonic Convention should take offence at the secrecy of our executive session, or insist on the expulsion of all the initiated from our councils, that we should be obliged to contend with them for our seats. Indeed, I had myself serious thoughts of introducing the reformation of our national code, and a plan for the gradual increase of the navy, and am not yet quite decided whether, before I sit down, I shall not urge the abolition of capital punishments. In truth, the whole brought forcibly to my recollection an anecdote told in one of the numerous memoirs written during the reign of Louis XIV. too trivial, perhaps, to be introduced into this grave debate, but which, perhaps, may be excused. A young lady had been educated in all the learning of the times, and her progress had been so much to the satisfaction of the princess who had directed her studies, that, on her first introduction, her patroness used to address her thus: "Come, Miss, discourse with these ladies and gentlemen on the subject of theology. So, that will do. Now talk of geography; after that, you will converse on the subjects of astronomy and metaphysics, and then give your ideas on logic and the belle lettrée." And thus the poor girl, to her great annoyance, and the greater of her auditors, was put through the whole circle of the sciences in which she had been instructed. Sir, might not a hearer of our debates, for some days past, have concluded that we, too, had been directed in a similar way, and that you had said to each of the speakers, "Sir, please to rise and speak on the disposition of the public lands; after that you may talk of the tariff; let us know all you think on the subject of internal improvement; and before you sit down, discuss the powers of the Senate in relation to appointments, and the right of a State to secede from the Union; and finish by letting us know whether you approve or oppose the measures of the present or the six preceding administrations." The approximation, sir, of so many heterogeneous materials for discussion, must provoke a smile; and most of those who have addressed you, while they lamented that subjects un-

connected with the resolution had been introduced into debate, rarely sat down without adding to the number. For my own part, I think the discussion may be turned to useful purposes. It may, by the interchange of opinion, increase our own information on all the important points which have been examined, while, not being called on for a vote, we may weigh them at leisure, and come to a conclusion, without being influenced by the warmth of debate. The publication of what has been said will spread useful information on topics highly proper to be understood in the community at large.

The recurrence which has necessarily been had to first principles is of incalculable use. The nature, form, history, and changes of our Government, imperceptible or disregarded at the time of their occurrence, are remarked; abuses are pointed out; and the people are brought to reflect on the past and provide for the future.

It affords a favorable opportunity, by explanations that would not otherwise have been made, to remove prejudice and doubts as to political character and conduct. For instance, sir, it has already produced one which I consider very important. The Senator from Massachusetts, who so eloquently engaged the attention of his auditors in the beginning of the debate, took that occasion to disavow any connexion with the Hartford Convention; to declare, in unequivocal terms, that he "had nothing to do with the Hartford Convention." Sir, I heard this explicit declaration with great pleasure, because, on my arrival here as a member of the other House, in which I first had the satisfaction of being acquainted, and associating with that Senator, I received an impression (from whom, or how, or where, it would be impossible for me now to tell) that, although not a member of that convention, he had, in some sort, favored, promoted, or approved of its meeting; and, being only on such terms of social intercourse as one gentleman has with another, without that intimacy which would have justified my making a personal inquiry, I remained in doubt on the subject. It gave me, therefore, I repeat, great satisfaction to hear a declaration which has so completely eradicated every suspicion that the Senator from Massachusetts lent his countenance to that injudicious, ill-timed, and dangerous measure, to which others have given strong epithets of disapprobation, and which were probably not unmerited. Sir, I happen to know something, not of the proceedings or views of that body, but of the effect its existence had in encouraging our enemy in exciting hopes of disunion, nay, of disgraceful adherence to their cause. While these worthy citizens were occupied in deliberating on the plans, whatever they were, which drew them together in the East; while they, and others associated with them in party feeling, were devising means of putting an end to the war, by vilifying those who declared, and detracting from the merit of those who conducted it; by opposing every measure for prosecuting it with vigor, and obstructing our means of defence; by denouncing the war itself as unjust, and the gallant exploits of our army and navy as unfit subjects for rejoicing; while these men were thus employed at one extremity of the Union, others were differently engaged at the other. A small but gallant band, directed by their heroic leader, were striving also to put an end to the war, but by far different means—by means of brave, uncompromising, uncalculating resistance; their attacks were made upon the enemies of their country, not upon its Government; among them were militiamen, who, without any constitutional scruples about passing the boundary of their State, had marched more than a thousand miles beyond those boundaries in search of the enemy. They found him, and glorious victory at the same moment. Joined to my brave constituents, they gave a most signal defeat to more than three times their number, and signalled the close of the war by an action in itself capable of putting an end to the contest. Immediately

after this great event, I was sent on a mission to the British fleet. Circumstances protracted my stay on board the admiral's ship for several days; during which, having been formerly acquainted with an officer high in command, I discovered, not only from his conversation, but that of almost all the officers, that the utmost reliance was placed on the Hartford Convention, for effecting a dissolution of the Union, and the neutrality of New England. I have no evidence that these hopes and expectations were derived from any communication with any member of that body; but I know that the enemy were, as must naturally have been the case, encouraged by the appearance of division which that meeting was calculated to produce. It was made the topic of conversation as often as civility to me would allow, and was never referred to but with an ill-concealed triumph. An assembly, on whose deliberations were founded such insolent expectations, so injurious to the patriotism and integrity of a part of my country, whose inhabitants I had always been taught to respect—such an assembly could not but have raised the most unfavorable impressions of its object; and the suspicion of having favored or promoted its meeting, necessarily derogated from the high opinion which might otherwise have been entertained of the discretion or patriotism of any one to whom it attached.

As this debate has offered an occasion of making the disavowal to which I refer, so, if it should (as I sincerely hope it may) produce a similar disclaimer of that construction of the constitution which assumes an uncontrolled power, under the general expression of providing for the general welfare, it will completely annihilate one of the most dangerous party dogmas, and verify what has been so frequently said, that federalism was extinct; and, on the other hand, an open avowal of that doctrine will put us on our guard against its operation; so that the frank interchange of sentiment that may be expected, must, in every view, be beneficial.

Yet, Sir, I should, notwithstanding these ideas of the utility of the debate, have taken no part in it but for these considerations:

The importance of the subject of the resolution to the State I represent;

The appeals that have been made to my recollection in the course of the discussion;

And the necessity of repelling a charge implicating me, and others with whom I acted, in a charge of hostility to the Father of his Country.

The original resolution, now completely abandoned, and only incidentally referred to, must form a prominent figure in the observations I shall address to the Senate. The subject it involves is one of deep interest to my State; and the policy of the General Government with respect to its public land within our boundaries, shall be freely canvassed. Representing, with my worthy colleague, the interests of that State, I should betray those interests were I not to seize this favorable opportunity of making known the true situation of our claims on the justice of the Union. I confine myself to my own State; the others are too ably represented to need my aid. Some gentlemen have thought that they could trace the measures of which they complain to particular sections of the Union, and I must not be understood as censuring this course. Though I do not think it necessary for me, others, who undoubtedly understand this subject better than I do, think that it is so for them. It is not for me to blame them.

My friend from Missouri has, with his characteristic diligence, collected a mass of evidence on this subject, which is, perhaps conclusive; but this it does not suit my purpose to examine; I will not attempt any such research. The measures of which I shall complain are those of the nation. I should bewilder myself, do injustice to others, and cause useless irritation, were I to seek,

MARCH 15, 1830.]

*Mr. Foote's Resolution.*

[SENATE.]

in old journals or forgotten documents, for the names of those who voted for or against the measures of which I am forced to complain, or try to discover what river or what geographical line divided them. All those votes, I am bound to believe, were given from proper motives, though from erroneous views. I feel no sectional or personal hostility, and will endeavor to excite none. In avowing this course, I am far from arraigning that which some of my friends have pursued; they are the best judges of their own griefs, and the best mode of redressing them. For my own part, I repeat, that all of which I shall complain are the acts and omissions of the whole Government: and I state them, only because I hope and believe that, when they shall be fully known, compensation for injuries and injurious omissions will be offered, and all stipulations faithfully performed.

Louisiana was ceded by France to the United States in 1803. By the treaty of cession the United States acquired all the vacant lands within the province, and the sovereignty over it, but under the following conditions:

To maintain the inhabitants in the enjoyment of their property;

To admit them, as soon as possible, into the Union, according to the principles of the Federal constitution.

Neither of these conditions have been faithfully performed according to the spirit of the stipulation.

To maintain the inhabitants in the enjoyment of their property, it was essential that all disputed claims to it should be submitted to the decision of a court, whether such claims were made by individuals or the Government. Yet all the titles disallowed by the Government were directed to be decided by commissioners of its own choosing, holding their offices at the will of the President. This was not only doing injustice to us, but was an infringement on the constitutional distribution of power, by which the judicial functions of the United States are vested in a supreme and inferior courts, of which the judges are to hold their offices during good behavior, who are to take cognizance of all controversies to which the United States are parties, and from the decisions of the latter of which an appeal lies to the former. Now, no one can deny that, to decide on the validity of a title to land, is a judicial function; that the United States are parties to all the controversies in relation to their titles to public lands; and that commissioners are not such judges as are intended by the constitution. Yet, sir, you refuse to give us the enjoyment of two millions and more of acres, claimed by citizens of my State, under perfect grants, made by the former sovereigns of the province, because your commissioners, under the instructions of an Executive department, have refused to ratify them. Year after year, for more than twenty years, they have petitioned for their right under the treaty, or for a judicial inquiry into their title; year after year you have refused this just and reasonable demand. You have partially granted it to the adjoining States and Territory of Missouri, Alabama, and Arkansas, but have pertinaciously, unjustly, and cruelly, refused it to us. We have, also, in common with the adjoining States of Missouri, Mississippi, and Alabama, (all in part or in the whole taken out of the territory ceded by treaty) been deprived of the benefits of the judiciary system of the United States. Lives and fortunes submitted to the legal decision of a single man: Lives without appeal—fortunes, under two thousand dollars, without appeal. Both, in my opinion, have been more than once illegally sacrificed to this cruel neglect of our rights.

To understand the next grievance of which I complain, the attention of the Senate must be drawn to the topographical features of the country, as well as its statistics and geographical position. In the short distance of four degrees of latitude, the extent of this State on one side of the Mississippi, and two on the other, that river, by its

meandering course, and the division of its waters by the Delta, presents banks of near fifteen hundred miles on both sides—the other rivers falling into it nearly as much more. All these are subject to annual inundation; and, in the whole alluvial soil, the banks of the river are the highest ground, which descends on an inclined plane to the level of the ocean. It follows, from this configuration, that the banks of the river must be secured by dikes, or that the whole of the alluvial country must be submerged, during every annual rise of the river. The construction of these dikes was a duty imposed on the first settlers of the province, as a condition of their grants; and this mighty river, encased in high and solid embankments, for nearly two hundred miles of its course, attests how faithfully this condition was fulfilled—a wonderful work, when compared with the slender population by which it was effected. By the terms of the cession, the United States became the proprietor of all the vacant lands; but they have not considered themselves liable to any of the duties that would have attached to the property, had it been in private hands; they expressly exempt themselves, and even those to whom they may sell, during five years, from taxes, or any contribution to Government; and, practically, have refused to make any of the improvements necessary, not only for reclaiming their own lands, but for protecting their inhabitants from the effects of the inundations which have been described; and, in numerous instances, parishes have been obliged, in their own defence, to perform this expensive operation for you. Now, sir, the State contains thirty-six millions of acres, of which your commissioners have confirmed, and you have granted and sold, only five millions; so that you now own six-sevenths of the whole State. That one-seventh, which is in private hands, supports a population of more than two hundred thousand souls, and raises an agricultural produce, beyond its own consumption, of eight millions of dollars. Yet, with this evident advantage, resulting from a settlement of the old titles, and the sale of the lands in the State, which, at the same rate, would give a population of more than a million, and an export nearly equal to that of all the rest of the States, you have only sold two hundred and fifty thousand acres of the public land; and you refuse to try, or to allow just claims to the amount of two millions more; so that, with the richest soil in the world, we are condemned to a scanty population, and to see the owners of six-sevenths of our soil refusing to contribute to the expenses of our Government, forcing us to defend their property, as well as ours, from destructive inundations, and more destructive invasions, and for more than a quarter of a century, by delaying the disposition of the lands, breaking that which I shall prove was the most important condition on which they received the country.

That condition was not only security for property, but "that the inhabitants should be incorporated in the Union, as soon as possible, according to the principles of the Federal constitution;" that is to say, that the country should be erected into a State, as soon as it could be done, according to the principles of the constitution; but there was no principle to oppose its being done instantly. Yet, notwithstanding the most spirited remonstrance, made in the first year after the cession, a remonstrance now on your files, and which testifies, not only the desire to enjoy the privilege, but shows the ability to exercise it, you kept them in the subordinate grade of a territory for more than eight years, and you lopped off the greater part of the province, out of which, without their consent, you have made an extensive territory, and a more extensive State. It is true, sir, that, at this late period, you brought Louisiana into the Union; you assigned their boundaries; you approved of their constitution; and you admitted their Senators and Representatives into the councils of the nation. But is this all that is necessarily implied by the ob.



ligation of the treaty? Is an extent of territorial limit all that is required? In contracting to create a State, you promised to promote its population. In stipulating that it should become one of a confederacy of free republics, you promised the means of making that population worthy of the name, and capable of exercising the duties of freemen; you promised them the means of moral, religious, and scientific education; you promised such a disposition of the lands as would fill the space assigned to the new member of the Union with independent freeholders, the product of whose labors, after supporting themselves in comfort, would contribute to the necessary expenses of the local Government, and increase, by their consumption, the revenues of yours. Unless you did this, you did nothing. Your assignment of boundaries, your statutory provisions, would have been a mockery, if we had not, by almost miraculous exertions, broke the shackles imposed on our progress, and supplied by the energy of our scanty population, the want of numbers which your laws denied us. You forgot that population, as well as soil, was necessary. You forgot the lesson taught by a Greek, and elegantly paraphrased by a British poet—

"What constitutes a State?  
Not high raised bastiment, nor labor'd mound,  
Thick wall, nor innated gate;  
Not citied fair, with spires and towers crowned;  
Not bays and broad-armed ports,  
Where, laughing at the storm, rich navies ride:  
Not sterc'd and spangled courts,  
Where low-bos'd baseness wafes perfume to pride!  
Not men! high-minded men!  
Men who their duties know;  
But know their rights, and knowing dare maintain,  
Prevent the long aimed blow,  
And crush the tyrant when they burst the chain—  
These constitute a State."

These your policy would have refused; but these Heaven had provided, by inspiring the little band which our sparse population could afford, and their few associates, with the energy, patriotism, and self-devotion, which the moment of danger required. Think you, sir, that, if my constituents, instead of the noble-minded men who flew to the standard of the country the moment its soil was invaded; who heroically and successfully contended against odds in discipline and numbers, and braved dangers, before which even high courage might quail; who can boast of having gained the honor of that resolution on your statute book, which records, in terms to which they and their posterity may look with pride, that "the brave Louisianians are entitled to the thanks, and deserve well of the whole people, of the United States"—an honor to which, as yet, no other State has attained; if, instead of the enlightened people who gave the first example to their sister States, of providing a written code of laws, and will be the last to give them an example of dishonor, or want of attachment to the Union; if, instead of these, they had been the degraded vassals of arbitrary power, hugging, rather than bursting their chains, incapable of appreciating the advantages of liberty and self-government, such as their calumniators in and out of Congress represented them to be: I ask, sir, whether all the laws you could have passed would have enabled them to assume their place in the Union, unless those laws, by rendering the acquisition of lands easy, should have supplied us with a race of independent, well-informed cultivators of the soil, the bone and sinew of every State?

You have left us, for this, to our own resources: you have done worse; by denying the power of trying our titles, you have deprived us of those to which we are legally entitled, independently of your laws; and you have for twenty-five years forced the proprietors of grants to contribute to the support of the State Government, according to the value of their lands, while you, by unfounded claims, prevent them making any use of them.

In these, as in the case with most unjust measures, the interest of those who adopt them has been most materi-

ally injured. If our titles had been confirmed; if the lands had been surveyed and disposed of at low prices to actual settlers; if large allowances had been made out of them for public education and other useful institutions; if, while the lands remained unsold, the Government had subjected itself to the duties required of other land holders, it is no extravagant calculation to say that the State would have, at this day, contained a million of inhabitants, producing from the soil an excess above their own consumption of forty millions of dollars, and, if there be any truth in the calculations of political economy, paying annually, by the duties on their consumption, according to the present rates, more than ten times as much as the aggregate sales of all your lands have produced in any one year.

As I said, sir, I confine my remarks to my own State, and I consider the policy pursued with respect to the lands it contains, as unjust, narrow, unwise, and in the highest degree injurious to the Union. If, twenty years ago, the land had been parcelled out to actual settlers, according to the policy pursued by the French and Spanish possessors of the province, without exacting any consideration, I have not the slightest doubt, that, in a mere pecuniary point of view, it would have been the wisest measure; and that, through your custom house, you would, as long as you chose to continue your duties, receive more dollars and cents twenty fold, than you will annually receive in the comparatively few years that your lands in the State will be on sale. It is because I think it not too late to change this policy that I have seized this occasion to expose it. Confirm all our just titles, submit those of which you doubt to the Judiciary, endow all our public institutions liberally: Remember that you deprive us of laying taxes for this purpose by condemning to sterility six-sevenths of the land in the State. Supply this defect, rescue your own lands, and those of our citizens which adjoin your's, from the destructive effects of inundation, and connect us by canals and roads with the rest of the Union. Give, if you cannot sell, your lands to settlers who will become consumers, and add to your revenue; who will be hardy and independent, and add to your strength; and who will form an iron frontier on your Southern and Western boundary, that will set invasion at defiance.

In asserting the rights of my constituents, I address my just complaints to the Representatives of the people and the States. I trace our injuries to no section of country, to no party, to no particular men. I can make proper allowance for opinions that may have actuated all who advocated the different measures of which we complain, without imputing them to a marked and improper hostility. Constitutional objections were entertained to our admission—they are removed. Doubts existed of our attachment to the Union, of our courage to defend it; they have been triumphantly destroyed. Our ability for self government was made a question, but our legislation has long since solved it. Now, therefore, we look for justice, and I trust, sir, that we shall not look in vain.

Having finished what I thought myself obliged to say on the policy pursued with respect to the State, I have tried to find some chain by which this subject might be connected with another, to which frequent allusions have been made—the existence of present, and the history of past, parties in our Legislature. This I have found it difficult to do, unless from the consideration that, in popular governments, party connects itself with every thing: nothing too high, or too low, too grave or too trivial—from a construction of the constitution to the merits of an actor; from the election of a President to that of a constable. It is not surprising, therefore, that party views may at times have mixed themselves with the measures pursued by the General Government towards the Western States. But I cannot willingly bring myself to believe

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that there is a party permanently, and on principle, hostile to the prosperity of those States. Allusions have been made to those which formerly divided us, and which are still, under other names, supposed to exist. It may be useful to examine their nature, and refer to their history. It is quite obvious, that parties must exist in all popular governments, and not less so, that they are, when not carried to excess, useful, and even necessary; but we must carefully observe their different kinds. The first and most important is, that which divides the supporters of general tenets on the construction of the powers of Government, or of any of its branches, from the opposers of those tenets. These being, from their nature, permanent, and occurring in almost every operation of the Government, form, until their doctrines are fully established, or finally given up, a marked line of division between all who take any part in public affairs. There can be in the nature of things no neutrals; every man who has any opinion, or even acts on those of others, must be united with one or the other of these parties; and when they are thus arrayed, great sacrifices of individual opinion must be made in matters of minor importance, in order to secure strength in those which regard the great question. Hence we find, that, whenever the country is divided by a permanent party of this kind, it brings within its vortex every measure of Government, and that useful laws are opposed by the one party, and injurious measures favored by the other, from the effect that the one or the other will have in gaining proselytes, or preserving friends.

When this great party division ceases to exist, it is generally replaced by such as are formed for the elevation or depression of particular men, or the support or opposition to particular measures. These last having no permanent principle to rest upon, continually change with the men, and the operations which they purport to favor or oppose. A vigilant opposition is, in both of these descriptions of party, extremely useful; in the one, to preserve the organization of Government inviolate; in the other, to secure integrity in its operations.

The establishment of our present happy constitution, (happy unless corrupted by false constructions or torn by mad and ruinous resistance) was preceded by the contest of two parties, whose names (no common occurrence) designated their principles and the object for which they respectively contended. It was general, and founded on principle; the one contending for a radical change in the confederation of the States—these were designated as federalists; the other, opposed to this change, who were styled anti-federalists. When the States had agreed to the constitution, this party became extinct; the object on the one side having been completely established, and the opposition on the other generally abandoned. Coeval with the operations of the new Government, arose a new party of the same general permanent kind, because it was founded on a contrariety of opinion on the powers of the new Government. Among those who had most zealously promoted its adoption, were men of high talents, who strove in its formation to give it a character of greater energy, and increase its power at the expense of those of the States. Being obliged to yield many of their ideas to those of others, who thought it too energetic as it was, they compromised with their opponents, and agreed to the constitution as it is, or, rather, as it was before the amendments. It was natural that men entertaining those ideas should put every construction on the words of the compact that would bring it nearer to what they thought the point of perfection. Men of equal eminence and abilities had co-operated as indefatigably in procuring the adoption, but from a conviction that the powers given to the Federal Government, strictly construed, were sufficient for all national purposes; that any extension of them would be injurious, if not ruinous;

and that no construction or direct change should be permitted that would lessen the power or influence of the State Governments. These last description of federalists were naturally joined by the individuals who had formed the extinct party of anti-federalists; and, together, under the name of the republican party, they watched the movements, and opposed the suspicious measures, of those whom I have first designated, and who retained the name of federalists.

The first and most dangerous principle, not always avowed by the federal party, but generally acted upon, was this: that, under the construction of the words in the preamble, declaring that the intent of the constitution was to promote the general welfare, and the use of the same phrase in the clause giving the power to lay taxes, a right to do any thing which promoted the general welfare of the United States, unless expressly inhibited, was included. The direct operation of this interpretation in consolidating the General Government, and annihilating the power of the States, was evident, and the avowal of it alarming. Besides this, there were many incidents which, to minds already excited by more important opinions and events, created suspicions of a design to change the forms, as well as the substance, of the new Government; and which, although by one party considered "trifles light as air," were by the other thought to be "confirmation strong as proofs from holy writ." The President having opened the session by a speech to both Houses, as was then, and for twelve years continued to be, the mode, one of the first subjects of deliberation in the Senate was the style by which he should be addressed in their answer. A committee was appointed to consider this subject, and they reported that the President should be styled, His Highness. The democratic branch, however, insisted on calling him simply what the people had made him—the President of the United States; and the Senate, yielding to the necessity of the moment, came to the following resolution:

*"In Senate of the United States, May 14, 1789.*

"The committee, appointed the 9th instant, 'to consider and report under what title it will be proper for the Senate to address the President of the United States of America,' reported, that, in the opinion of the committee, it will be proper thus to address the President: His Highness the President of the United States of America and Protector of their Liberties.

"Which report was postponed, and the following resolve was agreed to, to wit:

"From a decent respect for the opinion and practice of civilized nations, whether under monarchical or republican forms of government, whose custom is to annex titles of respectability to the office of their Chief Magistrates; and that, on intercourse with foreign nations, a due respect for the majesty of the people of the United States may not be hazarded by an appearance of singularity, the Senate have been induced to be of opinion, that it would be proper to annex a respectable title to the office of the President of the United States; but the Senate, desirous of preserving harmony with the House of Representatives, where the practice lately observed in presenting an address to the President was without the addition of titles, think it proper, for the present, to act in conformity with the practice of that House. Therefore,

*"Resolved,* That the present address be 'To the President of the United States,' without addition of title.

"A motion was made to strike out the preamble as far as the words 'but the Senate,' which passed in the negative; and, on motion for the main question, it passed in the affirmative."

By which you will perceive that, as the resolution has never been further acted upon, we may, to-morrow, confirm the report of the committee, and decorate our President with the princely title of Highness, and the ominous

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appellation of Protector. One other incident which I remember took place in the gay world of which my youth then made me a denizen. The citizens of New York, among other marks of hospitality, and desire to show a proper attention to the Great Man, who had just reluctantly given up his retirement at the unanimous voice of his fellow-citizens, gave a grand inauguration ball; on the ceremonial of which it was said once, at least, of those who afterwards composed his cabinet, was consulted. But though he came from the Eastward, I do not mean to say that this was an Eastern measure. In a conspicuous part of the large ball room was erected a superb canopy, and under the canopy was placed what the ill-natured democrats called a throne. [Whether it was or not, never having had the honor to see one, I cannot tell.] Napoleon said, a throne is a block of wood covered with velvet. This was a small sofa or large chair, covered with some costly material, and on it they induced the President to sit; and when the music sounded for the dance, every couple, before they took their station in the long column of the country dances, then in fashion, were directed to go up and make a low obeisance, to the great annoyance of the President, who is said, when he quitted the seat, (in which he had thus reluctantly and by surprise been placed) thus to have addressed the contrivers of the ceremonial, with some warmth: "You have made a fool of me once, but I will take care you never do it again." Such fooleries, sir, are hardly worth relating, but they are characteristic of the views of parties; at least they were thought so then. *He nuge*, said the democrats, (or such of them as understood Latin) *seria ducent*; and many of the more apprehensive thought they saw royalty typified in these signs of the times. These imaginary fears soon gave way; but others of greater reality succeeded them. Circumstances of historical notoriety influenced the minds of both parties with foreign predilections and animosities; and the federal party, which had constantly been predominant in Congress, sealed their construction of the powers of the General Government by the passage of the alien law and the sedition law. Nothing could exceed the indignation which these practical applications of the federal doctrine excited in the minds of their opponents. An attack on the liberty of the press, not only unauthorized but forbidden by the constitution by the one act, the arbitrary power vested in the President by the other, opened the eyes of the people to the principles of the party by which they were passed, and, at the very next election, they were deprived of a power they had so grossly abused. Having mentioned the alien law, let me stop to perform an act of justice to deceased worth. In the first stages of that bill, for it was hurried through the House, I was absent from the seat with which I was then honored in the House of Representatives. I returned on the day set for its third reading. Before I went to the House, I met with a Senator from Virginia,\* who, notwithstanding the disparity of our years, honored me with his friendship, sometimes instructed me by his advice, and always stimulated me by his example. The conversation naturally turned on the measure depending before the House; and he detailed to me its provisions, spoke with his usual animation of its unconstitutional features, and inspired me with his own indignation against its attack on the liberty of the nation. Warmed with this conversation, I went to the House and made a speech in opposition to the bill, which was at the time spoken of with applause, and sometimes attracts attention even now, but whatever of merit it had, was owing to the circumstances I have related; and I might have addressed him who urged me to declare my sentiments on the occasion, in the words of the poet to his muse—

"Quid speres et placeo (si placeo) tuum est."

The country has since been deprived of the services of that Senator, but she has the consolation to know that the

mantle of his patriotism, talents, and virtues, has fallen on his son and successor in this body.

I have given you, sir, so much of the history and state of parties as was necessary for the understanding of the refutation I must make of a charge brought against me, and those with whom it was my happiness to associate, and will always be my pride to have acted, in those times. I repeat the charge verbatim, from the printed speech of the Senator from Massachusetts, [Mr. WASHINGTON.] Speaking of the merits of New England, which I, at least, never attempted to lessen, he says, he "will not rake into the rubbish of by-gone times to blot the escutcheon of any State, any party, or any part of the country;" yet, sir, in the same page, he endeavors to fix a blot of the blackest ingratitude on a party, on men (I do not speak, sir, of myself) who have rendered most important services to the country; to one of whom it has given the highest mark of its confidence and esteem, and all of whom were, in the transaction alluded to, much more sinned against than sinning. The honorable gentleman goes on to say: "General Washington's administration was steadily and zealously maintained, as we all know, by New England. It was violently opposed elsewhere. We know in what quarter he had most earnest, constant, and persevering support, in all his great and leading measures. We know where his private and personal character was held in the highest degree of attachment and veneration; and we know too where his measures were opposed, his services slighted, and his character vilified. We know, or we might know, if we turn to the Journals, who expressed respect, gratitude, and regret, when he retired from the Chief Magistracy; and who refused to express respect, gratitude, or regret: I shall not open these Journals."

Sir, the honorable gentleman would have done well to open the Journals, or not to have referred to them. If he had opened them, he would have found the name of the individual who addresses you arrayed with those of men more worthy of note, in the vote to which he alludes. If he had opened the debates which led to that vote, as I think he ought to have done, he would have seen how utterly void of foundation is the charge he has brought. I do not think the gentleman intended any personal allusion to me—the terms of civility on which we are, forbid it—the consciousness of having said nothing to provoke the attack forbids it—but, sir, the individual who cannot arrogate to himself sufficient importance to justify the supposition that he was the object intended, was, at that time, the Representative, the sole Representative, of the first commercial city in the Union. That individual is now one of the members of this body, representing a sovereign State. He owes it, therefore, to those who have offered him these marks of their confidence, to show that they were not unworthily bestowed; he owes it to himself to disprove the reflection which the allegation casts on his character. Suffer me, also, [said Mr. L.] to remark, that this very charge was used during the late election; and that the refutation I am about to give was so widely diffused that it is somewhat singular it should never have come to the Senator's knowledge, or that he should have forgotten it if it had. Yet one or the other must have been the case, or he would not now have repeated the tale, nor, by incorporating it in his eloquent harangue, have given new currency to a refuted calumny which had long before been nailed to the counter. Since the honorable gentleman believes the story to be true, and surely he would not otherwise repeat it, hundreds of others must give it the like credit; and it increases the obligation I am under to explain all the circumstances attending it.

I have shown, sir, what were the doctrines and measures of the federal party at that time. During the whole of the Presidency of Washington they were predominant in both Houses; and as Washington was the head of the Government, one of their greatest objects was, to cover all

\*The late Mr. Tazewell.

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their proceedings with the popularity of his name; to represent all opposition to their measures, as personal hostility to him; and to force the republican party either to approve all their measures, or, by opposing them, to incur the odium of being unfriendly to the Father of his Country. In this they were for the most part defeated. The universal confidence reposed in the high character of Washington, the gratitude felt for his services, the veneration for his name, had practically produced the effect, in our Government, which a constitutional maxim has in that of England. He could not, it was believed, do wrong—most certainly he never meant wrong—most certainly his ardent wishes were for the happiness of the country he had conducted through so many perils, and the preservation of that form of Government which had been adopted under his auspices—yet measures were adopted, during his Presidency, which a very large proportion of the country thought injurious to their interests, and, on one occasion, a majority of their Representatives deemed them to be an infringement on their privileges. None of these were ascribed to the President: a practice which he introduced, enabled us to ascribe to his administration (to which in truth they belonged) all the measures of which we disapproved. The practice alluded to, was that of assembling the Heads of Department in a cabinet council, and being guided, as was generally understood, by the opinion of a majority in all important concerns. Hence the official acts of the President came to be considered as those of his cabinet, and were, in common parlance, called the acts of the administration; and they were opposed, when it was deemed necessary, and canvassed, and freely spoken of in debate, without any hostility being felt, or supposed to be felt, towards the President. Indeed, several of those most prominent in opposition to the acts of the administration, were men for whom Washington had the highest esteem, and who were among those who most admired and revered him.

Of the acts to which the republican party were opposed, it may be necessary to specify some, in order to show that the opposition was not a frivolous or a personal one.

The Chief Justice of the United States was sent as a minister plenipotentiary to England, while he held his judicial office, which he retained until after his return. Thus, in our opinion, blending the Executive and the Judicial Departments, directed by the constitution to be separated, and setting an example which might create an undue influence on the bench, in favor of the Executive.

This minister negotiated a treaty, which contained stipulations requiring the agency of the House of Representatives, in the exercise of their constitutional powers over the subject of them, to carry into effect. To enable them discreetly to exercise these powers, the House respectfully requested the communication of such papers, in relation to the treaty, as could, without injury to our foreign relations, be made public. This request the President was advised to refuse; and the refusal was grounded on a denial of the constitutional right of the House to exercise any discretion in carrying the treaty into effect. On this refusal the House of Representatives passed a resolution declaratory of the right which the President had denied. I will not trouble the Senate with adverting to any other measures which I, and those who acted with me, opposed. We opposed them, sir, without, in any instance, forgetting the sentiments of respect, gratitude, and high admiration, which were due to the name and character of Washington. We believe that it would have been a dereliction of duty to give up the independent expression of that opinion, because it was contrary to measures falsely ascribed to a name they revered; and conscious of the weight of that name, I may, without vanity, say, there was some degree of merit in stemming the tide of popularity that was attached to it.

The mission of Mr. Jay took place after the second elec-

tion of General Washington, and the discussions on the treaty in the first session of the fourth Congress, the seventh year of his Presidency. In his speech on the opening of the second session of the same Congress, (I repeat, sir, what I formerly wrote on this occasion) he alluded in affecting terms to his approaching retirement from office. I can solemnly say, for myself, that, on this occasion, so far from any ill feeling towards the President, none among those who arrogated to themselves the title of his exclusive friends, could feel more sincerely, or were more disposed to express, every sentiment of gratitude for his services, admiration for his character, or wishes for his happiness, than I was. These were ideas that had grown up with me from childhood. I had never heard the name of Washington pronounced but with veneration by those near relatives who were engaged with him in the same perilous struggle. Independence, liberty, and victory, were associated with it in my mind; and the awful admiration which I felt, when, yet a boy, I was first admitted to his presence, yielded only to the more rational sentiments of gratitude and national pride, when, at a maturer age, I could appreciate his services, and estimate the honor his virtues and character had conferred on the nation. I had seen him in the hour of peril, when the contest was doubtful, and when his life and reputation, as well as the liberties of the country, depended on the issue. I had seen him in the moment of triumph, when the surrender of a hostile army had secured that independence. My admiration followed him in his first retreat, and was not lessened by his quitting it to give the aid of his name and influence to the union of the States under an efficient Government. In addition to this, he had received me with kindness in my youthful visits to his camp; and, without having it in my power to boast of any particular intimacy, circumstances had thrown me frequently in the way of receiving from him such attentions as indicated some degree of regard. With these motives for joining in the most energetic expressions of gratitude, with a heart filled with sentiments of veneration, and desirous of recording them, my concern can scarcely be expressed, when I found that I must be debarred from joining my voice with those of my fellow-citizens in expressing those feelings, unless, in the same breath, I should pronounce a recantation of principles which I then thought, and still think, were well founded, and declare that I approved measures which I had just solemnly declared I thought injurious to the country.

Thus, Sir, it was contrived: At that period, the President opened the session by a speech, (the more convenient mode of sending a message having been introduced five years afterwards by Mr. Jefferson) and the House made an answer, which they presented in a body. The answer on this occasion was most artfully and most ably drawn. It was the work of a federal committee, and was supported by a federal majority. It contained, as it ought to have contained, every expression that gratitude, veneration, and affectionate regret, could suggest; and to the adoption of these there would not have been a dissenting voice; it would have been carried, not only unanimously, but by acclamation. But the dominant party had other views; it was to be made the instrument of degrading their opponents, if they could vote for it, or of holding them up to all posterity as opposers of the Savior of his country if they refused to pronounce their own condemnation. They preferred a paltry party triumph to the glory of the man they professed to honor, and deprived him of the expression of an unanimous vote, that they might have some pretence to stigmatize their opponents with ingratitude. The press, sir, the omnipotent press, and the publicity of our debates, have enabled me, even at this distant day, to defeat this unworthy end—unworthy of the honorable men who contrived and executed it, and which nothing but the excitement of party could have suggested to them.

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To understand this fully, sir, I should read to you the whole of the address. Its general character I have stated. But I will confine myself to one or two passages, which show what was endeavored to be forced upon us, and the amendment offered will show what we were willing to say, and I will then ask who it was that refused a unanimous expression of gratitude, respect, and merit?

The debates of that period were very concisely taken down; but (in Carpenter's Debates, p. 62) we find enough for our purpose. It is there stated that Mr. Livingston expressed his sorrow "that the answer was not so drawn as to avoid this debate, and his sincere hope that parties would so unite as to make it agreeable to all. He moved some amendments, first, to correct an error in the phraseology, which were adopted; and, in the course of his remarks, used these expressions: 'He hoped, notwithstanding the tenacity of adherence to words, that all might agree in the address; he would be extremely hurt, [he said] could he conceive that we differed in sentiments of gratitude and admiration for that great man; but, while he was desirous to express this, he could not do it at the expense of his feelings and principles. The former he might sacrifice, but the latter he could not, to any man.'"

I invite the particular attention of the Senate to the passage which I proposed to alter. As it stood in the address, it was in these words:

"And while we entertain a grateful conviction that your wise, firm, and patriotic administration has been signally conducive to the success of the present form of Government, we cannot forbear to express the deep sensations of regret with which we contemplate your intended retirement from office."

Now, sir, mark what were the words objected to in this sentence; bear in mind the distinctions that have been drawn between the character of the President, and that of his administration; remember what was the sense in which that word was universally used at that day: recollect, too, what I have just said of the opposition to one of the leading measures of that administration, and you will then be enabled to judge whether I, and those with whom I acted, could give our assent to this passage as it stood. To show, however, that, while we could not, with consistency or truth, say, that the measures of the cabinet were wise and patriotic, but that we were perfectly willing to use these epithets as applied to the President, I moved to strike out the words "wise, firm, and patriotic administration," and insert "your wisdom, firmness, and patriotism." The sentence then would have read thus: "While we entertain a grateful conviction, that your wisdom, firmness, and patriotism, have been signally conducive to the success of the present form of Government, we cannot forbear to express the deep sensations of regret with which we contemplate your intended retirement from office." Now, sir, compare this clause, which we were all ready to vote for, and did vote for, with that which was supported by the majority; and say which of them expresses the greatest veneration for the person, and the personal character of Washington—that which ascribes wisdom, firmness, and patriotism, to the measures of his cabinet, or that which attaches them to himself. Say, whether we refused to express regret at his retirement, when that word, accompanied by an epithet most expressive of its intensity, is readily adopted. Say who were the real friends to the glory of our great leader in war, and director in peace—those who, for a paltry party triumph, deprived him of an unanimous expression of thanks and admiration; who forced him to appear rather as the chief of a party, than in his true character, of the man uniting all affections, regretted, beloved, venerated by all his fellow-citizens; or those who intricated that, on this occasion at least, party considerations should be laid aside, and that they might be permitted to join their voice to that of their country, and of the world, in expressing the sentiments with which their hearts were

filled. Say, finally, sir, whether the Senator from Massachusetts is justified in the allegation, that we refused to express respect, gratitude, and regret, on the retirement of Washington; or, what is more than insinuated, that we slighted his services and vilified his character. Sir, the register I have quoted shows, that I supported my amendment by expressing the very sentiments you have just heard; and I must add, that, shortly after this transaction, while my votes, speeches, and conduct, were fresh in the recollection of my constituents, my term of service expired, and I was re-elected by an increased majority. Would a man, entertaining the sentiments towards Washington that have been ascribed to me, have received the votes of a city where his name was adored? Nay, more sir, one of the most conspicuous of those who have incurred the reproach of the Senator from Massachusetts, and for whose sole use it was perhaps designed—the President of the United States—was not long since elected, by the veteran relics of the Revolutionary war, the chosen companions in arms of their venerated commander, the New York Society of Cincinnati, as one of the very few honorary members on whom that distinction has been bestowed. They have, since that, done me the same honor. Would the venerable remnant of the friends and companions of Washington, associated under his auspices for the purpose of cherishing the friendships contracted during the contest he so gloriously conducted, and watching over his fame, so inseparably connected with their own—would they have conferred this distinction on two men, who had, at any period of their lives, shown themselves his enemies or detractors? Me, sir, they knew from my childhood—my whole life was before them. At the time these votes were given, I was their immediate Representative; many of them were opposed to me in the politics of the day, but they knew my conduct to have been such as I have described, and they did justice to my motives; and most assuredly would not have joined in my unanimous association with their honorable body, had they doubted the purity of either.

In the course of this defensive part of my address to the Senate, I have been obliged to refer, with some minuteness, to the state of parties at a remote period. I have done so with no desire to renew forgotten animosities, or impute injurious designs to the living or the dead. The latter consideration has induced me to stop short of the scenes which occurred in this place, in the first session that was held here; much of what I know, more of what I heard, would have this tendency, if detailed. Designs of the most violent and disorganizing kind were ascribed to some of the federal party, in a letter bearing the signature of one of its distinguished members. This statement was attributed by mistake to another, a no less respectable leading man of the same party, both of them since deceased. It does not enter into my purpose to determine between them. I had a high respect for both, and an intimacy with one, which was never interrupted by our difference in political tenets; in truth, I had, during the whole course of those violent times, the good fortune to preserve the most friendly intercourse with most of my principal political opponents. I thought their political principles dangerous, and they thought my ideas of Government inefficient; but we did justice to the purity of each other's motives, and preserved social harmony amid party discord. It is far, therefore, I repeat, from my intention, to renew heats which are now allayed, by a reference to the olden times of party; but I referred to them because they were necessary to my defence. Because, having left the Atlantic States soon after the triumph of the republican party in 1800, I thought, on my return to public life, after a retirement of more than twenty years—I thought I discovered some of the great dogmas of federalism prevailing in our public councils; and thinking them always dangerous, I felt it a duty to take this occasion to guard against their revival. Engaged during my absence in professional pur-

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suits, and wholly absorbed by them, I had not marked the changes of political parties or events. I knew not even the appellation by which they were distinguished; but in whatever shape the old dangerous federal doctrine of assuming all power under the claim of providing for the general welfare, may have appeared; under whatever colors its partisans may enrol themselves, *quocunque nomine gaudent*, Federalists, Federal Republican, or National Federalists, I now do, and ever will, hold it a paramount duty to discover and oppose their doctrines. I know that many who belonged to the federal party never did entertain this dangerous opinion: I believe that many who did entertain, have abjured it; I most sincerely hope they all have; and thinking this a favorable occasion to produce a disclaimer of them, I have seized it to submit the propriety of doing so. Should this doctrine be formally abandoned here, one great source of suspicion and ill feeling will be destroyed; and even after that is done, sufficient causes of dissension will remain to satisfy the most zealous lover of party.

These [said Mr. L.] were some of my reasons for speaking of the history of party under our Government. I had another. It was to mark the difference between the necessary, and, if I may so express it, the legitimate parties existing in all free Governments, founded on differences of opinion in fundamental principles, or an attachment to, or dislike of, particular measures and particular men; between these and that spirit of dissension into which they are apt to degenerate, to throw the weight of my experience, and the little my opinions may have, in the scale, and lift up a warning voice against the indulgence of the passions which lead to them, the illusions that irritate, the personal reflections that embitter debate, and the altercations that debase it. The spirit of which I speak originates in the most trifling as well as the most important circumstances. The liberties of a nation, or the color of a cockade, are sufficient to excite it. It creates imaginary, and magnifies real causes of complaint; arrogates to itself every virtue—denies every merit to its opponents; secretly entertains the worst designs, publicly imputes them to its adversaries: poisons domestic happiness with its dissensions; assails the character of the living with calumny, and, invading the very secrets of the grave with its viperous slanders, destroys the reputation of the dead, harangues in the market place, disputes at the social board, distracts public councils with unprincipled propositions and intrigues, embitters their discussions with invective and recrimination, and degrades them by personalities and vulgar abuse; seats itself on the bench, clothes itself in the robes of justice, soils the purity of the ermine, and poisons the administration of justice in its source; mounts the pulpit, and, in the name of a God of mercy and peace, preaches discord and vengeance, invokes the worst scourges of Heaven, war, pestilence, and famine, as preferable alternatives to party defeat: Blind, vindictive, cruel, remorseless, unprincipled, and at last frantic, it communicates its madness to friends as well as foes, respects nothing, fears nothing, rushes on the sword, braves the dangers of the ocean, and would not be turned from its mad career by the majesty of Heaven itself, armed with its tremendous thunders.

The *tristes ire* of the poet,

—Quis neque notior  
Detrectat ensis, nec mare naufragum,  
Nec cevas ignis, nec incensum  
Jupiter, ne, totus simul.

And to which, with an elegance of expression and profundity of thought rarely united, he ascribes the ruin of republics:

—Et stitis urbes ultime  
Strepere caute, cur perirent  
Funditus, imprimeceretque muris  
Hostile arctum exercitus insulas.

Yes, sir, the poet tells us true. These few lines contain a most important lesson. Not long before he wrote them, there existed a confederacy of independent States, united, as ours are, by the same religion, language, manners, and laws. Fair cities, adorned with noble edifices, decorated by the miracles of the imitative arts, governed by wise magistrates, and defended by intrepid warriors—where sages gave lessons of morality and wisdom—poured forth their numerous inhabitants at stated seasons to assist at solemn games, where poets sung, and historians read their instructive pages to admiring crowds; where the young contended for the prize of agility or strength, and the old recounted their former exploits; where the wisdom, and valor, and talent, and beauty, of each State, were the boast and pride of the whole. What followed? Civil dissension breathed its poisonous influence over them, and they met to contend, not for the peaceful prizes of dexterity or genius, but in the deadly strife of civil war. Where are their magnificent temples, their theatres, their statues of gods and heroes? They have vanished: they have been swept with the besom of destruction! The ploughshare of devastation has been driven over their walls, and their mighty ruins remain as monumental warnings to free States, of the danger of falling into the excess of party rage.

From these evils, may Heaven, in its mercy, preserve our beloved country: but, that this prayer may be heard, we must begin by correcting in ourselves every approach of the passions which lead to them. Is there no danger? Have no symptoms appeared to justify a fear that too great an excitement has been already produced by no sufficient cause? I am no censor of the conduct of others: it is sufficient for me to watch over my own. The wisdom of gentlemen must be their guide in the sentiments they entertain, and their discretion in the language in which they utter them. No doubt they think the occasion calls for the warmth they have shown; but of this the people must judge; and, that they may judge with impartiality, let the facts which have drawn forth the invectives we have heard, be fairly submitted to them.

We have heard much of supposed lines of division in this body. "This side of the House" and "the other side," "majority" and "minority," "opposition" and "administration," are as familiarly mentioned as if they were universally understood. Now, sir, I profess my ignorance. In what cause have the Senators of the United States arranged themselves into different bodies, and arrayed themselves under adverse banners? If the dangerous doctrine of undefined and undefinable powers in the General Government be assumed as the watchword; if the dormant—I had thought the extinct—principles of persecuting federalism are to be revived, let it be declared; and I, for one, will not hesitate on which side of the party line I shall be bound. As yet, sir, I see no constitutional question of a permanent nature to divide us. We undoubtedly think differently of particular measures, and have our preferences for particular men; these, surely, cannot arrange us into any but temporary divisions, lasting no longer than while the election of the man is pending, or the debate on the measure continues. The election has been long decided. Do gentlemen understand that, because they preferred another candidate, they are to form an opposition to all measures the President recommends, or to all appointments he has made? Do they imagine that those who supported him in his election are, in this House, to form a separate party for the indiscriminate approbation of all he may advise or do? Of their own intentions, gentlemen are the best judges; they must think for themselves, and draw what lines they choose for their own conduct; but, for one, sir, I inform them they cannot do so for me. I shall now, as I have always done, exercise my own judgment, guided by the instruction I receive from debate, on all important measures. I gave

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to the election of the present Chief Magistrate all the aid which my vote and little influence could give. My own knowledge of facts enabled me to refute many slanders; my intimate acquaintance with his character and services gave some weight to the testimony by which I cleared them from misrepresentation. I thought him entitled to the place, because he possessed talents which eminently qualified him to execute its duties; because he had rendered services such as but one man had ever before rendered to the country; because I had witnessed the energy, courage, prudence, and talent, by which he saved the State I represent from the worst of desolations. These were my inducements for his support during the first election when he was a candidate. The decision of that election, in favor of a man having a fewer number of votes, was calculated to embitter the minds of his friends, and make them hostile to the successful candidate. Yet, sir, during his Presidency, I gave a practical proof of the profession I now make. A measure of great importance was proposed by his administration—I mean the Panama mission—I thought great good might result from it; and, although it was violently opposed by those with whom I had acted in the election, I not only voted for, but supported it by argument. I then thought, and I still think, that its nature and object were both of them misrepresented or misunderstood; and that, if the assembly had taken place as it was first proposed, our envoys attending in a diplomatic, not a representative character, might, by their influence and advice, have prevented many dissensions that have since distracted those republics; might have introduced stipulations favorable to commerce, social intercourse, and the great interests of humanity. My reasons for that vote are published. And the fact, that, although one of the warmest friends of the unsuccessful candidate, and one of those who felt the deepest regret when his opponent was declared to be elected, I yet supported such measures of his administration as I approved, when they were opposed by my political friends, ought to be a sure pledge of my sincerity when I say, that I will support no important measure that I disapprove, merely because it is one of the present administration. I have not, however, the passion avowed by the honorable Senator from Maine, [Mr. HOLMES] who told us, if I understood him, that he had always been, and always wished to be, in a minority. [Mr. HOLMES exclaimed—He did not say he desired to be in a minority, but that he believed he always would be.] Mr. LIVINGSTON continued: It seems I have not repeated the words used by the Hon. Senator, which I regret; but the sense is the same. If he has always been in the minority it must have been a matter of choice, otherwise, in the ups and downs of his congressional life, in the turns of the political wheel, it must have so happened that, for a short time at least, he must have been uppermost; if so, it struck as a singular predilection. But there is no disputing about tastes; and the Senator has, at least, one great precedent for his:

*Victrix causa diis placuit, ac victrici Attilæ.*

And I am sure he cannot be offended by my classing him with the stern republican who would not survive the liberties of his country, as a fitter associate than the nameless one offered to him by my friend from Tennessee. But, sir, neither the example of Cato nor of the Senator tempt me. I am contented with the *victrix causa*, contending for what I think right, I like to see it succeed. On this occasion, I have, as yet, had no cause to repent my choice; nor have the charges, urged with so much warmth against the measures of the President, changed the opinion I had formed of his talents to conduct the affairs of the nation with honor, advantage, and success. I listened to them attentively, resolved to weigh calmly, and determine impartially, on all that could be urged. Sir, I expected a like disposition in those who have expressed their disap-

probation. I expected a detail of facts supported by proof, and of calm and clear deductions from those facts. Need I say that I have been mistaken? When I heard from the Senator from Maine "that this administration had glutted its vengeance upon the purest patriots on earth; that no age, condition, or sex, had escaped; that the sins of the fathers had been visited upon the children to the third and fourth generation; that innocence, virtue, patriotism, had all, all been swept into the gulf of misery;" and listened to the impressive tone in which the eloquent Senator from Delaware reprobated the spirit of oriental despotism, which had displaced deputy postmasters, and recalled unoffending ministers from abroad: need I repeat that I was disappointed? Now, I ask, will not the country ask, What is thereto justify such exaggerated invective? Language that might be applied to the tyranny of Nero or Caligula, but which is evidence of nothing but a heated imagination, when used to express disapprobation of removals from, and appointments to, office. But let us, sir, before we catch the infection of this fever, while our pulse still beats evenly, and our heads are cool, examine calmly into the oppressions of the Executive, which have excited this patriotic fervor. The honorable Senator from Maine did not design a single specification, except one; which, I confess, I cannot fully comprehend—this bloody administration, which, in its savage warfare, spares neither men, women, nor children, has visited, in its vengeance, the sins of the fathers upon the third and fourth generation of their descendants. Now, sir, I cannot comprehend what offence the great-great-grandfather of any one of the removed officers, who must have lived in the reign of Queen Ann, could have given to the President, or any one in his administration: this, I confess, puzzles me.

The Senator from Delaware has been more explicit, and, from his address, to which I listened with great pleasure, I gathered that these were the grounds of complaint:

That the principles of the administration are destructive of the liberties of the country. Such were the words used as I noted them, and not without much surprise.

That the public treasure has been extravagantly and illegally expended.

That the press has been subsidized, for party purposes.

That persons have been removed from office, without the advice and consent of the Senate—the President having no constitutional right to do so.

That, if there be such a right, it is illegal to exercise it, without giving to the Senate the reasons for which the removals were made.

That removals have been made for no other cause than to satisfy the vengeance of the President, or for the purpose of rewarding his friends.

That he has made appointments out of the two Houses of Congress, and particularly out of the Senate, for the purpose of rewarding his friends.

Of each of these grave charges in its order:—

First, [says the Senator from Delaware] the principles of the administration are destructive of the liberties of the people. By administration the Senator must mean, here and on other occasions where he uses the term, the President: for, as far as I have understood, there is now no cabinet, in the sense in which that word has been usually taken. If my information be correct, the words of the constitution, and what I have always believed to be its true intent on this subject, have been pursued, rather than the example of former Presidents. The constitution, in enumerating the rights and duties of the President, says, "he may require the opinion, in writing, of the principal officers in each of the Executive Departments, upon any subject relating to the duties of their respective offices." Instead of this, from the first organization of the Government, the Heads of Departments have been convened, and converted into a cabinet council, not where, according to the constitution, each was to give his opinion

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on the affairs of his own department, but where all were consulted on every difficult question relating to the affairs of each, or of the Government in general; and where, it has been generally understood, particularly during the presidency of Washington, that the President was guided by the voice of the majority; and the responsibility of the Executive, so far as regarded public opinion, was, if not thrown on the cabinet, at least divided with them. Indeed, sir, I know that, at a long subsequent period, a most illegal and oppressive act, by which I was deeply injured, was justified as being done by the advice of the cabinet. Now, sir, as I have said, there is no such cloak for Executive acts. The President performs the duties of his office, and assumes the responsibility they incur. The cabinet, a body unknown to the constitution, does not exist. The chiefs of the departments are consulted on the business of their respective offices; they are answerable to the President, and he, so far as he sanctions their acts, to the country. Of this, however, I have no farther information than any other Senator has obtained, or may obtain. In speaking of the administration of the Executive department, therefore, it must be understood that gentlemen mean the acts of the President, or of his officers, sanctioned by him. His principles, then, according to the charge, are subversive of the liberties of the people. The only modes by which the principles of a man may be known, are either by his professions or by a long course of action evincive of them. Submit the principles of the Executive to these tests. First, his professions. He has made two communications to us and to the country—his inaugural address and his message at the opening of this session. Surely the gentleman does not mean to apply the epithet he has used to the principles avowed in either of these instruments? If he does, the voice of the whole people of the United States, re-echoed from foreign nations, will contradict him; the principles there announced as those by which he will be guided, are, an adherence to the constitution of the United States: a respect for those of the individual States; economy, justice, liberty; equal protection to industry, manufactures, and trade; and a strict enforcement of the laws at home, and the extension of commerce; the observance of treaties; the assertion of our rights, and the establishment of a good understanding with all nations abroad. Which of these principles, thus professed, are subversive of the liberties of the people? If any, let them be pointed out. The charge, then, is not justified by any principle openly professed. Examine the other source. Can those principles be discovered by his course of conduct? Observe, sir, that this is a sweeping accusation of evincing dangerous principles. Any single improper act, even if it could be substantiated, would not justify it; it may be in contradiction to his professions; it may be injurious; but, unless persevered in, or followed up by others, that can be accounted for only by supposing that they were dictated by such principles, it does not justify the charge. The present Chief Magistrate has been in office a year. During that time he has assumed no new power; he has evinced no desire to enlarge those confided to him by the constitution; and if, in their exercise, he has not exactly followed the march which the Senator thinks the proper one; if he has selected for office those in whom he, and not the Senator, had confidence; if he has consulted his own, and not the Senator's, discretion; surely he ought not to be denounced as entertaining principles destructive of the liberties of the people. In examining the constitution, for the rules which were to direct his duties, he certainly found nothing written there by which he was bound to conform his own opinion to that of any Senator or any party. Where discretion is given to him he has used it, on his responsibility to the people; and the exercise of this discretion, even if it be not conformable to that which would have been suggested by the superior wisdom of those who arraign his conduct,

cannot authorize them to call his principles in question. Where no discretion was given him he has confined himself, as far as I have heard or observed, to the strictest rule of the constitution and law.

Enough, then, and more than enough, in refutation of this vague and general charge. Let us come to those that are more specific.

The public treasure has been extravagantly and illegally expended.

It is not, under this head, even pretended that any other or greater sum has been taken or paid to any individual than that which was due, by law, for the service or salary for which it was given. But comparisons are made between the amount of expenditure made under the last, and that made under the present administration. As applied to our Government, there cannot be a more fallacious rule for measuring the true economy or wisdom of the exercise of Executive functions. What has the President to do with the extravagance of the general expenditure? These are directed by legislative wisdom. But he must approve all laws! True, he must approve them; but remember that, if there was any extravagance in the expenditures of the last year, his predecessor, not he, is answerable for it. He has not approved a single law under which a dollar was disbursed in the year 1829; and all of the contracts for the service of that year were made before he came into office. But, sir, there was no extravagance in the appropriations; (for the contracts I will not vouch, because I am uninformed) on the contrary, there was a marked, I will not say, a designed reduction of a usual and necessary appropriation for the contingent expenses of foreign missions. In former estimates, this had been put at twenty-five thousand dollars: in the estimate for 1829, it will be found, by deducting the salaries and outfits provided for, it was only eleven thousand dollars.

But, although I protest against this mode of testing the economy or profusion of the Executive, yet, as it has been relied on, let it be looked into, and it will be found that the expenditure of the year 1828 exceeded that of 1829 by more than four hundred thousand dollars; it is true that near seven hundred thousand dollars, properly chargeable to the year '27, was expended in '28, for awards under the Convention with England, but this was balanced again by a payment of nearly the same sum in 1829, for expenditures for objects of Internal Improvement, directed in the year 1828, and properly chargeable to that year.

But, sir, I have done with these irrelevant calculations. If the criterion contended for was the true one, it would make in favor of the present Executive; but, in truth, it shows neither extravagance nor profusion in that Department. It shows what the united legislative wisdom of the Union thought necessary to be expended, and it shows nothing more; and the truest economy is frequently found in the largest expenditure. This depends, altogether, on the object for which it is incurred.

There is, however, one branch of expenditure more immediately under the President's direction, which, indeed, like all other expenditures, must be provided for by law, but which, from its peculiar nature, demands a greater degree of confidence in the Executive than any other—I mean the expenses of our foreign intercourse. All negotiations with foreign Powers, being a part of Executive duty vested in the President, the nature of the service frequently forbids that previous disclosure which is expected in every other case; in the estimates, the existing missions are enumerated, and if any new one is contemplated, which requires no secrecy, it is also mentioned; but, to provide for unforeseen cases, an appropriation for the contingent fund of missions abroad is made, and placed at the President's order; besides this, if the interest of the country should require an expense



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which the contingent fund cannot cover, it must be left, as in the case of all other excess of expenditure, to be provided for under the head of "deficiencies in the appropriations" of the preceding year—an item to be found very frequently in the estimates. Here, again, the same reasoning which I have used with respect to the general annual expenditure will apply to this particular head. It may be large, and not extravagant. The occasion must determine whether it was judicious or not; and, therefore, though again the comparison is greatly in favor of the present administration, yet I am, in candor, obliged to admit that this circumstance alone will not decide the question in favor of its economy, as compared with that of its predecessors. That depends on other circumstances, and other inquiries must be made to determine their weight. But it would seem that, if the same number of missions be kept up, and some of them of an increased rank and expense; if additional expenditures have been incurred, by the necessary change of ministers, and yet the whole expenditure is less than under the preceding missions; it would seem to follow that, if all this is now done, at a less expense than formerly occurred, there must have been a saving in some part of the expenditure, under the present, that did not exist under former administrations. Figures cannot deceive us; let us bring the question to that test, and compare the years 1817 and 1818, the two first of Mr. Monroe's administration; 1825 and 1826, the two first of Mr. Adams's; and the last and the present years, the two first of General Jackson's.

To the comparative view of the expenses of foreign intercourse, let us add that of the contingent expenses of the Department of State, during the same years. From which it results, that the expenditures for foreign intercourse, in the year 1829, added to the whole appropriation asked for the year 1830, supposing the whole to be expended, are less than those of the two first years of Mr. Monroe's administration, by two hundred and thirty-three thousand six hundred and fifty-six cents; and less than the two first years of Mr. Adams's presidency, by one hundred and thirty-four thousand twenty-four dollars and ninety-eight cents. That the contingent expenses of the Department of State, in the last and present years, is less than the two corresponding years of Mr. Adams's administration, by ten thousand two hundred and eighty dollars and forty-five cents; and exceeds that of Mr. Monroe only two hundred and nineteen dollars—an excess more than counterbalanced by the increased expense of printing the biennial calendar. But, as a part of this excess consists of items of occasional and temporary occurrence, only, we must bring the comparison to bear only on the permanent items, consisting of

The diplomatic department, strictly so called;

The contingent expenses of foreign intercourse;

And treaties with the Mediterranean Powers.

On comparing these, the balances will stand thus:

The expenditure in the two first years of the present administration falls short of that in the two first years of Mr. Monroe, by the sum of thirty-eight thousand two hundred and fifty-eight dollars; and of that in the corresponding years of Mr. J. Q. Adams, by five thousand three hundred and two; notwithstanding the additional expense of outlays incurred in the last year.

[Mr. L. here read an abstract of the expenses of foreign intercourse for the several years above referred to. He then proceeded:]

For the full understanding of the accounts I have just referred to, it may be necessary to state that, previous to the year 1801, the accounts of our foreign relations were kept at the treasury under the head of "intercourse with foreign nations," and included every charge in relation to our foreign relations—even the "contingent expenses of foreign intercourse," commonly known by the appellation of the "secret service fund." In 1801, according to

an arrangement made by Mr. Gallatin, the bankers of the United States in Europe were directed to open an account headed "the diplomatic department;" a correspondent account was, of course, opened at the treasury, and under this head, until the year 1814, were brought every item which had formerly been comprehended under the head of the intercourse with foreign nations; and this fund was provided, by general appropriation, in the same words. In 1814, the appropriations became more specific "for the salaries, allowances, and contingent expenses, of ministers to foreign nations, and for secretaries of legation;" and in 1818, the present form of appropriation, designating the several missions, was first adopted. But, from the date I have mentioned, 1801, until the present day, the accounts have been kept in the treasury under the general head of the "diplomatic department." And the course has been, to remit to our bankers in Europe, and charge to this fund, the moneys necessary for the payment of the salaries and allowed expenses of our foreign agents. These bankers are sometimes in advance to the United States, when unforeseen occurrences oblige the President, during the recess, to increase the expenses of our foreign intercourse, by new missions; and in those cases, appropriations are asked for, and made at the next session of Congress, to reimburse them. This was the case in the year 1816, to the amount of fifty thousand dollars; in the year 1818, to the amount of twenty thousand dollars; and probably other instances may be found, by a more careful examination than I have been able to give to the subject.

In the last year, owing to the insufficiency of the contingent fund for the expenses of foreign missions, which must not be confounded with the contingent expenses of foreign intercourse, (the secret service fund) there was a deficiency of about forty thousand dollars, which was included in the estimates for the current year, and, as I stated in the debate on the appropriation bill, would have been more accordant with form to have been asked for as a deficiency in the appropriations of the last year. But the effect is precisely the same; by appropriating for the salaries and outlays of foreign ministers, &c. as it stands in the bill, it is carried to the credit of the diplomatic fund, and will be remitted to our bankers to make good their advances.

After having shown that the sum expended for our foreign intercourse is actually much less than in former administrations, the statement I have just made of the mode of keeping the accounts may be necessary, when we consider another charge, loudly made out of the House, and confidently, and with a triumphant air, repeated on this floor, that the laws which forbid a transfer of one appropriation to meet a deficiency in another, have been violated by the President. The Senator from Delaware, who most earnestly urged this charge, added, that the President had appropriated money for outfits contrary to law. Now, sir, the honorable Senator, in the charge of an illegal transfer, must have been ill informed, or he would not have hazarded it. No transfer whatever has been made. The balance in the treasury to the credit of the "diplomatic department" was applied to outfits that have been paid; that balance was what remained unremitted to our bankers in Europe. If our ministers there have drawn upon them for their quarter's salaries, due on the first of January last, they of course are in advance, because, as I have stated, the appropriation of 1829 fell short of the expenditure about the sum of forty thousand dollars. The appropriation for the contingent expenses of missions abroad always formed part of the "diplomatic fund," and without any exception has been made liable to the drafts on that fund; therefore, there was no illegal transfer. The other contingent fund (that for foreign intercourse, the secret service fund) might, consistently with former usage, have been applied to this use; but, with a scrupulous re-

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gard to the directions of the law, the President suffered it to remain untouched, and, to the amount of thirteen thousand nine hundred dollars, it has been carried to the surplus fund, having been more than two years appropriated. There has been, therefore, no illegal transfer of appropriations—there has been no transfer whatever. And this charge also falls under the investigation, which the President should rejoice has been provoked here, where it must meet its final overthrow. Now to the one connected with it, and urged with equal warmth, (I will not say violence.) Outfits have been paid, for which there were no specific appropriations. Can the gentleman have calculated the consequences of the doctrine implied in this charge? Can he have reflected on the blot its establishment would fix on the characters of men whose memory I know he reveres? Surely not. But as to the consequences of the doctrine. If it be true, the President cannot, in time of war, send a minister to make peace in the recess, when no previous appropriation has been made for an outfit. He must lose the most favorable opportunities for negotiation, and suffer the ravages of war to go on until he can call Congress, at the expense of more than one hundred thousand dollars, to get an appropriation of nine thousand. Observe, sir, that, if our bankers were ready to advance the sum—nay, if he were ready to advance it himself, the doctrine contended for would make it equally illegal. How comes it that gentlemen who agree with the Senator from Delaware in this doctrine have ever voted an appropriation to supply the deficiencies of former years? Why have they not censured the Presidents under whose authority they were created? No, sir; they were silent under Madison, silent under Monroe, when deficiencies in this department were voted for without a word of dissatisfaction. They, and all our predecessors, were silent; and it was reserved for the present occasion to discover that an outfit could not be legally paid until there was a specific appropriation. Gen. Washington appointed Mr. Charles Cotesworth Pinckney to France; Mr. Jefferson appointed Mr. Charles Pinckney to Spain; Mr. Monroe to England; Mr. Armstrong to France; Mr. Monroe again to Spain; Mr. William Pinckney to England, and Mr. Erving to Denmark; Mr. Madison appointed Mr. Crawford to France, and Mr. Erving to Spain; Mr. Monroe appointed Mr. Rush to England, and Mr. Everett to the Netherlands; and Mr. J. Q. Adams appointed Mr. Tudor to Brazil. All these appointments were made in the recess, and without any specific appropriations. Their salaries and outfits were paid out of the diplomatic fund generally, and when that fund was indebted to our bankers, provision, as we have seen, was made to reimburse them.

Now, sir, let the gentleman, and those who join him in the crimination of the Executive, determine whether they are willing to incur the ruinous consequences attending the establishment of their doctrine, and the inculpation of every former President, the Father of his Country included, in their sweeping charge. And I pray the Senate also to remark, that, if these appointments and outfits in the recess, without a special appropriation, were proper by former Presidents, (as they undoubtedly were) even in the cases where the appropriations were specified for particular missions, without providing for outfits in the recess, the present case must be infinitely more justifiable: for the appropriations for 1828 give a gross sum for salaries, outfits, and contingencies, without specifying how much was intended for each, thereby creating a general fund, applicable to all such objects; but, being inadequate to the exigencies of the year, an appropriation has been asked for to provide for the deficiency, as has been usual in this and in every other department of the Government. This deficiency was provided for in the House of Representatives without any opposition, and in the Senate with only, I think, three or four dissenting votes. And this, sir, is the whole extent of the affair of the outfits, and the ille-

gal appropriations and transfers, which has been made the ground of so much serious accusation against the President. I hope we shall hear no more of this groundless charge. Now, sir, to another, connected with it: the missions for which these outfits were expended were totally unnecessary. The men whose recall occasioned them were fit persons to be entrusted with the business they were charged with; they ought to have been left; their recall was not only unnecessary, but, in the opinion of the Senator, a proscription. Now, sir, what means the Senator may have of judging on this point, I cannot tell; all I know is, that I have none that would justify me in believing that all these gentlemen possessed just such qualities and talents as ought to have induced the President to constitute them his agents in the important negotiations we have with foreign Powers. And if I had brought myself to this belief, there are certain considerations that would induce me to think, that a man selected by the people of the nation to manage for them this very concern, might, possibly, have rather more information, and must be much better qualified than I was, to form a proper opinion. I might say, as I do say, although these are very estimable men, in my opinion, yet the President possibly may have reason to believe that others may succeed where they have failed. He may not unreasonably think that, in addition to a minister's being a man of ability and integrity, he ought to possess the perfect confidence of the First Magistrate, whose views he is to carry into effect. These reflections, sir, would probably occur to me, did I disapprove of the nominations which have been made, and would prevent my expressing any warm disapprobation of measures, of the propriety of which I had not the means of judging. Much more would this induce me to refrain from stigmatising them as illegal usurpations of power and cruel proscriptions.

Do gentlemen really suppose that, by applying to the recall of a minister a word which leads the mind to the murders and assassinations of Marius and Sylla, and the Triumvirate, they can identify the two cases? Sir, the attempt is not very complimentary to our understanding; and the approximation only tends to show the ridiculous disparity of the cases.

What are these proscriptions? Five ministers plenipotentiary, at one "fell swoop!"—incarcerated? banished? decapitated? No, sir. Invited to return to their country—to their friends. Let us see, sir, who were the sufferers, whose fate excites so much commiseration.

First, sir, our late minister to France. I can, fortunately, lessen the gentleman's distress on his account, at least: for, having had the happiness to enjoy an intimate and uninterrupted friendship with him for many years, I know that he returned by his own desire, after having faithfully and ably represented his country with honor to himself, and possessing the esteem and the confidence of the First Magistrate, who acceded to his request.

The Senator from Delaware will not find fault with the mission to the Netherlands, when he knows that it was provided for under the administration of Mr. Adams. And the Senators from Maine, I am sure, cannot object to the selection of the distinguished citizen from their State, who so thoroughly understood the important question submitted to the decision of the court to which he has gone—a question so vitally interesting to their constituents.

Our minister to Spain had been there for five years, the usual period for them to remain abroad; during that time, as far as has been made public, he had been able to effect nothing, and the important claims of our citizens remained unsettled; it was not extraordinary, therefore, in any view, (doing full justice to that gentleman's assiduity and ability) that the efficacy of a new mission should be tried.

There remain our ministers to England and Colombia, and their cases seem particularly to have excited the sympathy of the Senator from Delaware. He pathetically

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exclaims—What had General Harrison done? what had Mr. Barbour done? that they should be proscribed. Sir, I cannot answer this question: I know not what they have done. But I do not consider their recall as a punishment. As far as the individuals are concerned, I presume they do not think it any great hardship: each of them, for a year's service, had received eighteen thousand dollars; and one of them has returned from a country which is, from all accounts, no very agreeable residence in its present unsettled state. I esteem both of these gentlemen: with the former I have an acquaintance of a very old date; and although I think highly of his character, and as highly of his military services as the Senator can, yet I scarcely expected from that quarter to hear these last insisted on as a qualification for diplomatic duties. But because I have this opinion, am I to join in the lamentations that are uttered over their recall, as if the act were an offence, and the consequences of it a public calamity? The President, for aught I know, may have as high an opinion of them as the Senator has, and yet he may very properly have chosen others to replace them; and if we may judge from what we hear, his choice has not been injudicious or unsuccessful.

Sir, I disavow any invidious comparisons, but it cannot escape observation that, in one of these missions, so loudly reprobated, Mr. Moore has already completed an arrangement for compensation to our fellow-citizens, which his predecessor was unable to obtain; and, in the other, under Mr. McLane, a gentleman well known to all of us, and highly esteemed wherever he is known, the important negotiations with which he was charged, and which had so long slumbered, were, from the moment of his arrival, revived. They were begun and have continued with his characteristic activity, talent, and perseverance. They may fail: for there are some errors which it is a most difficult task to repair. But, whatever be the event, neither the honor of the country, nor the reputation of its minister, will have suffered by the change. But I feel as if I had been led astray by the example of the gentleman to whose argument I am replying, and were treading on unconstitutional ground. Both of us, sir, have a right, as individuals, to form an opinion, and freely to express it, in such terms as our sense of propriety will permit, on appointments, removals, or any other measures of Government. As Senators, we have a duty to perform in relation to appointments; but, in our legislative capacity, I am at a loss to discover what duty requires, or what right permits us to pass upon the propriety of acts which the constitution has vested exclusively in the Executive hands; and that, too, without knowing the reasons or circumstances which induced them. Whether we accuse or defend, it must be in the dark. To know whether a minister has been properly recalled or appointed, we must know the precise object which the Executive had in view. We do not know it. We must know what particular talents or qualities were necessary to be employed. We do not know it. We must know what were the instructions of the recalled minister, and whether he had obeyed them. We do not know it. We must peruse his correspondence, and know the whole progress of the pending negotiation. These we have not perused, and this we do not know. We must know the difficulties which prevented his success, and whether his successor may be better enabled to overcome them; and of this, too, we are ignorant, and must be ignorant, and ought to be so, until the constitution is changed, and the Executive power is taken from the President, and placed in our hands: for, without totally subverting it, we cannot arrogate to ourselves the rights claimed in this argument.

So much for the despotism, and oppression, and illegality, alleged in our foreign relations. Let us now come to the domestic corruption: for such is the charge. The public treasure has been employed in destroying the liber-

ty of the press, and subsidizing its venal conductors; the interest of a million of dollars (I think that was the calculation) employed for this corrupt purpose. There are, I believe, on a moderate computation, above one thousand newspapers printed in the United States: of these, seventy-two are employed to print the laws of the United States, and the advertisements and notices issued by the Departments; for which they receive, I believe, on an average, about one hundred and twenty dollars each. Now, sir, suppose, instead of eight thousand dollars, the sum mentioned by the gentleman, or even a greater, for these necessary objects, were expended, would that incur the charge made? The printing must be executed. Who is to do it, the men designated by the proper officer, or those selected by the gentleman and his friends? One tenth or one twelfth of the printers in the United States are paid a very small price for doing a necessary duty, and this is called subsidizing the press for corrupt purposes. I have not inquired, but I take it for granted, that, at the expiration of the year, the Secretary of State has restored the public printing to those presses which were deprived of it for opposing the election of Mr. Adams; that he has not given or continued it, to those who manufactured or published the vile slanders by which the present Chief Magistrate and his dearest connexions were assailed; and that, in making the selection, he has taken care to choose such papers as had a proper circulation. This is a business confided to the Secretary of State, not to us, or even to the President. A proposition was made some sessions ago to give it another destination, but it was violently opposed by the friends of the gentleman who then filled that office; a similar proposition is, I believe, now before the other House. The subsidies, then, are paid to seventy-two printers out of a thousand, and amount to one hundred and twenty dollars each, for which they perform a service of equal value. Those who make this grave accusation must go farther, if they mean to support it; they must show that these presses are employed in some other service; that a part of the consideration is the promoting some object hostile to the interest or liberties of the country; that they are undermining the constitution, or preparing the minds of the people for revolt; and that this condition was written in their bond. No, sir, the sin is, that they do not join in the clamor which restless, disappointed men, out of doors, are raising against the Chief Magistrate of the people. While they are independent, those men will call them corrupt.

Having exhibited what I think must be an abundant refutation of the charge of extravagance, so perseveringly made against the present administration in the expenditure of the public moneys, let us now see whether there is not some evidence, not only that there is no illegal or extravagant expenditure, but of a system which has already effected some savings, and promises greater, by the application of greater vigilance, and the introduction of new checks in the administration of the revenue. I speak only facts that are notorious; but I have reason to believe that others of the same nature exist, which will be developed when time is given to put the system in complete operation. One collector, whose accounts had been frequently examined under the late administration, without the detection of any fraud or error, was, in the course of the summer, found to have abstracted the sum of eighty thousand dollars; another, nearly under the same circumstances, was found in arrears to the amount of thirty thousand dollars, and both have absconded; a minor defect was found in the accounts of the Patent Office, also undiscovered, from the want of official superintendence; and, by the introduction of a simple system of checks, losses can never again occur without detection before the amount becomes considerable.

In the office of the Treasurer a most material and highly important check has been provided. Heretofore, the

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Treasurer might, by his own draft on the banks, with no other guard than its registry, command all the moneys in the treasury. The highly respectable character of the venerable officer who held that place from the first institution of the Government rendered every check on his drafts unnecessary; and the integrity of his successors has secured the public against any loss, and forbid the suspicion of any. But the Senate will perceive how necessary it was to introduce a different system, as well to guard the reputation of the officers from unjust suspicions, as the treasury of the nation from embezzlement. One has been provided, which, by requiring the signatures of different officers and registers in their respective offices, effectually answers the end. The value of this single regulation can scarcely be too highly appreciated. Seeing these evidences of regularity and economy, and hearing of many others, that either have already taken place, or are projected, I cannot but consider the charge of extravagance as entirely undeserved. Whenever it shall be again made, and supported by proof, I promise the gentleman that no one will go farther to blame or to correct the evil than I will. But, if I dared to offer my advice to men who want it so little, I would say, reserve your invective against extravagance until you have clear proof of its existence; by making it without reason now, you lessen the weight of your testimony hereafter, when, perhaps, it may exist.

My friend and worthy colleague seems to have transferred this charge from the President to those in this House who favored his election; he has taken up the report of a Committee of Retrenchment at a former session, and rebukes us for not following up the plan traced out in that report, some of which reforms he has honored with his approbation. If this is meant as a reproach upon the administration, it is hardly a fair one; for I know of no means, of no influence, by which they could induce the members of this body to pursue the course of reform, other than that which has been pursued; the President's message, if set on in the spirit which dictated it, will certainly satisfy the severest economist; and although I am not prepared to say that I should adopt all the measures he recommends, yet he sufficiently indicates a desire to advise and approve every plan for reforming abuses that the wisdom of the Legislature might devise. Let my colleague, therefore, give his aid in the work; let him select the measures he approves from the report of the Committee, support them with the ability he is known to possess, and there is no doubt they will be adopted; in the mean time a little patience will show perhaps that others are laboring in the same cause, and it is hoped their labors will be successful.

The remaining charges are so connected with the constitutional question of the right of removal from office, that it will be necessary to examine the several doctrines now resuscitated after having been at rest forty years. The first position (I do the Senator from Delaware the justice to say that this strange construction is not his) is, that the power of removal from office is annexed to the appointing power, from its very nature; and that the constitution having vested the right of appointment in the President, by the advice and consent of the Senate, the same advice and consent is necessary to effect a removal. There is so much color for this argument, that, at the outset of the constitution, men of much discernment were deceived by the fallacy it contains, and argued strenuously for the joint power; it was, however, differently, and, as I hope to show, rightfully decided, in the year 1789; and from that time to this, has not, as I hope also to show, been departed from.

One error of the argument lies in the first position assumed, that the power of removal, where there is no constitutional contrary provision, is inherent at that of appointment. It has no connexion whatever with it. The power of creating a vacancy might certainly, but I con-

less, not without great inconvenience, be vested in one department, and that of filling it in another; but they are not inseparable. The constitution has no express cause declaratory in terms that the President shall have the power of removal; but it gives it to him by a necessary inference, when it declares that he shall have the Executive power—the signification of which is amplified in the subsequent clause, declaring it to be his duty to “see that the laws are faithfully executed.” Here the power of removal is as fully granted as if it had been developed by the clearest periphrase. No principle is clearer than that the grant of power or the requisition of a duty, implies a grant of all those necessary for its execution; and it is equally clear that the power and the duty of causing the laws to be executed must carry with it that of selecting those persons necessary and proper to carry them into effect. But if, after having selected them, they are found unfit for the purpose, the same necessity exists of changing the selection which has been made; but this cannot be done in any other way than by removal; therefore, the power of removal is a power necessary for the due execution of the laws; and, being necessary, must be presumed to have been given with, and annexed to, the power of executing the laws; which is the Executive power of the President alone, and cannot be divided with the power associated with him in making appointments. If my mind be capable of appreciating the force of reasoning by deductions, this is conclusive against the participation claimed by the Senate in the right of removal. But this is not all. Supposing the position were true, that the power which appoints must, of necessity, remove: how would the case stand? Who is it appoints? The President—he alone appoints. But, because there is a restriction on the one branch of his power, by making the advice of the Senate necessary to an appointment, does it follow that he cannot execute the other branch without that assent also? He has two powers by the argument—to appoint and to remove: surely the constitution might reasonably provide that the Senate should have a veto on the first, without having it necessarily implied that they gave it in the second. Let it be remembered that the Senate do not appoint; they can never select; they can only approve or disapprove, they can advise, or refuse to advise. But, independent of abstract reasoning, let us examine, from practical results, what the constitution really intended. The wise framers of that instrument could not be ignorant of the great republican principle, that to every grant of power, responsibility ought to be annexed—responsibility to the laws for its wilful abuse or neglect—responsibility to public opinion for its indiscreet or erroneous exercise. If there were, then, even a doubt of the construction in this case, to what solution ought this principle to lead us? When the President removes, his act is known: should he act from corrupt motives, he is liable to impeachment. Should he act from indiscretion only, public opinion, from which there is no escape, will pass upon his conduct. But admit the co-operation of the Senate. What happens? First, the perfect irresponsibility of the President, both at the bar of this House and at that of the public. Having co-operated in the offence, by advising the removal, how could we punish it as a crime? And with the public, our confirmation of the act would be a complete cloak to cover the indiscretion, if there were one in the measure. There would then be no responsibility whatever attached to the President. Would it be shifted upon us? As little. Our sittings are secret—our opinions and votes must necessarily be so. The act of the Senate is known: a majority have advised the removal; or, by refusing to do so, have kept a negligent, or incapable, or unfaithful officer at his post. Who is chargeable with this? When our terms of service expire, will the Legislatures of our respective States know which of us have disappointed the expectations they have formed

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of the prudence, discretion, or judgment, of their Senators, so that they may continue or withdraw their confidence? No, sir, the whole plan would present the anomaly of most important powers exercised in a free Government without any check from the fear of punishment or of popular disfavor.

If it were possible then for the Senate to participate in this power, it would be not only contrary to the true construction of the words of our social compact, but would be destructive of one of the most important principles on which it is founded. But it is totally impracticable, morally and physically impracticable, in its exercise, consistently with the existence of the Government. Take the case of a minister to a foreign court, charged with a negotiation of the most important kind, on the subject of which the commercial prosperity, perhaps the peace of the country depends; he becomes negligent in his correspondence, he addicts himself to play, to pleasure, to intemperance; he becomes unworthy of his trust, from these or other causes; or from malady, mental or bodily, becomes incapable of performing his duties; or, he makes himself so obnoxious to the court to which he is sent, that it demands his recall. The knowledge of these facts is brought to the President, soon after the adjournment of Congress; he cannot recall this minister, because he has been appointed by the advice and consent of the Senate; and by the newly vamped doctrine, the same advice is necessary to displace him. The President must then convene the Senate—sixty days, at least, is necessary for this operation.

All this while the unworthy, or inefficient, or obnoxious minister must remain, to betray or disgrace his country, or irritate the Power which he was sent to conciliate. The Senate are at length convened, and the President communicates the information which he has received. But here another new principle stands in the way of his recall. The minister, like all other officers, (such is the doctrine of the day) has an interest in his office, which it is injustice, tyranny, and proscription, to deprive him of without cause. He ought not then to be deprived of this interest unheard; he must have a copy of the charges, the names of the witnesses, time to reply, and a right to examine his evidence in discharge. Gentlemen must acknowledge this, or they must give up their favorite cry of oriental despotism and cruel proscription. The examination of ex parte evidence here is quite as fatal to the vested interest they contend for as any removal the President has made. These formalities are gone through, and at the end of three or four months the charges are substantiated, and the minister is recalled, or the proof is not deemed satisfactory, and he remains, having lost the confidence of the President, who is forced, however, to retain him, and he himself irritated by the accusation, and endeavoring to defeat every negotiation that will reflect credit on the administration of his country. Ten days after this trial is concluded, before the members from the distant States have reached their homes, advice is received that a collector is speculating with the funds committed to his charge; the same operation is to be renewed, the same delay incurred, the same waste of public money, the same vexation to the members of this body, the same impossibility—let us come to the conclusion at once—the same utter impossibility of carrying on the operations of Government with such machinery.

This was seen, felt, and acknowledged, as I have said, in the outset of our Government, and, from that time to the present, it has never been made a serious question. Why is it raised now? Doubtless from conscientious motives, by those who advocate it here; but, out of this House, it has been (in the total absence of better matters, for a reproach to the President) made a party cry, which will be hushed as soon as the matter is examined by an enlightened people. The gentleman from Delaware does not go this length; his doctrine is this:

The President has the right of removal for just causes. If he abuses it for corrupt or party purposes, he is liable to impeachment.

Whenever the Senate suspect that a removal has been made without cause, or from such improper or corrupt motives, they may ask for the reason of the removal.

The President is bound to communicate the cause whenever it may be demanded by the Senate.

The Senate, if he should refuse to give any, or give an unsatisfactory answer, may, and ought to, reject, successively, all the nominations he may make.

And the conclusion to which the gentleman is brought by this series of positions, is, that the temporary appointments made by the President, being in force only until the end of the session, the vacancy that is thus created is not one occurring in the recess, and therefore cannot be filled by the President, but the office must remain vacant.

These are, as accurately as I could note them, the positions laid down by the Senator from Delaware.

Let us inquire whether they are more tenable than the general doctrine I have just examined.

The first position I accede to. The President has the right of removal, and he is liable to impeachment for corruption and malconduct in the exercise of this, as well as any other of his functions. But this true position is fatal to all the errors which the Senator has built upon it.

He admits the right of removal to be in the President, without the advice of the Senate. As it is no where in terms given by the constitution, it must exist as a necessary means of executing some power which is expressly given. What is that power? Clearly the Executive; or, as more fully expressed, the duty of "seeing that the laws shall be faithfully executed." He has it then, simply, completely, solely, and the second member of this proposition proves it; he is impeachable for corruption in its exercise; he has the power without participation, and must bear the responsibility without any one to share in it.

Having seen that the President derives the power he is admitted to possess from a legitimate constitutional source, and that this gives it to him without any other limitation than that of his own responsibility, we must inquire from whence the Senate derives the control with which they are, gratuitously, I think, invested by the argument. They may call on the President for the reasons of the removal; and if they have the right, the obligation to comply with it follows of course. But in what part of the constitution is this right given? It is not pretended that there is any express provision. From what part is it a necessary inference? To the execution of what power, vested in the Senate, is it the necessary means? Not to the power of advising on the fitness of a candidate proposed to fill the vacancy, because the vacancy must be created before that advisory power can be exercised, and the argument admits that the President has the right to create the vacancy by a removal. Of what power, then, I ask, vested in the Senate, is this the necessary appendage? Or where is it expressly given as a distinct power? If given neither expressly nor by implication, it cannot exist.

But for what purpose should it exist? What is the advantage to be derived from it that should make us solicitous to give a construction that should admit it? Remember in this inquiry the first position which is assumed by the argument, and which I admit, that the President is impeachable for a corrupt removal; and remember also, that we are the judges of fact and of law on an impeachment. The power, then, is one that makes us accusers as well as judges, and judges who have predetermined the guilt of the accused: for if, on the inquiry, the corruption appear, and we make it the ground of refusing to confirm the President's nomination, do we not prejudice the question on the impeachment that must follow? This is an insuperable objection, which the doctrine of the Senator entirely overlooks in zeal to apply his remedy.

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And what is that remedy? One surely worse than the disease, although that should have all the bad symptoms ascribed to it. The evil complained of is, the removal of one good officer, to be replaced by another as good. Observe, sir, that I grant the fact in dispute. I admit, for the sake of showing the weakness of the argument, that all the removals have been of men well qualified for their offices; and all I ask in return is, a similar admission that the Senate, for whose powers they contend, will consent to no nomination of a person not qualified. This is the evil. What is the remedy? It is contained in the Senator's last position, that, if the President refused to give his reasons, or the Senate are not satisfied with them, they may refuse to confirm his nominations, and suffer the appointment to expire by its limitation, at the end of the session; and then it is the opinion of the Senator that the office can no longer be filled; because, according to his reasoning, it is not one that accrues during the recess. This is his remedy; for this you are to suppose powers that are so where given. For this admirable result you are to strain the construction of the constitution until it breaks. For this you are to add the accusing to your judicial power. For this you are to leave the laws unexecuted, and disjoint the whole machinery of Government. No matter whether the offices to be filled are the commanders of your army, or the captains of your fleet in time of war, or the heads of departments, or collectors of revenue, or marshals to execute the decrees of your courts in time of peace—all must remain vacant. Apply it in the present case. A number of removals in every department has been made. Suppose the Senate should have asked for the causes, and the President, as he most probably would, should have declined to comply with the request: what would have followed? All our diplomatic relations would have at once ceased: for all the ministers appointed in the recess would cease their functions at the end of the session. The revenue in some of our largest ports would be uncollected. The administration of justice in most of the districts would be stopped for want of district attorneys and marshals. This is the remedy for an evil, perhaps of doubtful existence in any case, but certainly much aggravated in all.

But suppose this right in the Senate to call for the causes of removal, and an acknowledgment by the President of an obligation to comply. He sends us his reasons, and in one case they are that he has no confidence in the man he has dismissed. Confidence cannot be commanded; it is the result of observation on character and conduct, on a thousand indescribable impressions. But a majority of the Senate say we have confidence in him. What is to be the result? Is he to be restored to office? No one pretends it: What then? The grand remedy to punish the President for his want of confidence in an officer whom he has not appointed, is to adopt the plan of the Senator from Delaware, and leave the office vacant. The whole reasoning on the general question of the right of the Senate to participate in removals, applies with the same force to this power of inquiring into the causes of removals; both are gratuitously assumed in argument; both are destitute of either express or implied authority in the constitution; both lead to absurd consequences, and to impracticable results; ruinous, if they were practicable.

But I deny that the remedy proposed (ruinous and extraordinary as it is) could be applied. The offices would not, in my opinion, remain vacant. The President would have a right to fill them, and would certainly exercise that right; the expressions used in the constitution are general: he shall have a right to "fill all vacancies that may happen during the recess of the Senate." Now, sir, in the case supposed, the vacancy arises when the commission expires; when is that? At the end of the session? When is the end of the session? Certainly not before the be-

ginning of the recess; not at any moment while the session continues. An official act, done at the last instant of the session, would be well done. The vacancy then happens at the first instant of the recess; but the constitution makes no distinction whatever; whether at the first moment or the last day is immaterial. When I use this argument, I am free to admit that I do not think the framers of the constitution did intend to provide for so extraordinary a case as that which the ingenuity of the Senator from Delaware has imagined, of the Senate rejecting all the nominations of the President, successively, because they might be dissatisfied with a removal. But the words of the constitution permit the exercise of his powers to fill all vacancies, whenever they should occur—with the advice of the Senate, if in session; without it, by temporary appointment, when they are not. The exercise of the extraordinary and destructive power contended for never certainly entered into their minds; it was left for the ingenuity of our times to discover. But, it has been said that this power is liable to abuse; the President may remove from caprice, prejudice, or a worse motive. No doubt, sir, he may; he may do worse; he may embroil you with foreign nations, by his abuse of the treaty making power; he may cause your fortifications to be dismantled and your army to be dispersed in time of war; he may destroy your revenue by the appointment of corrupt men in the management of the treasury: but what argument can be drawn from this? That he has not the constitutional power? Certainly not. But if the President might abuse the power of removal, may not the Senate abuse the control with which it is attempted to invest them? If he has enemies to displace, may not they have friends to keep in? If he is liable to be actuated by political feelings, are bodies, constituted as this is, at all times free from their influence? The President has the power to remove, it is said again, but only for just cause; but who is to judge of what is just cause? not the Senate, or if so, the power would be theirs, not the President's; he must himself be the judge, or else it would be a solecism to say that he has the power; he must judge and he must act, as I have said, uncontrolled but by his responsibility to the laws for corrupt acts; to his country for those which are indiscreet or erroneous.

This, sir, is my view of the constitutional power of the President in relation to removals—a power, in my view of it, vested solely in him, and for the due exercise of which he must bear the sole responsibility. I will not consent to divide it with him. No terms seem sufficiently energetic for the gentlemen to express their disapprobation of the manner in which the President has exercised this power. As it is their only subject for declamation and invective, it would be cruel to deprive them of it; but, by their own showing, are they not accusing without evidence? Why all these attempts to call on the President for his reasons of removal, if they already know he has none? Why call for evidence if they already have it? If these proofs of corruption, of favoritism, of persecution, are sufficient, plead the cause before the people, or prefer accusations of impeachment in the other House; but do not render yourselves, by prejudging the cause, liable to be challenged for the favor, or, by bold accusation, endeavor to influence the minds of your fellow judges with your own prejudices! If their doctrine be true, as it undoubtedly is, that, for corruption in the exercise of this as well as any other function, the First Magistrate is liable to impeachment; and if they believe, as they repeatedly allege, that there is evidence of it in the late removals; I put it to them whether they are correct in showing a feeling inconsistent with the calm investigation that becomes a judge. If, on the contrary, as I am more inclined to believe, the warmth that has been expressed arises only from a feeling for political friends, who have lost their places, are not the expressions they have used

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highly exaggerated? and ought they not to have been suppressed? But if there has been, in their opinion, an indiscreet use of the power, let them plead the cause before the people, who have the power to apply the remedy. To them the President is responsible, and to them, I have little doubt, his conduct will appear, as on other occasions it has done, correct, upright, disinterested, and intended for their best advantage. Yet, sir, if the contrary be proved, I shall, as a Senator and an individual, hold myself open to the conviction that evidence may produce.

I had almost forgotten [said Mr. L.] a complaint that this body was deprived, by Executive appointments, of one-eighth (I think that was the alleged proportion) of its members. There is only one view of the subject by which this can be considered as matter for reprehension. But that is one so derogatory to the dignity of this body, that I can scarcely think it was so intended. A Senator of the United States, dividing with a single colleague the representation of a sovereign State; the constitutional adviser of the President in appointments, and the formation of treaties; a judge of the High Court of Impeachments, to which the President is himself amenable; holds a station superior in importance and honor to any the Executive can give.

Whoever, therefore, quits it for one of the Departments, must be considered as having made a sacrifice rather than accepted a reward. The President's recommendation of a change in the constitution, which should disqualify members of the Legislature from office, has been alluded to as inconsistent with his practice. To this, it appears to me, his message gives a satisfactory answer; and it may be added, that the refusal by any of the States to adopt the amendment he suggested, afforded a conclusive proof, that neither the States nor the people desired that the requisite talent and fitness for office should be excluded, because it was found in the Legislature. In these appointments, then, the will of the people has been pursued, provided the choice has fallen on persons properly qualified; but this we cannot question: for we have concurred in all the appointments.

I now approach a graver subject—one on the true understanding of which the Union, and of course the happiness of our country, depends. The question presented is, that of the true sense of that constitution which it is made our first duty to preserve in its purity. Its true construction is put in doubt; not on a question of power between its several departments, but on the very basis upon which the whole rests; and which, if erroneously decided, must topple down the fabric raised with so much pain, framed with so much wisdom, established with so much persevering labor, and for more than forty years the shelter and protection of our liberties—the proud monument of the patriotism and talent of those who devised it, and which, we fondly hoped, would remain to after ages as a model for the imitation of every nation that wished to be free. Is that, sir, to be its destiny? The answer to that question may be influenced by this debate. How strong the motive, then, to conduct it calmly; when the mind is not heated by opposition, depressed by defeat, or elated with fancied victory, to discuss it with a sincere desire, not to obtain a paltry triumph in argument, to gain applause by tart reply, to carry away the victory by addressing the passions, or gain proselytes by specious fallacies, but, with a mind open to conviction, seriously to search after truth—earnestly, when found, to impress it on others. What we say on this subject will remain; it is not an every day question; it will remain for good or for evil. As our views are correct or erroneous; as they tend to promote the lasting welfare, or accelerate the dissolution of our Union; so will our opinions be cited as those which placed the constitution on a firm basis, when it was shaken or deprecatd, if they should have formed doctrines which led to its destruction.

With this temper, and these impressions of the import-

ance of the subject, I have given it the most profound, the most anxious, and painful attention; and differing, as I have the misfortune to do, in a greater or less degree, from all the Senators who have preceded me, I feel an obligation to give my views of the subject. Could I have coincided in the opinions given by my friends, I should most certainly have been silent; from a conviction, that neither my authority nor my expositions could add any weight to the arguments they have delivered.

My learned and honorable friend, the Senator near me, from South Carolina, [Mr. HATGE] comes, in the eloquent arguments he has made, to the conclusion, that whenever, in the language of the Virginia resolutions, (which he adopts) there is, in the opinion of any one State, "a palpable, deliberate, and dangerous violation of the constitution by a law of Congress," such State may, without ceasing to be a member of the Union, declare the law to be unconstitutional, and prevent its execution within the State; that this is a constitutional right, and that its exercise will produce a constitutional remedy, by obliging Congress either to repeal the law, or to obtain an explicit grant of the power which is denied by the State, by submitting an amendment to the several States, and that, by the decision of the requisite number, the State, as well as the Union, would be bound. It would be doing injustice, both to my friend and to his argument, if I did not add, that this resort to the nullifying power, as it has been termed, ought to be had only in the last resort, where the grievance was intolerable, and all other means of remonstrance and appeal to the other States had failed.

In this opinion I understand the honorable and learned chairman of the Judiciary Committee [Mr. ROWAN] substantially to agree, particularly in the constitutional right of preventing the execution of the obnoxious law.

The Senator from Tennessee, [Mr. GRUNDY] in his speech, which was listened to with so much attention and pleasure, very justly denies the right of declaring the nullity of a law, and preventing its execution, to the ordinary Legislature, but erroneously, in my opinion, gives it to a convention.

My friend from New Hampshire, [Mr. WOODBURY] of whose luminous argument I cannot speak too highly, and to the greatest part of which I agree, does not coincide in the assertion of a constitutional right of preventing the execution of a law believed to be unconstitutional, but refers opposition to the unalienable right of resistance to oppression.

All these Senators consider the constitution as a compact between the States in their sovereign capacity; and one of them [Mr. ROWAN] has contended that sovereignty cannot be divided; from which it may be inferred that no part of the sovereign power has been transferred to the General Government.

The Senator from Massachusetts, in his very eloquent and justly admired address on this subject, considers the Federal constitution as entirely popular, and not created by compact, and, from this position, very naturally shows, that there can be no constitutional right of actual resistance to a law of that Government, but that intolerable and illegal acts may justify it on first principles.

However these opinions may differ, there is one consolatory reflection, that none of them justify a violent opposition given to an unconstitutional law, until an extreme case of suffering has occurred. Still less do any of them suppose the actual existence of such a case.

But the danger of establishing on the one hand a constitutional veto in each of the States, upon any act of the whole, to be exercised whenever, in the opinion of the Legislature of such State, the act they complain of is contrary to the constitution; and, on the other, the dangers which result to the State Governments by considering that of the Union as entirely popular, and denying the existence of any compact; seem, both of them, to be so great,

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as to justify, and indeed demand, an expression of my dissent from both.

The arguments on the one side, to show that the constitution is the result of a compact between the States, cannot, I think, be controverted; and those which go to show that it is founded on the consent of the people, and, in one sense of the word, a popular Government, are equally incontrovertible. Both of the positions, seemingly so contradictory, are true, and both of them are false—true, as respects one feature in the constitution; erroneous, if applied to the whole.

These States, during the short period of the contest with Great Britain, which preceded the Declaration of Independence, although colonies in name, were, in fact, independent States, and, even at that early period, their political existence partook of this mixed character.

By a popular or consolidated Government, I understand one that is founded on the consent, express or implied, of the people of the whole nation; and which operates in all its departments directly upon the people.

By a federative Government, as contradistinguished from the former, I mean one composed of several independent States, bound together for specific national purposes, and relying for the efficiency of its operations on its action upon the different States in their political capacity, not individually upon their citizens.

In the incipient state of our political existence, we find traces of both of these features. When the oppressive acts of the mother country had excited the spirit of resistance, we find the colonies sending delegates to a General Congress; and, without any formal federative contract, that Congress assumed, by general consent, and exercised powers which could strictly be classed only under the head of such as belong to a consolidated Government. In order to effect a non-importation of goods from Great Britain, instead of operating through the agency of the separate colonies, and recommending that they should use their influence or authority to effect the object, the Congress addressed their recommendation to the merchants of all the united colonies individually. It is true this was only in the shape of a recommendation, not an imperative order; but this makes no difference in the argument: it was still an action of the Government, addressed to individuals of the colonies, not through the medium of the colonial authority, as would have been the case under a strictly federative compact. This was on the 19th of September, 1774. On the 27th of the same month, they proceeded more directly, and resolved that there should be no goods imported after a certain day, and that those so imported should not be used or sold; and a few days after, a resolution of non-exportation was entered into; the negotiation of British bills was prohibited, and besides levying and equipping a naval and land force on the continental establishment, they erected a Post Office Department, emitted money, and declared that persons refusing to receive the bills, on conviction, be deemed, published, and treated as enemies of the country. All these acts were, in a greater or less degree, direct operations of the general temporary Government upon the citizens, and, in that degree, were proofs of its character as a mixture of popular with a federative Government. After all these acts, and many more of the same nature, came the Declaration of Independence, in which they jointly declare themselves independent States, but still, it would seem, as one nation. In the preamble they assert the right, as "one people," to take the station, not the stations, to which they are entitled. The whole instrument complains of illegal and oppressive acts against them jointly.

After this decisive act, for more than two years the States, thus declared free, remained connected by no other bond than their common love of liberty and common danger, under the same authority of a general Congress, which continued to exercise all the powers of a mixed kind, which,

if they had been formally conferred, would have constituted a Government which could not properly be called either purely a federation of States, retaining all their sovereignty, or a consolidated Government, to which it had been surrendered.

The Confederation was at length entered into. This was certainly a compact between the States; but, among a number of stipulations strictly federative, contained others which gave to the Congress powers which trench upon the State sovereignties; to declare war and make peace; enter into treaties binding on the whole; to establish courts of admiralty, with power to bind the citizens of the States, individually, in cases coming under that jurisdiction; to raise armies, equip fleets, coin money, emit bills of credit, and other similar powers. The defects of this bond of union are well known: among these the most prominent was the want of a power, acting directly on the citizens, to raise a revenue, independent of the agency of the States. And it is a most instructive fact, that the common danger, though at times extremely imminent, during the continuance of the war, could never produce any kind of attention to the requisitions of Congress; yet there was no want of patriotism or attachment to the cause. Each State then possessed, on the subject of the requisition, the practical power of giving a veto to the operations they disliked, by refusing its quota; and the power was abused, and will always be abused, whenever it is the interest of the State possessing it to exercise that right.

In the Federal constitution this combination of the two characteristics of Government is more apparent. It was framed by delegates appointed by the States; it was ratified by conventions of the people of each State, convened according to the laws of the respective States. It guarantees the existence of the States, which are necessary to its own; the States are represented in one branch by Senators, chosen by the Legislatures; and in the other, by Representatives taken from the people, but chosen by a rule which may be made and varied by the States, not by Congress—the qualification of electors being different in different States. They may make amendments to the constitution. In short, the Government had its inception with them; it depends on their political existence for its operation; and its duration cannot go beyond theirs. The States existed before the constitution; they parted only with such powers as are specified in that instrument; they continue still to exist, with all the powers they have not ceded; and the present Government would never, itself, have gone into operation, had not the States, in their political capacity, have consented. That consent is a compact of each one with the whole; not, as has been argued, (in order to throw a kind of ridicule on this convincing part of the argument of my friend from South Carolina) with the Government which was made by such compact. It is difficult, therefore, it would appear, with all these characters of a federative nature, to deny to the present Government the description of one founded on compact, to which each State was a party; and a conclusive proof, if any more were wanted, would be in the fact, that the States adopted the constitution at different times, and many of them on conditions which were afterwards complied with by amendments. If it were strictly a popular Government, in the sense that is contended for, the moment a majority of the people of the United States had consented, it would have bound the rest; and yet, after all the others, except one, had adopted the constitution, the smallest still held out; and if Rhode Island had not consented to enter into the confederacy, she would, perhaps, at this time, have been unconnected with us.

But with all these proofs (and I think them incontrovertible) that the Government could not have been brought into being without a compact, yet I am far from admitting that, because this entered so largely into its origin, therefore there are no characteristics of another



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kind, which impress on it strongly the marks of a more intimate union and amalgamation of the interests of the citizens of the different States, which gives to them the general character of citizens of the united nation. This single fact will show, that the entire sovereignty of the States, individually, has not been retained: the relation of citizen and sovereign is reciprocal. To whatever power the citizen owes allegiance, that power is his sovereign. There cannot be a double, although there may be a subordinate fealty. The Government, also, for the most part, (except in the election of Senators, Representatives, and President, and some others) acts in the exercise of its legitimate powers directly upon individuals, and not through the medium of State authorities. This is an essential character of a popular Government.

I place little reliance on the argument which has been mostly depended on, to show that this is a popular Government: I mean the preamble, which begins with the words, "We, the people." It proves nothing more than the fact, that the people of the several States had been consulted, and had given their consent to the instrument. To give these words any other construction, would be to make them an assertion directly contrary to the fact. We know, and it never has been imagined or asserted, that the people of the United States, collectively, as a whole people, gave their assent, or were consulted in that capacity; the people of each State were consulted, to know whether that State would form a part of the United States, under the articles of the constitution, and to that they gave their assent, simply as citizens of that State.

This Government, then, is neither such a federative one, founded on a compact, as leaves to all the parties their full sovereignty, nor such a consolidated popular Government, as deprives them of the whole of that sovereign power. It is a compact, by which the people of each State have consented to take from their own Legislatures some of the powers they had conferred upon them, and to transfer them, with other enumerated powers, to the Government of the United States, created by that compact; these powers, so conferred, are some of those exercised by the sovereign power of the country in which they reside. I do not mean here, the ultimate sovereign power residing under all governments, democratic or despotic, in the people; a sovereignty which must always in theory exist, however its exercise may by foreign or domestic power be repressed; but I mean that power to regulate the affairs of a nation, which resides in its government, whatever the form of that government may be; and this may be, and generally is, distributed into several hands. As to all these attributes of sovereignty, which, by the federal compact were transferred to the General Government, that government is sovereign and supreme; the States have abandoned, and can never reclaim them. As to all other sovereign powers, the States retain them.

But the States have not only given certain powers to the General Government, but they have expressly given the right of enforcing obedience to the exercise of those powers. They have declared that "the constitution and the laws which shall be made in pursuance thereof shall be the supreme law of the land, any thing in the constitution or laws of any State to the contrary notwithstanding." And they have also expressly consented, that the Judiciary of the United States shall have cognizance of all cases coming under those laws. Here the words of the compact provide for the means by which controversies coming under it are to be decided; but this must be taken with the understanding that they are controversies arising not only under the laws of the United States, (including the constitution and treaties) but they must be between parties over whom the constitution has given jurisdiction to the courts. Every case, then, of this description, must be submitted to the Judiciary of the United States;

and as, in all cases, the constitution of the United States is paramount in authority to a law of the United States, and as both of them are so to a law of the State, the Supreme Court of the United States must, of necessity, when a contrariety between these authorities is alleged, in any case legally before it, determine that question, and its determination must be final; the parties must be bound; the States to which they belong must be bound; for they, in this compact, have agreed that their citizens shall be so. But it is asked, suppose the law of Congress is palpably contrary to the constitution, and endangers the liberties of the country, must the State submit? If the question be, whether the State can constitutionally resist, there is but one answer. She has by the constitution consented that the Supreme Court shall finally decide whether this be constitutional or not. If the question be, of the right which all people have to resist ruinous oppression, the answer is as clear; and I should be the last man in the world to contravene the existence of that unalienable right. But that is not the question; it is of a constitutional right, whenever, in the opinion of the Legislature, (or as some think, of a convention of the people of any one State) a law of Congress is palpably unconstitutional, such State has a right, under the constitution, not only to declare the act void, but to prevent its execution within the State, until Congress shall propose a declaratory amendment to the States, and their decision shall be obtained; and all this without quitting their place in the Union, without disturbing its peace, it is said; but, on the contrary, it is contended, for the purpose of preserving the general compact inviolate. Now, sir, independently of the argument drawn from the express consent of the people of the several States, that in all matters where the Supreme Court have jurisdiction between individuals, they should determine, and must determine whether a law be unconstitutional; independently of this, and supposing no such powers given to the court, can it be supposed that so essential a feature of the Government, as a positive veto given to, or reserved by each State, upon the operations of the whole, would have been left, not only unprovided for by express words, but without even an ambiguous phrase—a single doubtful word, to hang the argument upon? It is derived solely from the rights attached to the sovereignty of the States, unimpaired by its accession to the Union, indivisible, according to the argument of my learned friend from Kentucky, and always alive and active, (not one of those which he expressively says will keep cold) and ready to go into operation whenever it is attacked.

I have called it a positive veto on the operations of the whole Government. Is it not so in effect? That the right, when exercised by a single State, can only prevent the execution of the obnoxious law in the State alone which objects to it, does not take from the power the character I have given to it, is apparent. For, if the General Government were under an obligation to desist from executing the law in the opposing State, they must, of necessity, refrain from putting it in force in the others: if it were a tax, because they must be equal; if any other subject of legislation, imposing a burthen or restriction, they could not, in justice, force the others to bear what one was relieved from, nor would the other States submit to so unequal an imposition. The argument, then, supposes a feature in the constitution which certainly is not expressed in it, which, most assuredly, would have been expressed, if it had been intended: for it totally alters its character: puts the power of the Union at the will of any one of its members; and allows it, without risk, to throw off all the burthens of Government at its pleasure. Remember, sir, that I am speaking of a constitutional right; (for that is the one claimed) a right under the constitution, not over it; a power that may be exercised without incurring any risk, or committing any offence—without forfeiting a place in the Union, or any right or privilege

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under it. The State has only to resolve, by its ordinary Legislature, or, according to others, in a convention of its citizens, that a law enacted by the General Government is palpably unconstitutional and dangerous, and that it shall cease to operate, and it must cease to operate; and, as an inevitable consequence, it may be resisted by force; as another consequence, if death ensues, it is murder in those who act under the General Government; justifiable homicide in those who resist. Now, sir, would not these serious consequences have presented themselves to the enlightened men who framed this constitution? and, if they did, would not some provision have been made to prevent any illegal exertion of power by the Executive, fraught with such danger? If they had supposed that this was a right reserved, would they not have declared the correlative obligation in the General Government to respect it? For, sir, it is superfluous to say that every right carries with it its correspondent obligation, and that there cannot be two conflicting rights. If, then, the States have a right to prevent the execution of a law, the General Government is under an obligation to refrain from enforcing it; yet, instead of declaring this obligation to respect this reserved right, not the slightest allusion is made to it. On the contrary, when a law is once passed, it is made the duty of the President to execute it. But, by the argument, the law has been passed as constitutional by both Houses of Congress; it has been approved as such by the President; and a judgment has been given by the Supreme Court, declaring it to be constitutional, and directing that, in the particular case before them, it shall be executed. The State against whose citizen the judgment is given declares it to be palpably and dangerously contrary to the constitution, and that it is null and void, and shall not be executed. What is to be done? The right of the State, says the gentleman, must be respected; but, unfortunately for the argument, the constitution does not say so; unfortunately, it says directly the contrary. The President is bound by his oath to cause every constitutional law to be executed. But he has approved this law, therefore he believes it to be constitutional; but both Houses have passed it, therefore they believed it so; but the judges have decreed that it shall be executed; therefore, they, too, have believed it to be constitutional. Must the President yield his own conviction, fortified as it is by these authorities, to the opinion of a majority—perhaps a small majority—in the Legislature of a single State? If he must, again I say, show me the written authority. I cannot find it. I cannot conceive it. I am not asking for the expression of the reserved right; I know that they are not enumerated. But I ask for the obligation to obey that right; I ask for the written instruction to the Executive to respect it; I ask for a provision, that nothing but the grossest inattention, or the most consummate folly, could have omitted, if the doctrine contended for be true.

This might have been done by an article in these words: "Whenever, in the opinion of any one State, a law passed by the Congress shall be deemed unconstitutional and dangerous, such State may prevent its execution, and the President and the courts shall forbear to enforce the same; but Congress shall, in that case, if they persevere in thinking the law expedient, submit the question as an amendment to conventions of the States, in the manner prescribed by the constitution." Now, sir, the inquiry cannot be too often repeated, if such had been the intention of those who framed our form of government, or of those who adopted it, and considered and amended it, would not some expression of this kind have been inserted? and if inserted, would it not have been recommended or adopted? and, if adopted, how long would it have continued in operation? how many votes would have been interposed? how many conventions would have been assembled? Not an embargo, not a restriction, not a declaration of war,

not a measure for defence, not a tax or an impost, but would produce a stoppage in the wheels of the political machine; the most pressing operations of Government must be suspended until the amendments are proposed by Congress, until conventions are called in all the States, and they have made their decisions. It is unfortunately no answer to say that this power would not be abused; that the argument supposes it to accrue only in palpable cases. Let the constitutional right be acknowledged, let it be known that it may be exercised without risk, and local interest will always be strong enough to suggest constitutional scruples; not will common interest, the incalculable interest of our Union, be a sufficient argument. When was the interest of union more apparent than during the latter years of the Revolutionary war, and those which immediately succeeded the peace? Yet, when was the apathy of the States more apparent to the considerations of common good? When were local interests more consulted? When was it more difficult to procure the slender contributions which each State was bound to furnish to the common fund? It is a most important truth, that the existence of the General Government must depend on that feature which permits the exercise of all its legitimate powers directly upon the people, without the intervention of the States. Make that intervention necessary for the execution of those legitimate powers, or permit it to arrest them in cases which the States may deem illegal, and your Government is gone; it changes its character; it becomes, whatever other features you give to it, essentially an inefficient confederation, without union at home, without consideration abroad, and must soon fall a prey to domestic wars, in which foreign alliances will necessarily intervene to complete its ruin. No, sir; adopt this as a part of our constitution, and we need no prophet to predict its fall. The oldest of us may live long enough to weep over its ruins; to deplore the failure of the fairest experiment that was ever made, of securing public property and private happiness, based on equal rights and fair representation; to die with the expiring liberties of our country, and transmit to our children, instead of the fair inheritance of freedom, received from our fathers, a legacy of war, slavery, and contention.

But it is asked, will you deny to the States every portion of their former sovereignty? Will you call this, with the Senator from Massachusetts, a strictly popular Government? Will you deny them all right of intervention, and reduce them to the condition of mere corporations? Do you renounce the doctrines for which you contended in 1798, and consider the Supreme Court as the umpire provided in all cases to determine on the extent of State rights? God forbid that I should hold such doctrines. If my friends had stopped at the declaration that they adopted the resolutions of the Virginia Legislature, I should not, perhaps, have thought the difference between us of sufficient consequence to have troubled the Senate with my opinions. For the most part, I coincide in the sentiments of those resolutions; but my friends carried them out into their practical consequences farther than, I think, they warrant; farther, certainly, than I am willing to follow them.

As I understand them, they assert the right of a State, in the case of a law palpably unconstitutional and dangerous, to remonstrate against it, to call on the other States to co-operate in procuring its repeal, and, in doing this, they must, of necessity, call it unconstitutional, and, if so, in their opinion, null and void. Thus far I agree entirely with the language and substance of the resolutions. This, I suppose, is meant by the expression, interpose for arresting the progress of the evil. I see in those resolutions no assertion of the right contended for, as a constitutional and peaceable exercise of a veto, followed out by the doctrine that it is to continue until, on the application of Congress for an amendment, the States are to decide.

If these are the true deductions from the Virginia resolutions, I cannot agree to them, much as I revere the authority of the great statesman whose production they are. I cannot assent to them; and it is because I revere him, and admire his talents, that I cannot believe he intended to go this length. I cannot believe it, also, for another reason. He thought, and he conclusively proved, the alien and sedition laws to be deliberate, unconstitutional, and dangerous acts; he declared them so in his resolutions. Yet, sir, he never proposed that their execution should be resisted; he never uttered or wrote a word that looked like this doctrine, now contended for, of a constitutional right to arrest the execution of the law until amendments could be proposed. The right he asserted, when he alludes to resistance, was one that all acknowledge, that of opposition to intolerable and unconstitutional oppression. Mr. Jefferson, in the Kentucky resolutions, has used a word of equivocal authority, as well as signification: he asserts the right of a State to "nullify" an unconstitutional act. If he means by this any thing more than is contained in the Virginia resolutions, he must apply it to the extreme case of resistance, on the right of which there can be no contrariety of opinion: for Mr. Jefferson does not, if I read him aright, avow, any more than Mr. Madison does, the right now contended for, of a State veto, with its consequences. This, it appears to me, is a more modern invention, and, as I think I have proved, utterly incompatible with the nature of our Government. Was it ever conceived, before the present day, to form a part of it? If it was, why is it not alluded to in any of the debates of the Federal convention which framed, or the State conventions which adopted it? Surely it is of sufficient importance to have attracted attention, either as an advantage or an objection; yet not a word is said about it. Nay, more, if we refer to that luminous exposition of the whole character of the General Government, and of its expected operation, "The Federalist," not a word can be found that favors this idea of a veto, now for the first time set up as a part of our constitution. The constitution, its advocates, its opposers, the great contemporary exposition of its character, the practice under it for forty years, all silent on so important, so fundamental a doctrine! Is not this a fair, I might say a conclusive argument that it does not exist; that it is what I have indicated it to be, a modern invention? But this is not all: the case of a conflict of authority between the General and State authorities, under the new Government, was one that could not escape the foresight of the authors of "The Federalist." A series of chapters on this, and subjects connected with it, are found in that collection, written by Mr. Madison. Here would have been the place, certainly, to have developed the character and operation of this legal veto, if, in his opinion, it had existed. He could not have been silent on the subject. It is impossible that he could then have held the doctrines which are erroneously, in my opinion, said to be those of his Virginia resolutions. In the 44th number, in arguing the necessity of the article which makes the laws of the United States, made in pursuance of the constitution, paramount to the State constitutions, he says, if the State sovereignty had been left complete in this particular, among other absurd and dangerous consequences, "The world would have seen, for the first time, a system of government founded on an inversion of the fundamental principles of all government; it would have seen the authority of the whole society every where subordinate to the authority of the parts: it would have seen a monster in which the head was under the direction of the members." And, as more immediately applicable to the present subject, in the 46th number, he gives expressly what he supposes the only remedy for an "unwarrantable," by which he must mean unconstitutional measure. "On the other hand, (he says) should an unwarrantable measure of the Federal Govern-

ment be unpopular in particular States, which would seldom fail to be the case, or even a warrantable measure be so, which may sometimes be the case, the means of opposition to it are powerful and at hand." Now, sir, if the new doctrine were the true one, if the veto were a constitutional measure, now we should hear of it! What more powerful? What more at hand? What more effectual? Why look for any other? Yet this constitutional right, so clearly deducible from the very terms of our national compact, never occurred to the very man whose doctrines, in 1798, are said erroneously, I again repeat, to embrace it. What are the remedies which he there points out? "The disquietude of the people, their repugnance, and, perhaps, refusal to co-operate with the officers of the Union, the frowns of the Executive magistracy of the State, the embarrassments created by legislative devices, which would often be added on such occasions, would oppose, in any State, difficulties not to be despised; would form, in a large State, very serious impediments; and where the sentiments of several adjoining States happened to be in unison, would present obstructions which the Federal Government would be hardly willing to encounter." These were the sentiments of Mr. Madison, in 1787; and such, I think, is the true construction of his language in 1798. For he goes on, in the same paper, to follow up the consequences of a perseverance of the Federal Government in unconstitutional measures, into the only result that all agree must, in extreme cases, happen—a resistance by force; and that he may not be misunderstood, makes it analogous to the case of the colonial resistance to Great Britain.

Although, in my opinion, in every case which can lawfully be brought within the jurisdiction of the Supreme Court, that tribunal must judge of the constitutionality of laws on which the question before them depends, and its decrees must be final, whether they affect State rights or not; and, as a necessary consequence, that no State has any right to impede or prevent the execution of such sentence; yet I am far from thinking that this Court is created an umpire to judge between the General and State Governments. I do not see it recorded in the instrument, but I see it recorded that every right not given is retained. In an extreme case that has been put, of the United States declaring that a particular State should have but one Senator, or should be deprived of its representation, I see nothing to oblige the State to submit this case to the Supreme Court; on the contrary, I see, by the enumeration of the cases and persons which may be brought within their jurisdiction, that this is not included; in this the injured State would have a right at once to declare that it would no longer be bound by a compact which had been thus grossly violated.

I consider the existence of the States, with that portion of their sovereignty which they have reserved, to be a most invaluable part of our Government; their rights should be most zealously watched over and preserved—preserved but not enlarged. An organized body, ready to resist either Legislative or Executive encroachment, round which the people, whenever oppressed, may rally, will always keep oppression in awe; they are an intermediate corps between the people and the Federal Government, and being a permanent one, they answer the same end in our Government that a hereditary aristocracy does in some others. They check the power of the federative head, while they themselves are kept within constitutional bounds by the direct operation of the general laws on their citizens through the Judiciary. Their agency and its effective utility were shown in 1798, in the stand which Virginia and some other States took against the obnoxious alien and sedition laws. They reasoned, they remonstrated, they appealed to the high feelings of patriotism and freedom, as well as to the understanding of the people; they demonstrated the usurpation of the power which

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had enacted these laws; they proved to conviction that they were void; and this had the desired effect. But they did not declare that the laws should not be executed; they did not array the force of the State against the decrees of the Judiciary; they did not interpose, or threaten to interpose, their constitutional veto.

But if the power contended for, on the one side, be dangerous, the doctrine by which it is opposed, on the other, seems no less so. If this be strictly a popular Government, as contended for by the Senator from Massachusetts, that is to say, a Government formed by the people of the United States, considered in one mass, without any consideration of the relation in which they stand to each other as citizens of different States, then the following important consequences follow. Not a denial of State rights, as has, I think, been incorrectly and unjustly, in and out of the House, charged to the Senator's argument: he expressly, as I understand him, acknowledges that they retain all that are not given to the General Government. But, sir, although his argument acknowledged the existence of the reserved rights, yet it took away the means of preserving them. If it be a popular Government in the sense I have described, then what a majority of the whole people will, must be executed, and rightfully executed. If this be the true construction of our fundamental compact, then, in any future changes that our situation may call for, the people of a few large States, making a majority of the whole number of voters, must give the law to the greater number of States, and may materially and injuriously alter or totally destroy the Union, which the argument supposes not to be a compact between the States, but the work of the people, that is to say, the whole people of the nation. It will be no answer to this to say, that alterations cannot be made in the constitution but by the assent of the States; because, if there is no compact, there is no injury to the States, any more than there would be by altering the boundaries or the representation of a county; or giving to or taking from it advantages which were enjoyed under a State constitution. The majority of the people of a State may do this at their pleasure, with regard to a county; so might a majority of the people of the United States do, with regard to a State, if the Government has the same popular character in the one instance that it has in the other. As to the impediments imposed by the constitution to the power of making alterations, by the clause which designates the mode in which they are to be made, by the assent of a requisite number of States, it affords no insurmountable difficulty. If the Government was made by the people, the same people have the right to alter it, and a majority may alter that clause with the same ease and the same right that they change any other in the constitution. It is plain, therefore, that this argument places three-fourths of the States at the mercy of one-fourth of their number. Six States having on an average a million of inhabitants each, form a majority of the population. In a popular government, the will of the majority must be obeyed in making or altering constitutions as well as laws; therefore, if this be a popular Government, without any feature of compact in it, there is plainly no security for even the existence of the State Governments under it. It is true, that the argument allows to them certain rights; but if those rights were the result of the will of the people, expressed by their adoption of a popular Government, is it not clear that whenever that will changes, and another kind of Government is preferred by a majority, the rights are gone, and rightfully gone? In short, the doctrine puts the States precisely in the situation of counties, or any other political division of a consolidated Government.

It is true, that, while the present form of Government exists, States are necessary for its organization; but if it be simply popular—if no compact enters into its composition, the State agency may be easily dispensed with in the new changes that a majority may deem expedient.

Observe, sir, that, by popular government, the Senator does not mean one adopted or made by the people of each State, acting separately in their State capacity; if he did, there would be no dispute: for it cannot be denied, that the constitution was adopted by the people of each State in its separate convention. This would not contravene the idea of a compact, which his argument totally denies. He means, and so I understand him clearly to express, a Government framed by the people of all the States, acting in their aggregate capacity; and this doctrine, for the reasons I have stated, I think dangerous in the highest degree. Even if no attempt be made under it, it will, if acknowledged, lessen the dignity and utility of the State Governments; they will be considered as mere tenants of their power at the will of the Federal head; which will be looked to as the source of all honor and all profit. State rights will be disregarded, when held by so precarious a tenure; encroachments will be submitted to that would not be otherwise hazarded, until gradually we are prepared for a consolidated Government, which, on experiment, will be found to require more energy for its support over the extensive country which it must embrace; and then the dormant resolution on your Journals will be called up, and His Highness the President of the United States will be invested with dictatorial or protectorate powers, for an enlarged term, for life—and at last with reversion to his children. Sir, this is the natural consequence of the doctrine, should it be acquiesced in as correct, but not carried into effect in an immediate attempt against the State-sovereignities. Suppose, however, the reverse should take place, and the citizens of a number of States, sufficient to constitute a large majority of the inhabitants of the Union, should become converts to the Senator's doctrine, and determine to exercise the lawful right which a majority of every consolidated Government has, to change the constitution. The minority of numbers, constituting, perhaps, two thirds of the number of States, are incredulous, and entertain the heretical opinion that there were certain portions of their State sovereignty never surrendered, and which they deem it a duty to defend. Can no case be imagined that may, by a diversity of local interests, produce such a state of things? and can the consequences be calmly considered by any lover of his country?

The most dangerous of all errors are those which give false impressions of fundamental political rights. When firmly convinced that they are true, it is thought a duty to defend them at the risk of life—at the expense of fortune. The tranquillity of the country is sacrificed, its institutions destroyed, and its dearest interests disregarded, by men, who, with the purest intentions, have adopted on trust the opinion of others, in whom they have confidence; and who are taught to believe that disobedience to legitimate authority is resistance to oppression, or the exercise of an unauthorized power is the assertion of a constitutional right. This consideration alone, it appears to me, should make us most tremblingly apprehensive of inculcating any new doctrine of this character; and it has made me scan with greater attention those which have been offered in this important branch of the debate. But, with a becoming distrust of my own judgment, and a proper respect for that of the Senators who have preceded me, I cannot but see, in the doctrines of all, excepting only those of my friend from New Hampshire, [Mr. Woodbury] dangers of the gravest cast. Those I have endeavored respectfully but decidedly to point out, and to state what are my own views on the subject, that they may be weighed and compared. I resume them.

I think that the constitution is the result of a compact entered into by the several States, by which they surrendered a part of their sovereignty to the Union, and vested the part so surrendered in a General Government,

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*Mr. Foot's Resolution.*

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That this Government is partly popular, acting directly on the citizens of the several States; partly federative, depending, for its existence and action, on the existence and action of the several States.

That, by the institution of this Government, the States have unequivocally surrendered every constitutional right of impeding or resisting the execution of any decree or judgment of the Supreme Court, in any case of law or equity, between persons, or on matters, of whom, or on which, that court has jurisdiction, even if such decree or judgment should, in the opinion of the States, be unconstitutional.

That, in cases in which a law of the United States may infringe the constitutional right of a State, but which in its operation cannot be brought before the Supreme Court, under the terms of the jurisdiction expressly given to it over particular persons or matters, that court is not created the umpire between a State that may deem itself aggrieved, and the General Government.

That, among the attributes of sovereignty retained by the States, is that of watching over the operations of the General Government, and protecting its citizens against their unconstitutional abuse; and that this can be legally done—

First, in the case of an act, in the opinion of the State palpably unconstitutional, but affirmed in the Supreme Court in the legal exercise of its functions;

By remonstrating against it to Congress;

By an address to the people, in their elective functions, to change or instruct their Representatives;

By a similar address to the other States, in which they will have a right to declare that they consider the act as unconstitutional, and therefore void;

By proposing amendments to the constitution, in the manner pointed out by that instrument;

And, finally, if the act be intolerably oppressive, and they find the General Government persevere in enforcing it, by a resort to the natural right which every people have to resist extreme oppression.

Secondly, if the act be one of those few which, in its operation, cannot be submitted to the Supreme Court, and be one that will, in the opinion of the State, justify the risk of a withdrawal from the Union, that this last extreme remedy may at once be resorted to.

That the right of resistance to the operation of an act of Congress, in the extreme cases above alluded to, is not a right derived from the constitution, but can be justified only on the supposition that the constitution has been broken, and the State absolved from its obligation; and that, whenever resorted to, it must be at the risk of all the penalties attached to an unsuccessful resistance to established authority.

That the alleged right of a State to put a veto on the execution of a law of the United States, which such State may declare to be unconstitutional, attended (as, if it exist, it must be) with a correlative obligation on the part of the General Government, to refrain from executing it, and the further alleged obligation, on the part of that Government, to submit the question to the States, by proposing amendments, are not given by the constitution, nor do they grow out of any of the reserved powers.

That the exercise of the powers last mentioned would introduce a feature in our Government not expressed in the constitution, not implied from any right of sovereignty reserved to the States, not suspected to exist by the friends or enemies of the constitution, when it was framed or adopted, not warranted by practice, or cotemporaneous exposition, nor implied by the true construction of the Virginia resolutions in '98.

That the introduction of this feature in our Government would totally change its nature, make it inefficient, invite to dissension, and end, at no distant period, in separation; and that, if it had been proposed in the form of an expli-

cit provision in the constitution, it would have been unanimously rejected, both in the convention which framed that instrument, and in those which adopted it.

That the theory of the Federal Government, being the result of the general will of the people of the United States, in their aggregate capacity, and founded, in no degree, on compact between the States, would tend to the most disastrous practical results; that it would place three-fourths of the States at the mercy of one-fourth, and lead, inevitably, to a consolidated Government, and, finally, to monarchy, if the doctrine were generally admitted; and, if partially so, and opposed, to civil dissension.

These being my deliberate opinions on the nature and consequences of the constructions hitherto given of the Federal compact, and the obligations and rights of the States under it; deeming those constructions erroneous, and, in the highest degree, dangerous to the Union, I felt it a duty to my place, and to my country, to say so. Having done this, I ought, perhaps, to stop. But, sir, I dare not! I dare not stifle the expression of apprehensions which have fastened upon my mind.

It would be useless affectation to pretend ignorance of the discontent that prevails in an important section of the Union; its language is too loud, too decisive, too menacing, not to have been heard, and heard with the deepest concern. It has already been more than once alluded to, in this debate, in terms of severest censure. I shall not assume that tone, although I cannot but deprecate the light manner in which the greatest evil that can befall us is spoken of, as if it were an every day occurrence. Arguments for and against the dissolution of the Union are canvassed in the public papers; form the topic of dinner speeches; are condensed into toasts; and treated, in every respect, as if it were "a knot of policy that might be unloosed familiar as a garter." Sir, it is a Gordian knot, that can be severed only by the sword. The band cannot be unloosed until it is wet with the blood of brothers. I cannot, therefore, conscientiously, be silent; and, humbly as I think of my influence or powers of persuasion, I should feel myself guilty if they were not exerted in admonition to both parties in this eventful controversy. The tariff is the prominent grievance that excites the discontents in some of the Southern States, and particularly in South Carolina. It is denounced as unconstitutional, injurious to the whole country, ruinous to the South, and beneficial only to a particular interest in the North and East. My sentiments on this subject may be expressed in a very few words. A decided convert to the free trade system, I think it may be departed from in the few cases in which restrictions may be used, with a hope of producing a relaxation of similar restrictions by a foreign Power. I therefore believe the present tariff unwise, unequal, and oppressive in its operations, but I cannot think it unconstitutional. And I consider one of its worst consequences to be, that, when it has been long persisted in, and considered as the settled policy of the nation, so much of the capital and population of the country may be employed in the manufactures protected by it, as to make it a matter of serious calculation whether a sudden and total abandonment of the policy may not produce greater evil to the whole nation than the benefit to be expected from throwing open the trade. With these opinions on the subject of the Southern discontents, I enter largely into their feelings, and join them in lamenting a policy which operates so distressingly on their prosperity.

There is no doubt that, for some years past, the pecuniary difficulties of that part of the country have increased; that the value of property has diminished; and that, from a state of affluence, many of the citizens are, without extravagance or individual misfortune, greatly reduced in circumstances. But would it not be prudent calmly to consider whether all this distress is to be attributed to this

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one cause; whether the low price of the staples of that district (the immediate cause) has been produced by that measure; whether the actual price of imported goods, paying the duty, or the same kind of goods protected by it, have not, from other causes, been kept down nearly to their former value? And that, therefore, although they may lose the advantage which the fall of prices would have given, independent of the tariff, whether the actual expenditure is increased beyond that of former years; and if this should be the result, whether the evil is not of such a nature as may be borne, without recurring to extremities, in the hope, in the certain hope, that it will not be of long continuance.

For, sir, let them also consider the powerful agents that are at work for their relief. First, in point of efficiency, is the press. It may spread errors, but it also diffuses truths; and, with an intelligent, an educated people, such as ours, these last will ultimately prevail. Political Economy was but lately, with us, considered as a science: a false, but specious, and now exploded policy, usurped its place, under the imposing title of the American System. The true science was the subject of idle sneers and jests, by those who found it easier to adopt an old error than to study a new science, and to found political combinations upon sectional interests than to acquire popularity on the broad basis of the general good. These doctrines are in a course of examination; they cannot stand the test of theory, still less of practice. Sir, the professor is in his chair! the press is at work! and a powerful but demoralizing agent is demonstrating the truth of their science. The smuggler is abroad; his boats and cutters are in all your bays, and inlets, and rivers, on the Atlantic; his canoes are on your lakes; he is lurking in the woods of your frontier; and presently, sir, when your oppressive laws have become unpopular, he will come in at noonday, in defiance of them. You may seize and sue and prosecute; but when the feelings of the people, in such a Government as ours, are enlisted against the laws, you cannot execute them; and this is one of the worst consequences of the restrictive system—an unavoidable consequence. Oaths are disregarded, evasions of the law considered as proofs of genius; and the agent, or captain, who has most address in defeating the officers of the customs, is sure to be most employed. Let any one who doubts this look back to the times of non-intercourse and embargo. How many vessels bound from Charleston or New Orleans to New York, blown by irresistible gales from Sandy Hook to Liverpool; how many false log books, how many perjured protests, how many acquittals against evidence; presenting a mass of perjury, fraud, and combination to defeat the laws, perpetrated by men, in every other view respectable, but who had become contaminated by the corrupt influence of these demoralizing laws. In every country in the world, high duties have been defeated by illicit trade; it is inevitable; no cause is more certain of producing its effect; it will be so forever. If the morals of the country are correct, it will corrupt them. If the frontier is small and guarded, the officers will be bribed; if it is extensive, their vigilance will be avoided. If France, with thirteen thousand men, and England, with a fleet of revenue cutters, cannot prevent it, what can be expected from our insignificant revenue force, on a coast of more than two thousand miles, and an inland frontier of the same extent? These causes will disgust those, for whose exclusive use the system was intended, with its operation, and, at the same time, convince the people of its injustice. It is possible, also, that the improvements in machinery, and the competition fostered by the protection, may reduce the price of some of the domestic articles, so as materially to lessen the evil.

But, if these should fail, I cannot but place great reliance on an address to the justice of the nation, and do not believe, when, in the confidence of private correspond-

ence, the venerable Jefferson, in a moment of warmth and irritation, said of the Representatives of the nation, "that you might as well reason with the marble columns which surround them," that he uttered the cool dictate of his judgment. No, sir, he had a higher idea of the value of representation in Government. In a debate like this, on the importance of the Union, his genius would have drawn a different illustration from those objects which surround us, and sustain the dome under which we deliberate. What were they originally? Worthless heaps of unconnected sand and pebbles, washed apart by every wave; blown asunder by every wind. What are they now? Bound together by an indissoluble cement of nature: fashioned by the hand of skill, they are changed into lofty columns, the component parts and the support of a noble edifice, symbols of the union and strength on which, alone, our Government can rest; solid within, polished without; standing firm only by the rectitude of their position, they are emblems of what Senators of the United States should be, and teach us that the slightest obliquity of position would prostrate the structure, and draw, with their own fall, that of all they support and protect, in one mighty ruin.

A distrust of the justice and good feeling of one part of the Union by another, is a most dangerous symptom; it ought not to be indulged, even when occasional circumstances justify it. A distrust of the justice of the whole is still more fatal. How can we hope for ready obedience to our laws, if the people are taught to believe in a permanent hostility of one part of the Union towards another; and that every appeal made by reason and argument to their common head is vain? Perseverance will do much; for, even if the illustration which has been made of party obduracy, were just, we should remember that the hardest marble is worn by a succession of drops; much more may we hope that prejudice, however strong, will yield to the claims of justice, frequently enforced by a repetition of sound argument.

Mence is unwise, because it is generally ineffectual; and of all mences, that which strikes at the existence of the Union is the most irritating. Have those who thus rashly use it, who endeavor to familiarise the people to the idea, have they, themselves, ever done what they recommend? Have they calculated, have they considered, what one, two, or three States would be, disjointed from the rest? Are they sure they would not be disjointed themselves? That parts of any State, which might try the hazardous experiment, might not prefer their allegiance to the whole? Even if civil war should not be the consequence of such disunion—an exemption from which I cannot conceive the possibility—what must be the state of such detached parts of the mighty whole? Dependence on foreign alliances for protection against brothers and friends; degradation in the scale of nations; disposed of by the protocols of allied monarchs to one of their dependents, like the defenceless Greeks. But I will not enlarge on this topic, so fruitful of the most appalling apprehensions. Disunion! the thought itself, the means by which it may be effected, its frightful and degrading consequences, the idea, the very mention of it, ought to be banished from our debates, from our minds. God deliver us from this worst, this greatest evil. All others we can resist and overcome; encroachments upon individual or State rights cannot, under our representative Government, be long or oppressively persevered in. There are legitimate and effectual means to correct any palpable infraction of our constitution. Try them all before recourse is had to the menace of this worst of evils. But when an honest difference of construction exists, surely such extreme means or arguments ought not to be resorted to. Let the

\* The interior columns of the capital are of a beautiful marble, composed of variegated pebbles, united by a natural calcareous cement.

SENATE.]

Mounted Infantry Bill.

[MARCH 23, 1830.]

cry of unconstitutional oppression be justly raised within these walls, and it will be heard abroad—it will be examined. The people are intelligent; the people are just; and in time these characteristics must have an effect upon their Representatives. But let the cry of danger to the Union be heard, and it will be echoed from the White to the Rocky mountains; every patriotic heart will beat high with indignation; every hand will draw a sword in its defence. Let the partisans on either side of this argument be assured that the people will not submit to consolidation, nor suffer disunion; and that their good sense will detect the fallacy of arguments which lead to either.

Sir, I have done. I have uttered the sincere dictates of my best judgment, on topics closely connected with our dearest interests. I have, because it was my duty, uttered them freely; without reserve, but, I hope, without offence; with the respect that was due to the opinion of others, and with a becoming diffidence of my own. It would be a cause of great regret if I should have misapprehended the tendency of any of the doctrines of which I have spoken. It would have been a greater, if, thinking of them as I do, I had omitted the animal versions which I thought their consequences required.

Gentlemen have spoken, with patriotic enthusiasm, of the consolation they would receive, at their last moments, in seeing the flag of their country display to their dying eyes its emblems of union and glory. The period when mine must be closed in night is too near to refer to it the duration of my country's happiness. But I can anticipate for that beloved country a continuance of freedom and prosperity, long after the distant, I hope the far distant day, when the last of those honorable men shall have finished his useful career. I can apprehend for it the worst of evils before any one of them shall quit the stage. These hopes are founded on the exertions of active and enlightened patriotism to preserve the Union; these fears, on the madness of party that may destroy it.

[From the 16th to the 22nd of March, excepting Saturday and Sunday, the discussion of private bills and Executive matters chiefly consumed the hours of business of the Senate.]

TUESDAY, MARCH 23, 1830.

## MOUNTED INFANTRY BILL.

Mr. RENTON moved that all the bills preceding bill No. 119 should be postponed, for the purpose of taking up and considering that bill. The Senate agreed to the motion, and that bill was then taken up, and read by the Secretary. It consisted of a single section, and proposed to vest the President with authority to mount and equip ten companies of the army of the United States, to be employed as the public service might require, and appropriated the sum of ——— dollars for the purchase and equipment of the horses. After it was read, Mr. B. proposed to add a second section, to appropriate the sum of ——— dollars for purchasing forage for the horses for the remainder of the present year; stating that his object was to keep the appropriations for the different branches of the service distinct and separate. The motion to add the second section was agreed to; and, after stating that he should move, at the proper time, to fill the blank in the first section with thirty-three thousand seven hundred and fifty dollars, and that in the second one with eighteen thousand seven hundred and fifty, he [Mr. B.] entered into a particular examination of the nature of the bill, and advocated its policy and utility. He first remarked upon the terms, or phraseology of the bill, which were to authorize—not to procure—the President to cause the ten companies to be mounted; and which gave him a discretion over the number of camps

to be mounted, not exceeding the limitation expressed in the bill. Such a discretion was properly vested in the President, who, being charged with the defence of the country, and responsible for the safety of the frontiers, should have some authority to use the species of force which the occasion required; and that the present President preferred mounted men for the kind of service—defence against Indians—which this bill contemplated, was a fact as well known by the events of his military career as by the communication of his sentiments on the particular subject of this bill. The Missouri Legislature, the officers of the army on the Western frontier, and all the citizens of the West, interested in the question; the President, the Secretary at War, and the Quarter Master General, Jesup, have united their voices in favor of the species of force which this bill contemplates; and the granting of it may justly be considered as one of the highest objects of Western hope and desire. One object of the measure is, to give defence and protection to the trading caravans between Missouri and Mexico—caravans which annually bring home large sums of gold and silver, and now experience continued losses, in lives and property, for want of the species of protection which this bill proposes to give. Another object, and a more extensive one, is to provide an adequate and appropriate defence for the Western frontier, and that in its whole extent, from the Sabine to the Falls of St. Anthony, and thence to Green Bay, at the upper end of Lake Michigan. This line of defence is largely upwards of a thousand miles in length, covering the frontiers of Louisiana, Arkansas, Missouri, Illinois, and the new territory upon the upper Mississippi. To those two objects a third one, also of great importance—the security of the fur trade, now a dangerous pursuit to our own citizens on our own soil—must be added. For all those objects—for the just and necessary defence of the frontiers, the fur trade, and the Mexican trade—a mounted force is indispensable. The Indians who infest the frontiers, and attack the caravans and traders, are all mounted on fleet and durable horses, which live on grass, and are trained to war and hunting. They come, and go, like Arabs—the attack and the flight being instantaneous. Our soldiers are all on foot, and can oppose no appropriate movements to these sudden and flying assaults. They may repulse an attack, but they cannot pursue, cannot chastise, cannot reconnoitre; cannot venture to quit the column when marching; the camp, or the garrison, when stationary, without danger of being cut off, and that in sight of their companions, who are of horses are unable to get to their relief. The reports of all the officers from the West, and of all the caravans, attest the truth of this distressing fact. The country where these troops are to act is open and champagne. It is a connexion of interminable prairies, destitute of large forests, and covered with grass; it is the native theatre for horsemen, the prairies giving them a clear stage for action, and the grass furnishing subsistence for horses, and attracting and supporting game for the subsistence of men. This is the character of the country upon the whole frontier beyond the Mississippi, and indefinitely to the West. Every where—at every point—from the Sabine round to the Wisconsin, the open prairie country approaches the frontier, and lays open the settlements to the danger of inroads from mounted barbarians. Men, on foot, pursuing a march on such boundless plains, seem to stand still; Indians, mounted on horseback, gallop round them with impunity. They approach the garrisons; kill and scalp men in its view, and gallop off in triumph. A mounted force, on our part, is indispensable. It is the appropriate defence of the Western frontier. The ten companies provided for in the bill will give us that defence. They will make a corps of regular rangers, or land fencibles; such as all Governments have used, and such as we need more than any Government ever did. Every post, and

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Mounted Infantry Bill.

[SENATE.]

every garrison, from the Gulf of Mexico to the lakes—from Louisiana to Canada—should have its proportion of this mounted corps. When necessary, the companies at different posts may be united, and form an expedition, either to meet and repulse expected incursions of the Indians, or to pursue and chastise marauders, or to visit hostile towns. The service to which the corps can be applied is general and indefinite; it can go wherever the public interest requires. The Western frontier now demands it; but the Southern or Northern frontier may receive its aid when necessary. The horses may form the basis for cavalry, of which the army is now destitute; the men may be learnt the use of the sword and pistol, of which our magazines now contain a useless supply. Some companies of flying artillery may be trained. It will elevate the character of the service, induce better men to enlist, and diminish desertions by giving active and attractive employment. The President may mount the whole corps at once, or less; he has a discretion; he may mount a part now, and the remainder as necessity may seem to require. He may do as he thinks best; but, in my opinion, the whole ten companies will be little enough to guard the extended frontier of the West, and to perform the variety of service for which they are intended. Every year American blood is spilt upon American soil. Every year American citizens are killed and robbed, pursuing a lawful commerce, upon the soil of their country. The road to Mexico is stained with their blood; savage Indians are loaded with their spoils; families are reduced to want. In the region of the fur trade, where the Indians are excited by the British, the destruction of lives and property is horrible. The report of Gen. Clark and Gov. Cass, made at the last session of Congress, estimates the loss of lives, in this trade, at upwards of four hundred; the loss of property at about five hundred thousand dollars. The destruction of lives and property is still going on, and will go on, until the troops of the Federal Government shall make an appearance beyond the Mississippi, calculated to impress respect and fear upon the savage mind. Horses alone will enable them to make that appearance. General Ashley, with his mounted men, traverses the continent in safety; goes to the Buenaventura, and Multnomah, and returns in safety. For want of horses our soldiers are pursued, surrounded, insulted, harassed, and assassinated. Read the report of Major Riley, and see what his detachment suffered for want of horses. The mounted force is indispensable; it is the appropriate, and the only appropriate, defence for the West; it is the true and adequate, and the only true and adequate, protection for the fur trade, the Mexican trade, and the whole line of the Western frontier. It is the security, and the only security, for the tranquillity of the frontiers, the preservation of lives, and the protection of two great branches of Western commerce. This being shown, the great fact of the necessity of this species of force being established, I feel confident that the consideration of the expense that may attend it, which is the next point to be examined, will present but little difficulty to the Senate. The mounted force being necessary, the cost of it, I feel persuaded, will not be an over-ruling consideration, although that cost should be large, when, in point of fact, it will be small, and, in comparison to its object, inconsiderable and insignificant. Five hundred horses will be wanted for ten companies of fifty men each; the price of these horses, and their maximum price, will be fifty dollars each. This will make twenty-five thousand dollars for the purchase of the horses. Their equipment in saddles, bridles, halters, &c. will not exceed seventeen or eighteen dollars each. Seven or eight thousand dollars will defray the expense of equipment; so that the sum proposed for filling the first blank, thirty-three thousand seven hundred and fifty dollars, will meet the first and greatest expense to be incurred. Subsistence is the next item in expense. The

Quartermaster General, (General Jesup) estimates this item at fifty dollars a year for each horse, which is nearly a dollar a week; but I must differ from him in this estimate, and do it without derogating from his high and established character for correctness, because, living in the country where the horses are to be employed, I have a local knowledge on this subject which he could not possess. I reduce the expense of forage to less than one-half of his estimate. I make this reduction upon these data: First. The horses will live upon grass full one-half of the year; and that will reduce the Quartermaster General's estimate one-half. Secondly. The cost of keeping horses, among the farmers in Missouri, is about seventy-five cents a week, including care and attention as well as food; consequently soldiers can keep their own for less than a dollar a week, when forage alone is to be paid for; and of that forage, the hay will cost nothing, for the soldiers cut it in the prairies without expense, and haul it in with the garrison teams. Upon these data the annual subsistence of the horses will be nearer to twenty dollars than to fifty dollars each. I think ten thousand dollars will be enough for their annual forage; but I have proposed to fill the second blank with eighteen thousand seven hundred and fifty dollars for the remainder of the present year, according to the estimate of the Quartermaster, and leave it to time and experience to ascertain the true amount. This will make the total appropriation, for the present year, about fifty thousand dollars. For each subsequent year it will probably be about fifteen thousand dollars, say ten or twelve thousand dollars for forage, and the remainder to supply the waste of horses and equipments. This is nothing compared to the magnitude and variety of the objects which require the expenditure. It is nothing in comparison to the good to be accomplished. It is a grain of sand to a mountain, compared to the annual expenditures for Atlantic objects of defence; compared to the annual expenditures for fortifications for the defence of the sea coast; compared to the annual expenditure for navy yards, light houses, and ships of war, for the safety and accommodation of maritime commerce. But, small and inconsiderable as this expenditure for the mounted force appears, there is still another point of view under which it is to be looked at, and which reduces it still lower, and, in fact, annihilates it as an object of expense, and converts it into a piece of economy. It is this: That, for the want of these horses, large sums are now expended in chartering steamboats for moving troops in the Western country, and for volunteer mounted gun men. The infantry have to be transported; and for this purpose steamboats are chartered. They need horsemen, and for this purpose, mounted volunteers are accepted. Every Indian alarm on the frontiers renews the expense of these boats and volunteers; and the expense is heavy in proportion to the suddenness of the alarm, the magnitude of the apparent danger, and the distance to be traversed. The Illinois volunteers, which went to the Winnebago country three years ago, cost about forty thousand dollars. The Missouri volunteers, for the last summer, when the alarm broke out on the frontier of that State, are not yet paid, but their claims are considerable. On both occasions steamboats were chartered. The movement of Major Riley's detachment last summer must also have involved some expenditure for transportation. I know these various items to be considerable, and that they have been incurred, and must be incurred, just so long as we remain without horses. The exact amount of what has been expended heretofore is unknown to me; the amount that may be expended hereafter, cannot be foreseen. It will depend upon the frequency and magnitude of the alarms on the frontiers—alarms which must arise upon every point of a line, of more than a thousand miles in length, covering the settlements of Louisiana, Arkansas, Missouri, Illinois, and the new territory upon the Upper Mississippi.



SENATE.]

Purchasers of the Public Lands.

[MARCH 26, 1830.]

The amount of these casual and unforeseen expenditures may be safely assumed to be equal to the expense of keeping up the ten companies proposed in the bill. I make this assumption advisedly, and would be willing to stake the passage of the bill upon the quartermaster general's opinion of the fact, if the passage of such a bill, in the judgment of any statesman, ought to depend upon such a fact. In this point of view, and I fully believe it to be correct, the annual keeping up of the ten companies of mounted infantry will be no expense at all; there will be as much, or more, saved from steamboat transportation and mounted volunteers, as will balance the expense of these horses. At the same time the mounted horsemen will be infinitely more efficient, and incomparably more satisfactory to the West; so that the whole question of passing the bill reduces itself to the mere problem of good will to the Western country, without expense to the Federal treasury. Mr. B. concluded with expressing his thanks to the Senate for taking up the bill before its turn; stating the necessity for it to pass immediately, as the Santa Fe caravan would set out from Missouri in May; and declaring his readiness to answer any questions which might be put to him for the further information of any Senator.

Mr. SMITH, of Maryland, said he saw no objection to the passage of this bill. It read, that the number of men to be mounted was not to exceed ten companies, and of course, the President, at his discretion, would not cause that number to be mounted, if a less number should be found sufficient. This was, indeed, but an experiment, and, if it proved successful, it might become necessary to carry it further. He had examined into the subject and become fully acquainted with it, and was, therefore, satisfied of the utility and importance of the measure proposed by the bill. The trade to Mexico was very great, and the hazards to which it was exposed were equally great. It demanded protection; and this bill would operate in the same manner and on the same principle as the protection given by the Government to our merchant ships on the high seas.

The bill was then ordered to be engrossed and read a third time.

[On Wednesday, the 24th, and Thursday, the 25th of March, the Senate was chiefly occupied in the consideration of Executive business.]

FRIDAY, MARCH 26, 1830.

#### PURCHASERS OF THE PUBLIC LANDS.

On motion of Mr. FOOT, the bill for the relief of the purchasers of public lands was taken up; the question being on certain amendments to the amendments made by the House of Representatives, proposed by the Committee on Public Lands.

Mr. McKINLEY said that although he thought that the amendments, proposed by the Committee of the Senate, rendered the bill somewhat better than it was, as it came from the House of Representatives, yet, as it had been delayed so long, he thought it would do more good to the people for whose relief it was intended, to pass it and reject the amendments, than farther to delay the bill. This was his wish, and he hoped the Committee on Public Lands would consent to it. After some farther remarks from Mr. McK. the two amendments were rejected.

Mr. HENDRICKS said that, however much he regretted the necessity of retarding the progress of this bill, yet there was one amendment which he felt it his duty to propose. He regretted that the complexion of this bill had been so much changed since it passed the Senate. The whole bill had been stricken out, and the present substituted by way of amendment. The second section of the bill proposed to give a preference, in becoming the purchasers of relinquished lands, to those who had relinquished a pre-emption in favor of the persons in possession.

But the conditions of this pre-emption totally destroyed the benefit intended to be conferred. It required the person purchasing under this section of the bill to pay the present minimum price, and in addition thereto the amount paid before relinquishment, subject to thirty-seven and a half per cent on the last mentioned sum, provided that the whole amount shall not in any case exceed three dollars and fifty cents per acre. Now, [said Mr. H.] this is worse than the law as it now stands. As the law now is, the person in possession, it is true, must go into market and compete with others; but nobody will bid against him, and the result will be that the person in possession will get the lands he relinquished, at one dollar and twenty-five cents per acre. This section, however valuable it might be to other portions of the Union, brought no relief to the people he had the honor to represent. The effect of this provision would be to keep the relinquished lands so much longer out of market, for nobody would take the pre-emption given where the lands had originally been purchased at the minimum price, and where they can, after the termination of the prescribed time, be had at the present minimum price. Mr. H. then moved to amend the second section of the bill, by inserting in the 27th line, at the close of the first proviso, the following words: "And that the persons aforesaid, in all cases where the lands relinquished were originally purchased at the minimum price, shall have the right of pre-emption, as aforesaid, on payment of the present minimum price."

Mr. McKINLEY said that the amendment proposed by the Senator from Indiana (Mr. HARRISON) had his entire approbation, if the whole bill could be made to conform to it. But if he would examine, he would find this amendment in opposition to the whole policy of the bill. Many attempts had been made in Congress to relieve those who had relinquished their lands, and applied the payments made thereon to other lands retained. Several bills had passed the Senate for that purpose, and the great difficulty had always been in reducing lands which had originally sold at two dollars an acre, under the credit system, to one dollar and twenty-five cents, the minimum price under the cash system. The subject had often been referred to the Commissioner of the General Land Office, and he had invariably refused his sanction to any bill which did not give the treasury one dollar and twenty-five cents in addition to the first instalment. The present bill was submitted to him, which makes the minimum price three dollars and fifty cents; but does not relieve those who have purchased at two dollars an acre, from paying one dollar and twenty-five cents in addition to the first instalment. The relief intended by this bill for that class of purchasers is the deduction of thirty-seven and a half per cent. on the remaining instalments, and the additional advantage of taking scrip for the amount paid on all lands which did not cost more than two dollars and fifty cents per acre.

The relinquished lands are placed upon a better footing than those which had reverted, because the first instalment to be paid on those, was subjected to a discount of thirty-seven and a half per cent; which, upon land costing but two dollars, would bring the whole amount to be paid to but one dollar fifty-six and a quarter cents. The bill was not devised by either House. It was framed to suit the views of the Land Office, and calculated for the benefit of the treasury. It would prove altogether useless to those who might derive benefit from it, if impediments were thrown in the way of its passage at this period of the session. He hoped, therefore, that gentlemen would withdraw all amendments, and suffer it to pass in the shape it had been returned from the House, rather than run the risk of losing whatever good would result from it. There were large classes of citizens who would derive benefit from the provisions of the bill as it now stood. The pur-

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chasers of public lands, who had not yet fulfilled their engagements, and those whose lands had reverted to the Government for non-payment, would receive benefit from it. He observed, that, if the Senator from Indiana [Mr. H.] would examine the bill a little farther, he would find that the class of purchasers which he wished to protect, would ultimately have to pay only one dollar and fifty-six and a quarter cents per acre, after deducting the discount provided for by the bill. He observed that it was not such a bill as he was desirous of having; but, he believed, from the discussion and the modification it had undergone in the other House, that it could not be got through that House again, if embarrassed with any farther amendments. It was true it did not suit all, but we had to take such an one as we could get; not such as we would desire.

Mr. KING said he very much regretted that his friend from Indiana had thought it necessary to offer this amendment. Our objects are the same, [said Mr. K.] we both wish to extend relief to those who have been compelled, from inability to pay, to relinquish a portion of their lands necessary to their settlement; we both wish to keep the actual cultivators of the soil from the grasp of the speculator; and, sir, I am confident, if the Senator from Indiana had examined this bill with his usual attention, he would agree with me that these objects are fully and fairly attained. What, I would ask, are the provisions of this bill? The first section gives to those whose lands have been forfeited for non-payment of the purchase money the right to purchase them at private sale for the minimum price of the Government, in addition to the amount already paid and forfeited; but in no case shall the sum to be paid exceed three dollars and fifty cents the acre; with this the Senator from Indiana is perfectly satisfied. I will say to the gentleman, that the principle of the first section, of which he approves, is precisely the principle contained in the second, which he proposes to amend. No relinquished lands are to cost the purchaser more than three dollars and fifty cents the acre; this is the maximum. ~~Take the case put by the Senator: lands which cost two dollars the acre, have been relinquished; the payment made was fifty cents; from this sum, thirty-seven and a half per cent. is to be deducted, and the remainder added to the minimum price of one dollar and twenty-five cents, which makes precisely one dollar fifty-six and a quarter cents the acre, the amount to be paid under this bill, for lands of this description. Is not my friend convinced, by this view of the provisions of this section of the bill, that he has labored under an error, when he supposed that the purchasers of two dollar lands would be compelled to pay more than the original cost? Is he not convinced that the section he proposes to amend is in strict conformity with the principle contained in the first section? And will he not, if convinced of the correctness of the view I have taken, consent to withdraw his amendment, which must, if persevered in, and with success, greatly delay the passage of this most important bill.~~

Mr. HENDRICKS replied that he understood the second condition of the first section of the bill more favorably to the purchasers of reverted lands than the Senator from Alabama. The case was one of sheer calculation. On the subject of reverted lands, to which the first section of the bill solely applied, the legal holder is permitted to obtain his final receipt and patent, by paying the residuary payments according to the present minimum, and on the principle of the land which expired on the 4th of July last. For instance, if there be three payments due, the purchaser gets his patent for a quarter section, on payment of one hundred and fifty dollars, where the land has originally been purchased at the minimum price. The second section applies to relinquished lands, and requires the pre-emption to pay on a quarter section the present minimum two hundred dollars, in addition to the amount paid before relinquishment, with a deduction of thirty-

seven and a half per cent. on such original sum. It is manifest, then, that the purchaser of relinquished lands has much harder terms than the person paying out lands reverted. If, on the reverted quarter section, there has been two instalments paid, all that remains to be paid by the bill is one hundred dollars. If, on the relinquished quarter section there has been two instalments paid, the purchaser is required by the bill to pay the whole minimum price, two hundred dollars, and also to pay the two instalments paid before relinquishment, getting thirty-seven and a half per cent. discount on them, making in all three hundred dollars. The Senators from Alabama [said Mr. H.] admit, that in cases of relinquished lands on which there had been one payment, and where it had been originally purchased at minimum cost, it would, according to this bill, cost the purchaser one dollar and fifty-six and a fourth cents per acre. Now this is exactly that of which I complain, and say it is unreasonable that these lands should cost more than one dollar and twenty-five cents per acre, because that is their price, if you say nothing about this in the bill; that is the present minimum. The bill will, as before said, have a tendency to keep these lands longer out of market, for nobody will give more than one dollar and twenty-five cents an acre for them. It will [said Mr. H.] be no advantage to the people I represent, unless giving a longer time for purchasers to prepare for the sales be an advantage.

Mr. McKINLEY said that, by referring to the second section of the bill, not a doubt would remain. He would read it, as follows:

"Sec. 2. *And be it further enacted*, That all purchasers, their heirs, or assignees, of such of the public lands of the United States as were sold on credit, and which lands have, by such persons, been relinquished under any of the laws passed for the relief of purchasers of public lands, and the amount paid thereon applied in payment of other lands retained by them, and which relinquished lands, or any part thereof, may now be in possession of such persons; or in case the certificate of purchase, and part payment of said lands, has been transferred by the persons now in the possession of said lands, or part thereof, or the persons under whom the present occupants may hold such possession, to some other person not in possession thereof, and the payment made thereon applied by such other person, or his assignee, in payment for land held in his own name: in either case, the persons so in possession shall have the right of pre-emption of the same lands, according to the legal subdivisions of sections, not exceeding the quantity of two quarter sections, [in contiguous tracts] until the fourth day of July, one thousand eight hundred and thirty-one, upon their paying into the proper office the sum per acre therefor, which shall, at the time of payment, be the minimum price per acre of the United States' public lands; and, in addition thereto, the same amount per acre heretofore paid thereon, and applied to other lands, subject to a deduction of thirty-seven and a half per centum on the last mentioned sum: *Provided*, That the sum to be paid shall not, in any case, exceed three dollars and fifty cents per acre: *Provided also*, That such persons only shall be entitled to the benefits of this section who shall apply for the same, and prove their possession to the satisfaction of the Register and Receiver of the district in which the land may lie, in the manner to be prescribed by the Commissioner of the General Land Office, within nine months from the passage of this act; for which such Register and Receiver shall each be entitled to receive from such applicants the sum of fifty cents, each: *And provided further*, That the provisions of this section shall not extend to any lands that have, in any manner, been disposed of by the United States."

He could not be mistaken, [Mr. McK. remarked] because the second section provided against the difficulty

apprehended by the gentleman; the cost, by any calculation, would only be one dollar and fifty-six cents per acre. Would the Senator from Indiana desire to place those who had relinquished their lands on a better footing than those who had retained them? Those who had retained their lands were certainly more meritorious than those who had relinquished, and obtained the benefit of their money in the purchase of other lands. He hoped, therefore, the gentleman would see the propriety of passing the bill as it was, and abandon his amendment.

Mr. McLEAN said that, when the amendment was first proposed, he was clearly of opinion that it ought to pass. If the bill was intended to do any good to Illinois and Indiana, the amendment ought to be retained, otherwise it would only benefit the State of Alabama. With us, [said Mr. McL.] land is never worth more than one dollar and twenty-five cents per acre, because there is much land in the market, and little demand for it. He was satisfied that the bill should pass without the amendment, as it would benefit Alabama, and do no injury to his State, except to postpone, for nine months, the purchase of relinquished lands; though the passage of the bill, with the amendment, would give to the citizens of Illinois an advance of nine months. The delay would occasion no great difficulty in his State, as one neighbor never purchased the land on which another is settled. The amendment would be a convenience to us, [said he] for, as the bill stands, it will be of no earthly benefit to us.

The question being taken, the amendment of Mr. HENDRICKS was rejected.

The amendments of the House were then concurred in.

#### OFFICE OF THE ATTORNEY GENERAL.

The bill "to re-organize the establishment of the Attorney General, and erect it into an Executive Department," was taken up for a second reading.

Mr. ROWAN rose to explain the objects of the bill, which, he said, was of importance to the fiscal concerns of the country, which have occasionally been injured by reason of the incompetency of the United States' District Attorneys. The Treasury would also be benefited by the enactment of the bill. It is provided that, after suit shall have been ordered in any case whatever, no Collector of a District, Clerk of a Circuit or District Court, United States' District Attorney, or any other person than the Marshal of the United States, shall be authorized to receive the money from any such debtor or debtors, but in all cases payment shall be made to the Marshal of the District where the suit has taken place. The duties of the Agent of the Treasury are, by the bill, transferred to, and vested in, the Attorney General. It has been also believed by the Committee that a transfer of the Patent Office to the Department of Law would be an improvement. It has been thought that all the duties connected with the Patent Office, which are now required by law to be performed by the Secretary of State, and all applications which are required to be submitted to him, ought to be performed by, and submitted to, the Attorney General. The Secretary has now to undergo considerable inconvenience and trouble by those duties being imposed upon him, and it has been deemed proper to consign them all, by bill, to the Attorney General. The bill also provides that the publication of the laws of the United States shall be done under the superintendence of the Attorney General—a duty which is now assigned to the Secretary of State. The Clerk who is now charged with this duty in the State Department is to be transferred to the Law Department. This measure has been suggested by the consideration that the Secretary of State may not be, as he is not required to be, a professional man. It is supposed that this duty can be better done by an individual who is still engaged in the profession of the law than by one who is not.

Mr. R. said he did not know whether the bill would be

objected to by any gentleman. If agreed to, it would relieve the State Department from those duties which have suggested the project of establishing a Home Department, a measure urged by the former Executive. The Secretary of State will then be left to the conducting of the foreign relations of the country, while the business of the Patent Office, and the superintendence of the collection of debts due the Government, will be confined to the Head of this Department. The Attorney General is to be the Head of the Law Department; he is required to superintend all suits in which the United States is a party; and his practice is confined to the Supreme Court—cases in inferior Courts to be conducted by deputy. All the duties performed by, and all the powers and authority vested in, the Agent of the Treasury, are proposed to be transferred to the Attorney General. We have been told [said Mr. R.] that the Government has sustained serious losses from the improper manner of collecting the revenue, and from the mode of prosecuting defaulters.

Mr. WEBSTER, in a sportive manner, warned Mr. R. not to infringe on the secret session discussions.

Mr. ROWAN said, he was not aware that he was guilty of any violation of the rules in what he said; and he then proceeded to state the evils resulting from the present mode of collecting the revenue, and of instituting suits against delinquents. These evils the bill was intended to remedy. The Attorney General is now a member of the cabinet; and this measure, if carried into effect, will not impose upon him more duties than what, as a member of the cabinet, he is now required to discharge.

[The bill further provided that an Assistant should be appointed by Congress to the Attorney General, who was also to act as Chief Clerk in the Law Department, at a salary of three thousand dollars per annum, besides Assistant Clerks, Messengers, &c. The salary of the Attorney General was to be placed on a level with that of the other Heads of Departments, namely, six thousand dollars per annum.]

Mr. WEBSTER said, this was a subject which certainly required consideration. He was opposed to the object of the bill altogether, although he agreed that the evils complained of, which it proposed to remedy, existed. The business of the Departments had outgrown the provision made for their establishment; the business had outgrown what the organization of the Departments contemplated, especially that of the State Department; and so far as the bill proposed to remedy this evil, the objects of it were justifiable. But it proposes to transfer the duties of the Patent Office, with its clerks and officers to the Attorney General—to the Law Department. Mr. W. objected to any measure which would give this anomalous, this ambiguous character to the Attorney General, while he was at the same time shut out from practising in any other than the Supreme Court of the United States. You would thus [said Mr. W.] turn him into a half accountant, a half lawyer, a half clerk—in fine, a half of every thing, and not much of any thing. The true course will be, to have a Home Department, if you choose to call it by that name; a Department, he meant, for the management of the internal affairs of the country. This subject had hitherto undergone discussion, and was referred to a select committee, of which he, in company with the Senator from Louisiana, [Mr. JOHNSON] had the honor to be a member. We recommended the organization of a Home Department, leaving the Attorney General as he is, a lawyer, to attend to the business of the Government in the Supreme Court. Mr. W. said he was also opposed to the provision of the bill transferring the duties and powers of the Agent of the Treasury to the Attorney General. The subordinate collectors of moneys ought to be attached to the Treasury; whoever is concerned in collecting the revenue ought to be under the Treasury Department, the Agent of which is one of the most important and useful officers we have. It requires a professional man—an

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Mr. Foot's Resolution.

[SENATE.]

appropriate character to fill it. The Agent of the Treasury has a jumble of duties to perform: he has to superintend all the light-houses &c. on the coast, and, in addition, is Agent for the Treasury in collecting the public debts. His [Mr. W's] object was to give force and efficiency to that office. He and a gentleman, formerly a member of the other House, who is now abroad, reported at one time a bill to establish an office to be called that of "Commissioner of Customs." Our object was to have appointed a competent man, who understood the laws, and could supervise the collection of the revenue—one who would be qualified to see that these laws received an uniform construction: for this was not, nor is it now, the case. Under the same law, different regulations had, to his own knowledge, been adopted in the custom houses of New York and Boston. The Boston Collector gave it one interpretation; the New York Collector gave it another; and the Treasury gave it a different interpretation from both, or, he believed, no interpretation at all. To tell the truth, the honorable gentleman to whom he alluded and he [Mr. W.] gave up the project, for already, in that stage of it, we had numerous applicants for the office, none of whom were competent to fill it. Every one who had lost a place of any description, who had been removed from a land office, or any other office, all who wanted employment in general or particular, were candidates for the situation of Commissioner of Customs. But our object being to appoint a competent man, we had to abandon the measure. The Attorney General had, in Mr. W's opinion, enough to do in the Supreme Court. He should be engaged in studying his books of law, instead of superintending the Clerks of either a Patent or Treasury office. He had not, he said, when he rose, any intention of occupying the Senate so long; his object was to ask the gentleman who reported the bill to consent to a postponement of the consideration of it, and appoint for it a particular day. It was necessary that some provision should be made to remedy the evils complained of, although he was opposed to the present bill. He would, when the subject was brought before the Senate again, take up the report accompanying the bill, to which he had adverted.

Friday next was then fixed upon for considering the bill.

MONDAY, MARCH 29, 1830.

The Senate was this day principally occupied in the consideration of Executive business.

TUESDAY, MARCH 30, 1830.

MR. FOOT'S RESOLUTION.

The Senate resumed the consideration of the resolution of Mr. FOOT, and Mr. JOHNSTON, of Louisiana, addressed the Senate as follows:

It is no vain ambition of display here, but a deep sense of my public duty, [said Mr. J.] that induces me to trespass on the time and patience of the Senate. I have waited until every gentleman has spoken: the topics are exhausted; the attention wearied; the excitement has passed away; and I have neither the spirit nor talent to revive the interest or give animation to the debate. The novel principles, and, as I think, the dangerous doctrines avowed here, as well as the extraordinary course pursued in the discussion, make it my duty to speak, however irksome the task, and however inadequately that task may be performed. The attack made here, in behalf of the West, upon the North, is of a character to make it necessary for me to disavow the sentiments, and to disclaim for myself and for my State any participation in the charge. If it was the object of the gentleman of Missouri [Mr. BAXTON] to transfuse his own feelings into the bosom of the West; if it was his purpose to excite prejudice there; if it was his design to wound the pride and sensibility of the North, by injurious *reproaches* and invidious comparisons; to exasperate the

passions and alienate the affections of the people, he has been but too successful.

No one at a distance, without the means of explanation, can read that speech, with its formidable array of charges, specifications, and facts—with its commentaries and criminations, and not feel the prejudice they were intended to excite.

It has been said, in the course of the debate, that I am a Western man, and the advocate of Western interests. Sir, I am a Western man. I feel a strong degree of attachment to the West. I will be her faithful Representative. I will guard her interests and defend her rights. I shall be proud of her approbation. I am the advocate of Western interests, not merely because they are Western, but because they are equally a part of the interests of my own State, and a part of the great interests of the whole.

In looking to the interests of my State, after the security of property and liberty under her own laws, I consider the stability of this Union as the greatest and highest concern. I look to the extent of this great country, its natural and political divisions, the objects of the Union, and the constitution established for its Government; and from these I deduce my duties. Under this Union we find a market for our productions, peace, security, and commerce, without which property would have no value, and liberty no enjoyment; and from these considerations I learn to cherish and defend it.

It comports with my own feelings, and with the sentiments of my constituents, to take the most enlarged and liberal views of all our great national interests. While I agree, in general, with the gentleman from Missouri, about the interests of the West, I am compelled to differ from him entirely in the mode of securing them. What is the great interest of the Western States at this moment? To obtain some modification of the land system more favorable to the settlement of the West. And how does he propose to accomplish this object? By assailing the whole North, by charging them with systematic hostility to the West for more than forty years. He has ransacked the archives, collected every fact, arrayed every charge, and presented them under the highest coloring, to prove what can only exist in his imagination—a settled policy, steadily pursued on the part of the North, to stifle the birth and cripple the growth of the West, until he has driven every member, from a sense of pride, into an opposition to every scheme he may recommend. And has he gained the South, or a single vote in that quarter, more than he had before? Will they change their principles? Will the charge against the North, and the comparisons with the South, make any impressions on the South? Are they so easily won, and are they thus to be flattered out of their votes?

Sir, we had gained much in public opinion. The most favorable dispositions were manifested from all quarters. Several propositions had been made, by members of different States, of great liberality. The member from Virginia [Mr. TAZEWELL] had some time since proposed, for great political considerations, to cede the lands to the States in which they lie. This was founded on the idea of placing the new States on a footing with the old States; to cut off the dependence upon the General Government; to diminish the patronage of office, and the expense of legislation, &c. Another gentleman from New York, now in the cabinet, [Mr. Van Buren] proposed to cede the lands for some reasonable equivalent. We have had the graduating bill several times under discussion; and the object of graduating the price to the quality, and of reducing the price to settlers, the main object of the bill, has been much approved. The objection to it was as to the details—to the mode of obtaining the object. It embraces too large a quantity of land, and runs down the price too low and too rapidly. We have heard from the North and South, during this debate, the most liberal principles on this subject. Without making any specific propositions,

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both the gentlemen from Massachusetts and South Carolina have the same enlarged, liberal, and statesman-like views. Our opinions began to approximate, and there was every reason to expect a favorable adjustment of this great interest. I regret that the gentleman has thought this a proper time to make this injurious attack upon a large section of country, of whose justice and liberality to the West we had so many proofs.

There appeared to me, besides the votes that have been referred to, a general coincidence of opinion between the North and the West, upon most questions of great public interest: the construction of the constitution, the policy of the Government, and especially upon the tariff, and all subjects of Internal Improvement. I regret this attempt, at this time particularly, to separate these interests. I deprecate the unfortunate influence it may exercise over our legislation.

Sir, I deny the right of the gentleman to speak in the name of the West. I deny his right to speak for me or for my State. I do not choose that any man should make political friendships or enmities for me or my State. And I deny that the charge of hostility to the West has any foundation.

Against whom is this charge leveled? Against the North, including all the States north of the Potomac. And can it be intended to make this sweeping accusation against eleven States of the Union, and to induce the people of the West to believe that they have been, from the commencement of the Government, unfriendly to their interests? Yet all the charges equally affect the five Middle States. It was unfortunate, during the confederation, that the Potomac was considered the line that separated the North and the South, and it no doubt at some times exercised an unfavorable influence upon legislation. There was a general coincidence of opinion in the States north of that line, upon all great questions of that period, and so there was upon all the subjects affecting the Western country, but without the slightest feeling of hostility towards it. In all the great measures taken in reference to the navigation of the Mississippi, the Southern boundary line with Spain, and the defence of the West, they were actuated by their own patriotic views of the great interests of the country, under the peculiar and often pressing circumstances of the times. In the midst of a war of great sacrifice and suffering, in which every nerve was exerted, the whole South overrun, how could they go to the relief of the West? Instead of these reproaches from the West, they ought to receive the homage of our gratitude for the firmness, the fortitude, and constancy, with which they carried us through the trying scenes of the Revolution.

No great measure that was adopted, requiring the consent of nine States, could be carried, without the votes of at least five of these Northern States. Will not New York, and New Jersey, and Pennsylvania, Delaware, and Maryland, see, that they concurred with the other Northern States in all the measures of hostility imputed to them? That their names are formally arranged, side by side, in high relief, with the States of the North? And will they comprehend how they escape from the charge? Will they see how the exception can exclude them from all the odium, if any, that these measures are calculated to excite in the minds of the people of the West?

But, sir, New England is the real point of attack. No, not even New England, not the republican party of New England, which constituted, at every period for the last twenty years, not less than one-half of the people of that section; and, especially, is excluded the democracy of the North, as they are now called, *par excellence*, to distinguish some of them from their republican brethren here, who now represent the North. The attack is aimed only at the federal party there. But then that party is mostly extinct. None have joined the ranks since 1801. No politician, coming into life since that time, has found it wise or

expedient to try to stem that current. There can be no Federalists now, (except the very few who are so from family pride or real independence of character) under fifty years of age. Besides, many of the veterans have died, or retired from the theatre of public life. Those that remain have suffered the ban of the republic, in the form of proscription, for twenty-eight years. Many of them, during the era of good feeling, in the belief that the contest was injudicious and unavailing, have given in. The few men that remain, advanced in life, seem still to be the objects of bitter and unrelenting persecution. But, sir, the accusation does not go even to this small remnant. It excepts all those who supported the last war. It is aimed, then, it is said, at the Hartford Convention; no, not even those of that class, who have supported the election of the President; they have received absolution; and of them, it has been said in debate, there are many intelligent and honest men who had no improper designs, and were misled by the few ambitious leaders of the convention. Against whom, then, is the accusation leveled? This bold charge, then, against the North, dwindles down at last to be a mere attack on a few old and retired politicians of the Hartford Convention; and, to sustain the charge, it is necessary to array before the public the votes of all the States of New England, New York, New Jersey, Pennsylvania, Delaware, and Maryland, in regard to the defence and settlement of the West, during all the eventful period of the Revolutionary war.

But, sir, what does the charge turn out to be? A system of hostility, pursued for many years, to prevent the settlement of the West. These charges, and the facts adduced to establish them, have been fully examined and explained, by both Senators from Maine, (Messrs. SPRAGUE and HOLMES.) They have done their duty, by vindicating their country. Sir, I take a very different view of the subject. The charge involves a palpable incongruity of conduct. The States demanded the cession of the Western lands as a part of the acquisition of the war, and for the purpose of applying their avails to discharge the debt created in carrying it on. They contended with Spain, during a long and arduous negotiation, for the utmost Southern boundary, and finally established the thirty-first degree of North latitude. They instructed the minister to adhere to this line, and would not even authorize the treaty, without its final ratification by themselves. They afterwards gave Georgia more than a million of dollars, and undertook the extinguishment of the Indian title. They subsequently paid five millions of dollars to settle the Yazoo claim. The country northwest of Ohio was conquered from the Indians, after a conflict of several years, at an expense of five millions of dollars. They have, besides, paid large sums for the extinguishment of Indian titles. They established the ordinance of 1787, for the Government of this territory, and passed laws for the surveying and sale of the lands; and now, it is gravely said that they have pursued a systematic course of hostility to the West; that the sagacious and intelligent men, who have acquired these lands at so much cost, and who pursued this object with so much perseverance, and for so long a time, had no object in view but to stifle the birth, and cripple the growth of the West. The whole charge is utterly inconsistent with itself, and the facts themselves refute it.

After the acquisition of an immense territory, by cessions from the States, and by treaties with foreign nations at a vast expense, and after securing it by conquest or by purchase of the Indians, they adopted a wise and paternal system of administration. The whole has been divided into territories of convenient and compact size, that now form States of the Union. There are six surveyor generals' offices, and more than two hundred millions of acres of land surveyed and ready for market. These lands are divided into squares of six miles, and subdivided down to eighty acres, so as to suit every class of purchasers. There are forty-two land offices in the most convenient situations

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for the sale of the lands; the price was reduced in 1820 to one dollar and twenty-five cents per acre; and several pre-emption laws have passed, to secure the rights of settlers, and a general privilege of entering, at the minimum price, any land that has been once offered for sale. There is nothing in all this that seems to indicate a spirit of hostility to the growth of the West. The conduct of the Government has been marked by extreme liberality as well as wisdom, towards the new States. They gave them one twentieth of the proceeds of the sales of the lands for roads. One section in every township for schools, and two townships in every State for colleges, in consideration of exempting these lands from taxation for five years after the sale. Besides this five per cent., they have appropriated more than a million and a half of dollars to the Cumberland road, and its continuation through the Western States, besides the proceeds of the five per cent. They have given more than two millions of acres of land to different Western States for canals; and they released purchasers of public lands to an immense amount. These lands were ceded to the Government, and pledged for the payment of the public debt; they have been disposed of with that view. They have brought into the treasury nearly millions of dollars. The price has been moderate, such as to enable the people to buy, and to prevent the acquisition of large quantities on speculation. And what is the result? More than four millions of industrious and intelligent people, more than the original stock at the Revolution, a country highly improved, and rapidly advancing. If it was the object of the North to prevent the growth of the West, they have been singularly unfortunate. Great and flourishing communities have risen up in the wilderness, in spite of their supposed hostility.

The reduction of the price to one dollar twenty-five cents, in the year 1820, is now brought as a serious charge. It became a matter of prudence and necessity, in consequence of the great and increasing rage for speculation, which had raised the debt from eight millions to twenty-one and a half millions, in less than three years. The Government wisely stopped the credit system, which put an end to purchases on speculation, reduced the price, and then generously gave relief to the people. The continuation of that system would have created an immense debt in the West to the General Government, oppressive to the inhabitants, and ruinous to the country. It is greatly to be regretted that the change had not been made when the debt began to accumulate.

But, sir, let us return to the other charges. The charge of surrendering the navigation of the Mississippi is again renewed, to give color to the idea of hostility to the West. Mr. Madison says, that, soon after the commencement of the war with England, at the period of greatest distress, the Northern and Eastern States refused to relinquish the navigation, even for the substantial aid and succor of Spain, "sensible it might be dangerous to surrender that important right, particularly to the inhabitants of the Western country." And when instructions were afterwards given to our minister to negotiate a treaty, it was expressly enjoined upon him to stipulate for the right of the United States to their territorial bounds, and the free navigation of the Mississippi, from the source to the ocean, as established by treaties with Great Britain, and that he neither conclude nor sign any treaty until he had communicated the same to Congress, and received their approbation. Congress had obtained, from Great Britain, a recognition of a conditional boundary, to extend to the thirty-first degree of north latitude, and the right to navigate the Mississippi. These instructions evince the determination of Congress to maintain their territorial rights to the utmost Southern limit, and with them the concomitant right to the free use of the river. And so jealous were they of these rights and privileges, that the minister, the then Secretary of Foreign Affairs, Mr. Jay, a man of

great public confidence, was not permitted to conclude a treaty without the approbation of Congress.

The United States, exhausted by the war, destitute of funds, without public credit, with an inefficient Government, were in no situation to go to war with Spain, then connected with France and other Powers of Europe. On the contrary, it was our policy to form a commercial treaty, then proposed to her on the most favorable terms, and to prevent any coalition with England. After the most urgent representations were made by our minister, with regard to the navigation of the river, "the concluding answer, said he, to all my arguments, has steadily been, that the King will never yield that point, nor consent to any compromise about it; for that it always has been, and continues to be, one of their maxims of policy, to exclude all mankind from their American shores."

The Minister of Foreign Affairs, [Mr. Jay] in this situation, reported to Congress that the treaty with Spain was of great political and commercial importance; that, unless this point could be settled, no treaty, however advantageous, could be concluded; that Spain then excluded us from that navigation, and held it with a strong hand against us; that she would not yield it peaceably, and, therefore, we could only acquire it by war; that we were unprepared for war with any Power; that the Mississippi would ~~be~~ shut, France would tell us our claim was ill founded, the Spanish posts on its banks would be strengthened, and we must either wait in patience for better days, or plunge into an unpopular and dangerous war. In this situation, he submitted to Congress the expediency of yielding our right to Spain for twenty-five years, without waiving our right to resume it, at a time when we should be more competent to maintain it. On one side were presented peace, commerce, and friendship, with a powerful State; on the other, war, with all its evils, in defence of a valuable right, or the waiver of that right for a limited time, with a view to its permanent security. Seven Northern and Eastern States, including New York, New Jersey, and Pennsylvania, were in favor of making this proposition—a sacrifice they felt bound to make under the peculiar and pressing exigencies of the times; "but there was not," said Mr. Lee, in the Virginia Convention, "a gentleman in that Congress, who had an idea of surrendering the navigation of that river." And Mr. Madison said, "they had no idea of absolutely alienating it: the temporary cession, it was supposed, would fix the permanent right in our favor, and prevent a dangerous coalition with England." Whatever opinion may be now formed of the wisdom of this proposition, it must be manifest that no feeling of hostility to the West influenced their judgment. They obtained the greatest possible concession of territory from England; they maintained our right through this whole negotiation, to the thirty-first degree of north latitude; they tried by every means to obtain the navigation of the river from Spain; and it was not until all hope was abandoned that they consented, as the means of peace, and to avoid a war, for which they were unprepared, to forbear the use of it until a more favorable period. But they did not stop here; they instructed the Secretary of Foreign Affairs to propose, and, if possible, to obtain, the right to transport our productions from the thirty-first degree to New Orleans, with a right of deposit at New Orleans, &c. but nothing was done under these instructions, and the whole subject was referred to the new Federal Government. A treaty was eventually made with Spain, which secured to us the thirty-first degree of north latitude, our utmost Southern boundary, and the right to navigate the river, with a deposit at New Orleans, &c. The Government immediately obtained a cession of the lands embraced by this treaty from the State of Georgia, erected two Territorial Governments, extended over them the laws of the Union, extinguished the Yazoo title, adjusted the private claims, and, so far from

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feeling that the growth of the West was incompatible with the interest of the North, they have done every thing to foster it. The Government having expended more than seven millions of dollars in the acquisition of this country, are now accused of the folly and absurdity of preventing its growth and settlement.

When, at a subsequent period, the right of deposit was violated, these men, who are now aimed at, maintained, with more spirit than prudence, the right of the United States to the free navigation of the river, and proposed to authorize the President to take possession of New Orleans. But Mr. Jefferson entertained more wise and moderate views. He proposed to obtain redress by pacific means, and instituted the embassy which fortunately terminated in the acquisition of Louisiana; and these are his sentiments on the subject:

"The question which divided our Legislature (but not the nation) was, whether we should take it at once, and enter, single handed, into war with the most powerful nation on the earth, or place things on the best footing practicable for the present, and avail ourselves of the first war in Europe (which it was clear was at no great distance) to obtain the country as the price of our neutrality, or as a reprisal for wrongs which we were sure enough to receive. The war happened somewhat sooner than was expected; but our measures were previously taken, and nothing took the best turn for both parties. Those who were honest in their reasons for preferring immediate war, will, in their candor, rejoice that their opinion was not followed. They may, indeed, still believe it was the best opinion, according to probabilities. We, however, believed otherwise, and they, I am sure, will now be glad that we did."

The gentleman from Missouri has accused the Federal Government of entire neglect and abandonment of the West, from 1774 to 1790. He has presented a shocking picture of savage warfare. This is a chord that will vibrate in the West, and is well calculated to excite prejudice in the minds of those who have not the means of correct information. He might, with equal propriety, have given us a description of the distress, and suffering, and sacrifice, of the revolutionary war in the East; during which all our cities were successively occupied by the enemy, and during the three last years of which the whole South was overrun and laid waste. The people knew that, in going to the West, at that period, they went beyond the protection of the Government; that it had neither the means nor the men to give succor or relief. He comes down, however, to the year 1786, to accuse the North of "unrelenting severity" towards the West. No charge was ever more unjustly made. Instead of taking an enlarged and liberal view of the general policy of the Government in regard to the Indians of the West, he has singled out a particular occurrence, in which there was a difference of opinion, not in relation to the object, but in the mode by which both sides sought to obtain it. Both parties in this question were anxious for peace with all the Indians, but entertained views somewhat different as to the mode in which that object was to be obtained. One party desired to give peace and security to the frontiers by amicable treaties with the Indians—the other by military force; but neither, for a moment, thought of abandoning the West. As soon as the definitive treaty was signed, Congress set on foot conventions with all the Indian tribes, and, to expedite the holding of treaties, three hundred and fifty men were held in readiness to protect the commissioners. Treaties were successively made with all the tribes of Indians. In 1785 a treaty was made with the Wyandot, Delaware, Chippewa, and Ottawa tribes; and on the 31st January, 1786, a treaty was concluded at the mouth of the Great Miami, with the Shawnee nation. Seven hundred men, drawn from New England, were placed in the Western country, to defend the frontiers. Congress were pursuing steadily this system, when, in consequence of some

depredations, the South conceived the necessity of marching a large armed force into the Indian country, to compel them to make peace. The North considered these as irregular parties, making incursions without the authority of the tribes; and thought that they ought to organize the Indian Department, and adopt such measures as would secure peace to the Indians and safety to the inhabitants of the frontiers.

The resolution to detach four companies had the approbation of but one State; the resolution to detach two, had the negative of but one State. The objection, therefore, was to the number of companies to be moved, and to weakening the other points of defence. The North was opposed to carrying the war among the Indians, but in favor of employing the militia for defence, when necessary. The South desired "an expedition into the Indian territory," and to call out one thousand militia. The North desired to treat with the Indians amicably, to avoid war and expense, and to use the military only for defence. They were unwilling to make war, because they thought the object could be better obtained by peaceful means; they were unwilling to incur the expense, in their exhausted situation, of calling out one thousand militia; they were unwilling to derange the disposition of the regular troops that had been stationed at all the proper points of defence along the line of the Ohio. But they passed a resolution on the 30th June, 1786, to inform the Governor of Virginia that they were desirous to give the most ample protection; and they requested him to give orders to the militia to be in readiness to unite with the regular troops, in such operations as the commanding officer may judge necessary for the protection of the frontiers. On the 20th of October, 1786, Congress resolved, unanimously, to raise one thousand three hundred and forty troops, in addition to the seven hundred, "to form a corps of two thousand and forty," not only "for the support of the frontiers of the States bordering on the Western Territory and the settlements on the Mississippi, but to establish the possession and facilitate the surveying and settling those intermediate lands, which have been so much relied on for the reduction of the debts of the United States." And, on the 21st of July, 1787, Congress resolved to hold treaties with these hostile tribes, to hear their complaints; and inquire into the causes of their quarrels with the settlers, and to make peace. That, for this purpose, the troops should be placed in such positions as to afford the most effectual protection to the frontier inhabitants of Pennsylvania and Virginia, from the incursions and depredations of the Indians; for preventing intrusions on the federal lands, and promoting a favorable issue to the treaty: that the Governor of Virginia be requested, on the application of the commanding officer, to embody a part of the militia, not exceeding one thousand, to co-operate with the troops of the United States, in making such expeditions against the Indians as Congress may direct, &c. These resolutions passed unanimously, Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, voting in favor of them.

Now, this insulated case is singled out, disconnected with the whole subject matter, and spread before the Western people, to induce a belief that, in consequence of Northern jealousy and Northern hostility, they utterly and unfeelingly neglected to give any protection to the West against the Indians. The effect of it may be to excite prejudice, to create dissension, and set apart the people of the different sections of the country; but, when examined, it will be found destitute of any foundation.

In pursuance of this system, a treaty was concluded 9th January, 1789, at Fort Harmar, by General St. Clair, with the Wyandot, Delaware, Ottawa, Chippewa, Pottawatomie, and Sac nations of Indians. But difficulties continued to occur with the Indians, until the Government was obliged

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to send a military force to conquer them, which was finally accomplished in 1794, and was followed by the treaty of Greenville. Throughout this whole period, from 1786 to 1794, Congress labored with the most patient, persevering, and patriotic exertions, to procure peace for the Indians, and safety to the frontier; and now the gentleman from Missouri says "that Massachusetts and the Northeast abandoned the infant West to the rifle, the hatchet, the knife, and the burning stake of the Indian." But this charge relates equally to all the States north of the Potomac, and to a period anterior to the existence of the republican and federal parties; and it has been seen with what justice it has been made against any portion of that Congress to whose patriotic services and public labors the country owes so deep a debt of gratitude.

We now pass over a period of twelve years, from the formation of the constitution to the acquisition of Louisiana, during which there is no charge of hostility to the settlement of the West. The cession of Louisiana was obtained in 1803, when political parties were very violent; when some feared that an enlargement of our limits might weaken the Union, and others thought, conscientiously, that there was no power in the constitution to acquire territory. Yet, under these circumstances, there were twenty-seven votes in the Senate in favor of the treaty, and half of these North of the Potomac, and four from New England. This shows that there was no unity in the North—no concert, even in the federal party—no hostility to the West.

It is well known that many wise and excellent men believed the acquisition was an extra-constitutional act, and that it would require an amendment to the constitution. Mr. Jefferson entertained this opinion himself. In his letter to Mr. Dunbar, July 17, 1803, he says: "they (Congress) will be obliged to ask from the people an amendment to the constitution, authorizing the receiving the province into the Union, and providing for its government; and the limitations of power which shall be given by that amendment will be unalterable but by the same authority." In his letter to Mr. Breckenridge, 12th August, 1803, he says: "This treaty must, of course, be laid before both Houses, because both have important functions to exercise respecting it. They, I presume, will see their duty to their country in ratifying and paying for it, so as to secure a good which would otherwise probably be never again in their power. But I suppose they must then appeal to the nation for an additional article to the constitution, approving and confirming an act which the nation had not previously authorized. The constitution has made no provision for our holding foreign territory, still less for incorporating foreign nations into our Union. The Executive, in seizing the fugitive occurrence which so much advances the good of the country, have done an act against the constitution."

It is well known that Mr. Adams entertained the same opinions, and he thought that the consent of the people should be obtained, by an amendment of the constitution, and the approbation of the people of Louisiana. "It is well known," said he, "that my voice and my opinions were in favor of the acquisition of Louisiana, and of the ratification by which it was acquired." "Entertaining these opinions, I voted for the bill appropriating eleven millions two hundred and fifty thousand dollars to carry into effect the Louisiana convention; and, in a speech to the Senate on the passage of that bill, I declared at once my approbation of the measure, and my belief, that, to carry the treaty into entire execution, an amendment to the constitution would be necessary;" and he moved the appointment of a committee to inquire whether any, and, if any, what, farther measures were necessary to carry into effect the Louisiana cession treaty; to prepare "for the annexation of the people of Louisiana to the North American Union, and their accession to all the rights,

privileges, and prerogatives, of citizens of the United States."

In his speech on this subject, Mr. Adams said: "I am extremely solicitous that every title of the engagements on our part in these conventions should be performed with the most scrupulous good faith." "I trust they will be performed, and will cheerfully lend my hand to every act necessary for the purpose: for I consider the object as of the highest advantage to us. And the gentleman from Kentucky himself, who has displayed, with so much eloquence, the immense importance to this Union of the possession of the ceded territory, cannot carry his ideas farther on that subject than I do." "I shall give my vote in its favor."

I have quoted these opinions of Mr. Adams to show, that none of those imputations rest upon him, and that there may be no misapprehension or doubt left even by implication.

"It was," he says, "upon the same principle, a conscientious belief that Congress had not, by the constitution, the power to exercise the authorities, (without an amendment of the constitution) that I voted against the other acts relating to Louisiana." "There remains in the country a power competent to adopt and sanction every part of our engagements, and to carry them entirely into execution. For, notwithstanding the objections and apprehensions of many wise, able, and excellent men in various parts of the Union, yet, such is the public favor attending the transaction, which commenced by the negotiation of this treaty, and which, I hope, will terminate in a full, undisturbed, and undisputed possession of the ceded territory, that I firmly believe, if an amendment to the constitution, amply sufficient for the accomplishment of every thing for which we have contracted shall be proposed, as I think it ought, it will be adopted by the Legislature of every State in the Union."

Mr. Adams gave a signal instance of his freedom from all party influence, of the independence of his mind, and the elevation of his views over all ordinary, local, and political calculation, in approving the acquisition of Louisiana.

When, some years afterwards, the attack was made on the Chesapeake by a British ship of war, Mr. Adams was among the first to take side with the country, and to pledge himself to aid and assist the constituted authorities with all his personal influence and exertions to support them in such measures as they might adopt. He attended the meetings of the people in Boston to express their sentiments, and they are worthy of the place and the occasion. He was on the committee that proposed the resolutions for the first meeting, of which Mr. Gerry was moderator, and chairman of the committee which reported the resolutions at the second meeting.

"BOSTON, 10th July, 1807.

"MR. GERRY, Moderator—GEORGE BLAKE, Secretary.

"Resolved, unanimously, That the late aggression committed by a British ship of war on a frigate of the United States, for the avowed purpose of taking from her, by force, a part of her crew, was a wanton outrage upon the persons and lives of our citizens, and a direct attack upon our national sovereignty and independence: That the spirited conduct of our fellow-citizens at Norfolk, on this occasion, before the orders of Government could be obtained, was highly honorable to themselves and to the nation.

"Resolved, unanimously, That the firm, dignified, and temperate policy adopted by our Executive, at this momentous crisis, is entitled to our most cordial approbation and support.

"Resolved, unanimously, That, with all our personal influence and exertions, we will aid and assist the constituted authorities in carrying the proclamation of the Pre-



sident of the United States, in every particular, into full and effectual execution."

"*Meeting, Faneuil Hall, 16th July, 1807.*

"Mr. ADAMS, Chairman of the committee.

"*Resolved*, That we consider the unprovoked attack made on the United States' armed ship *Chesapeake*, by the British ship of war *Leopard*, a wanton outrage upon the lives of our fellow-citizens, a direct violation of our national honor, and an infringement of our national rights and sovereignty.

"*Resolved*, That we most sincerely approve the proclamation and the firm and dispassionate course of policy pursued by the President of the United States, and we will cordially unite with our fellow-citizens in affording effectual support to such measures as our Government may farther adopt in the present crisis of our affairs."

This was an insult to our flag, and an outrage on our sovereignty; it was an affair between our country and a foreign nation; they sacrificed all party considerations. When Mr. Adams came to Congress, this affair not atoned for, he made good his promise; he determined to support the administration in any course they might adopt to vindicate the honor of the country. This President recommended the embargo, and Mr. Adams gave it his unqualified support, because he believed it a wise and prudent measure of precaution, and because he was unwilling to thwart the views of the administration for party purposes, and because he had solemnly pledged himself to give effect to such measures as the Government should adopt upon its responsibility.

The measure, no doubt injurious to the Northern interests, became unpopular, and Mr. Adams, in obedience to his principles, resigned the trust into the hands of his constituents and retired, but continued, in private life, to give his advice and opinions to the friends of the administration, when required, upon the difficult questions that arose in that crisis of our affairs.

The embargo locked up the navigation, and destroyed for the time the commerce of the North. It produced great private distress, and ruined thousands. It is not, therefore, extraordinary, that a measure so severely felt should have been opposed. They believed an embargo, without limitation of time, that destroyed commerce, to be a violation of the constitutional power of Congress to regulate commerce. They submitted the case to the courts—it was decided against them, and they acquiesced. But the opposition to the embargo grew out of their sense of their own interests, and not from mere political hostility. The embargo was repealed, and the non-intercourse substituted, in March, 1809, which led immediately to the arrangement with Erskine, upon which all parties expressed the highest satisfaction. Mr. Randolph moved, in the House of Representatives, "that the promptitude and frankness with which the President of the United States has met the overtures of the Government of Great Britain towards a restoration of harmony and free commercial intercourse between the two nations, meet the approbation of this House."

The federal members now expressed their hearty approbation of the President, and thanked him cordially, for the country. They said: "The promptitude and frankness with which the President has met the overtures of Great Britain, while they receive the applause and gratitude of the nation, call not less imperiously for an unequivocal expression of them by the House."

The Governor of Massachusetts said to the Legislature—"We have great reason to indulge the hope of realizing those views (arising from a revival of commerce) from the prompt and a micable disposition with which it is understood the present Federal administration have met the conciliatory overtures of Great Britain—a disposition which is entitled to, and will certainly receive,

the hearty approbation of every one who sincerely loves the peace and prosperity of the nation." The Senate and House of Representatives replied, that "the prompt acceptance of the overtures of Great Britain meets the approbation, and will ensure the support, of this Commonwealth." These sentiments seem to indicate that the opposition heretofore had been founded in principle, and not in political hostility to the Executive. The arrangement was disavowed by the Government of Great Britain, and the non-intercourse restored. Mr. Adams left the country on a foreign mission, under the appointment of Mr. Madison. He was absent during the war, and officiated as one of the American ministers in negotiating the treaty of peace. He returned in 1817, and was appointed, by Mr. Monroe, Secretary of State.

It is farther charged that the Legislature of Massachusetts, in 1813, resolved, that the admission into the Union, of States created in countries not comprehended within the original limits of the United States, is not authorized by the letter or spirit of the constitution; and that it was the interest and duty of the State to oppose the admission of such State into the Union, as a measure tending to a dissolution of the Union. And it is said to adhere to a party opposed to the admission of Louisiana into the Union. Sir, is that in any sense true? What have I to do, or any existing party, or Mr. Adams, with the persons who opposed the acquisition of Louisiana, twenty-seven years ago? They are all gone from the theatre of public affairs. Mr. Adams was not united with them, and they have ceased to exist as a party. It is seventeen years since the passage of this resolution. Mr. Adams was not in the country. The interests and passions and excitements of that day have passed away; new men and new parties have arisen, with different principles and other views. New England was revolutionized and republicanism, as you may see by her delegation here, many of whom have been personally alluded to on the floor. Massachusetts did not declare it a palpable violation of the constitution, and that she had a right to put forth her veto, and annul the act. And, sir, what is there to connect me in any party with this resolution, that does not equally attach the gentleman himself to the anti-tariff resolutions of South Carolina, and make him responsible for them?

He, [Mr. Adams] has been charged with sacrificing the interests of the country, in establishing the western boundary, in the treaty with Spain. This charge has been reiterated through the papers of the West, where it has been greatly misrepresented or misunderstood. That negotiation was conducted with great ability, and our title to the River Grande fully sustained. But it was the object of the Spanish Government, in ceding Florida, to save the province of Texas. Her minister proposed the Mississippi as the boundary, and adhered to that proposition; he seemed determined not to yield any thing beyond that line. The great importance of securing Florida induced our minister to propose the Colorado, which was rejected promptly. At this point, the negotiation came to a pause, and its entire failure was anticipated. The subject was reconsidered by the cabinet, and a compromise was proposed, and at length accepted, which fixed the boundary at the Sabine River. This was done to secure the Floridas, and after every means had been tried in vain to obtain a greater extension of our limits. It was done by the whole of the cabinet of Mr. Monroe, upon full consideration of all the great interests it involved, and was finally approved by the Senate.

Sir, I have aimed to set the character of Mr. Adams fairly before the Senate, and to vindicate him from the imputations cast upon the North. He has filled the highest stations at home and abroad, at the most critical junctures, with the greatest ability; possessing a mind so firm and so balanced as to preserve its independence and its principles free from all political influence; he has advo-

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*Mr. Foot's Resolution.*

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cated the best interests of his country, and avoided the errors of parties. He supported the two great leading measures of Mr. Jefferson's administration. He represented this country abroad during Mr. Madison's term, and participated in the treaty of peace. He was eight years in the Department of State, and negotiated the Florida treaty; he has been four years at the head of this Government; a man of great learning and experience—of uncommon grasp of mind—of indefatigable labor. And now, sir, it is said, "the Senator of Louisiana adheres with a generous devotion (I call it generous, for it survives the downfall of its object) to that party that passed this resolution."

It may well excite the surprise of the gentleman, that, with the examples before him, and with the temptations before me, I have not also deserted the party, after the downfall of its object. I have the weakness, no doubt, of other men, and all the motives of interest and ambition that govern them. My support of that party was founded in principle, and was disinterested. They who supported this cause from motives of interest or ambition, may desert it without any violation of their principles: for it will be their principle to desert any cause, as soon as it ceases to be their interest.

If it is meant that I have not deserted the object of the party, in consequence of his defeat, it is correct. I did not ride into favor on his popularity, and then desert him: I did not watch the ebb of his fortune to throw myself adroitly into the current, and swim with the tide. Sir, I want the moral courage to desert a cause, or betray a party. I could not encounter the averted eye, the cold disdain, or the indignant scorn, of my friends: I could not bear my own self reproach, or the odium of the public, from which no man can escape—he can never be forgotten for his desertion, nor forgiven for his treachery. I am less surprised, when I see all the offices, emoluments, and honors, of the Government distributed among the victors, at the facility with which pledges were violated and the cause betrayed, than the gentleman can be at my adherence. It was no want of sagacity in me. I can calculate chances and balance probabilities as well as those who know better how to avail themselves of their talents: and if I could not, I had as much intelligence as the Dutch Governor of New York, who could always tell which way the wind blew by the weathercock.

When the Presidential election terminated, leaving one party free, every one saw it threw the balance of power into their hands; and those who understand the springs of human action know the invariable law by which minorities combine. When it was known that one party had ninety-eight votes, and that thirty-three would turn the scale, it required no mathematician to calculate the chances; and when I heard a voice, saying, "the combinations are nearly complete!" I was at no loss in making my calculations. It required no magician to work out the results: it was as plain as that two sides of a triangle are longer than the third side.

When things stood thus, in January, 1826, we were not surprised that those who knew the signs of the times should desert us. We knew there was a tide in the affairs of men, which must be taken at the flood. We knew they would desert us, exactly as the chances increased, and we are not disappointed at the great accession in a certain quarter, since the event is no longer doubtful. When the rats began to leave the ship, I was warned of the danger, and if I did not avail myself of it, to seek safety in time, it was my own fault.

But, sir, that contest is over. My principles have undergone no change. I shall vote for all public measures, and take the same interest in them, and act with the same zeal, I have always done. I have kept my mind free from the spirit of party, and above the influence of political feeling. I trust my principles, and my political opinions, and my views of the great interests of the country, will never suf-

fer the slightest change, whoever may be called to preside over it.

The present party in power is a mere personal party; it is composed of men of all parties, who never agreed in any measures of administration before. Nay, it is composed of men of opposite principles, and of the most heterogeneous elements—men who may combine, but can never adhere. It was formed for good reasons, no doubt; but it was, at best, a mere personal preference of one man to another. Now to change sides requires no change of political principles, and may greatly advance a man's fortune; besides, it is a stale, unprofitable thing, to be struggling against power and numbers, in a hopeless minority, and working in that barren field where there is neither Executive favor, nor popular applause, nor public honor.

If the condition of adhering to the Executive is to sacrifice principles to sustain his measures, then it is a dangerous connexion, and will produce the most fatal effect. It is to make one overruling power in the Government—a power capable of drawing after it every other power, even the power of the people. And if the President, armed with the extraordinary power now claimed, over all the offices, emoluments, and honors, of the Government, does not draw after it the Representatives of the people, and the aid of the press, it is because they are above the influence. And if adherence to a party produces no effect, and lays us under no obligations or restraints, and we preserve our independence, and vote as we please, I can perceive no great use in changing sides, or changing names, so far as the country is concerned: those who have objects beyond that may no doubt obtain them in that mode.

The gentleman has said we were once together, and intimates a wish that we may meet again. Sir, it is not at all improbable. Those who travel in opposite directions on the political circle, are sure to meet. The changes of public opinion and the combination of parties are so rapid, that no one can foretell where or with whom he may be found. When I look around, and see who are together, and how we have been separated, and remember where you have all been, I cannot be surprised at any thing that may occur. When I see the republicans, and federalists, radicals, and liberals; when I remember how you stood in 1821–2, and how in 1824, and see how easily you came together, I do not despair of again meeting many of my old friends. When I remember the open hostility and secret plots, the charges and criminations, the violence and abuse, and now witness the reconciliation, the harmony and union, I am ready to acknowledge the wonderful and magical effect of the spirit of party, which can soothe the irritation and heal the wounds it makes. It is a panacea perfectly infallible, no matter how furious the struggle, or how violent the conflict.

I intended to have spoken upon several subjects of great public interest in relation to the lands, but I find I have not time. It was my purpose to have taken this occasion to show the power of Congress over the public lands. That the lands were "ceded to the States to be disposed of for the common benefit," before the adoption of the constitution, and are held only under this obligation to dispose of them, and not subject to any restrictions and limitations of the constitution. What the common benefit is, must depend on the determination of Congress. Under this construction, Congress have made contracts with the new States, and have given land for schools, colleges, (when they could not give money under the constitution) for roads and canals, and other objects for the public benefit. I shall take another occasion to present my views on that subject, to show to what various and useful purposes they may be applied.

I proposed, also, to have said something about the changes proper to be made in the land system, after the payment of the public debt. I will merely say, that the present price ought to be retained for the sales, so as to

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*Mr. Foot's Resolution.*

[APRIL 2, 1830.]

prevent the purchase of large quantities of land in States, by individuals, on speculation. That the actual settler ought to have it for half price; that as soon as practicable the lands ought to be classed, and the price graduated to the quality; that each of the new States, especially Louisiana, Mississippi, Missouri, ought to receive the same quantity of land as the other new States for internal improvement, &c.

I will take leave to say, before I conclude, that no law or regulation will hasten the sales of the lands, unless they are sold on speculation. There are a certain number of persons, who annually arrive at manhood, who require about a million of acres of land, and beyond that there is no demand. They must be supplied or they must settle on the public lands, and the easier the terms on which they are supplied, the better for the people and for the country.

Sir, it has been said that this resolution is the last act in that system of hostility to the West, which has made so great a figure in this debate. The honorable gentleman from Connecticut, who performs his duty with great industry and zeal, perceived what had almost escaped me, that we had more than two hundred millions of acres of land surveyed, and ready for market; that we only sell about a million a year; and that we should not, at that rate, sell, in one hundred and fifty years, the land already surveyed, and therefore very naturally proposed to inquire into the expediency of stopping the surveys, &c. Sir, it is true we have more land surveyed than necessary; there have been, heretofore, though not latterly, great impositions and frauds practised upon the Government, and there are large quantities of poor land, of pine woods and prairies, that will never sell. This department has been, within a few years, better managed. I think I may venture to say, for the honorable mover, that the idea of retarding the growth or preventing the sales of the land in the West, never entered his mind.

Mr. JOHNSTON here gave way to a motion to adjourn.

[Considerable business was transacted on the 31st of March and the first day of April; there was also some debate—principally on the last named day, on a bill to extinguish the Indian title in the State of Indiana.]

FRIDAY, APRIL 2, 1830.

The Senate resumed the consideration of the resolution of Mr. FOOT, and

Mr. JOHNSTON addressed the Senate, in continuation of his remarks, commenced on the 30th March, until four o'clock.

Mr. J. said he saw rising in this country a new party, under a new organization, and under high auspices, that, whatever may be its aim or its object, tended inevitably to weaken the bonds of the Union—a party founding themselves upon State rights in contradistinction to the rights of the General Government. Under this banner was seen a systematic and combined attack upon this Government, that would destroy the confidence and undermine the affections of the people.

All the objections urged to this constitution before its adoption [said Mr. J.] are revived, to create prejudice and excite alarm. We are told there are no checks; "that it is an uncontrolled majority, and an uncontrolled majority is a despotism." It is said to be a foreign Government, and that the States are foreign to each other. It is said to claim unlimited powers; to aim at encroachment upon the proper powers of the States; that it tends to a great consolidation, that will annihilate the States and destroy the liberty of the people; and, that the only means of protection, for the people and the States, against this overbearing despotism, is the power to negative her laws.

The people are told that the laws are unequal and oppressive; that they are palpable, dangerous, and deliberate violations of the constitution. There is a general tendency to bring the Government into contempt, and render it odious. We hear of the abuses of the power of Congress and of the administration. We hear of extravagant expenditure; of bargain, and intrigue, and corruption; of the rigorous conduct of the Government in relation to the lands; of the unequal distribution of money; of wild and profligate schemes of improvement; and we see attempts to excite sectional hostilities. The press groans under whatever can prey upon the minds, and provoke the resentment, of the people.

Sir, this is not all, nor, I fear, the worst. There is a deliberate attempt to undermine the power and destroy the confidence of the country in the Supreme Court: that great tribunal, upon which this Union rests, is an object of combined attack. This court, created by the constitution for the decision of all cases arising under it, as a common arbitrator between the Government and the members that compose it, "this more than Amphictyonic council," it is said, is the creature of the Government, and not the umpire of the States; that it tends, by the course of its decisions, to extend its jurisdiction, and to a consolidation, not of the Union, but of the Government; that there is no security for the States against its encroachments.

It is said that, "after the Book of Judges, comes the Book of Kings;" and high authority is quoted to show that "they are the sappers and miners of the constitution." Examples of tyranny, drawn from the worst times of judicial history, are presented, and the victims, carried from the dungeon to the scaffold, are exhibited, to excite prejudice and disgust. It is said they are always the tools of power; that they have never been independent; that they are a "subtle corps," "working under ground to undermine the foundation of our confederated fabric;" "that they have been, with constancy and silence, like the approaches of death, sliding onwards to consolidation, giving a diseased enlargement to the powers of the General Government, and throwing chains over State rights;" "that they will lay all things at their feet."

Sir, this is not all. The gentleman from New Hampshire has boldly charged the court with prostrating the rights of the States, and has enumerated the cases. And how have they prostrated the rights of the States? By assuming a jurisdiction? By improper construction? By erroneous opinions? Neither are pretended: but, because this court, in protecting the rights of the people of other States; in guarding the Union against the exercise of the prohibited powers by the States; in maintaining the constitution and the laws of the Union, and preventing the violation of the obligation of contracts—the very object of its institution—decide against the claims and rights of the States, it is said the States are prostrated; that the court is "putting chains on the States," and "laying all things at their feet."

Sir, if these judgments were erroneous, they would be impeached; if the authority was assumed, it would be challenged. It is a power expressly confided to them; and how could this Government move a day without a supreme tribunal to decide all controversies of this kind? And yet it remains to be seen whether this court, created by the constitution, without power or patronage, depending upon its virtue and talents to sustain itself in public opinion, and which is essential and indispensable to the existence of this Union, can stand against these numerous, combined, and powerful assaults; or, whether public confidence will be destroyed, the authority of the court impaired, the constitution become a dead letter, and the Union dissolved by its own weakness.

The people have an habitual and cordial love and veneration for the State institutions, under which their property, their liberty, and their happiness, are secured; there is no feeling of jealousy or hostility to them; there

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is no meditated attack upon their rights or privileges. We are all their guardians. But this General Government, which is designed to protect the States; to guard them from danger from abroad; to secure them domestic tranquillity at home; to give them peace and commerce; is not so ardently cherished. There is less attachment; more jealousy of its power and encroachments; more centrifugal tendencies. The tie that binds the Union is more feeble; many causes are operating to weaken it; and, openly assailed from every quarter, it remains to be seen whether the people will defend it, or whether it has energy to preserve itself.

It becomes the duty of every enlightened statesman and patriot to "support the State Governments in all their rights, as the most competent administrations for our domestic concerns, and to preserve the General Government in the whole of its constitutional vigor, as the sheet anchor of our peace at home, and safety abroad," and to give to the court as much confidence as will sustain it firm and unmoved, and unawed, in the legal administration of our affairs.

The right of a State in this Union to annul an act of Congress [said Mr. J.] presents a grave question to our consideration. It is a question of the first impression, and deepest import; which ought not to be discussed under the excitement of party spirit, the influence of passion, or the peculiar circumstances in which any of us may find ourselves. It should be approached under a deep sense of the momentous consequences to the people, to the Union, and to the country it involves.

I shall speak on this question, not as a lawyer and a statesman—that has been done already, in an able and masterly manner—I shall speak of it as a man and a citizen, whose hopes and happiness are embarked with those of his constituents in this great experiment, "the world's last hope."

It is now said that the individual States have a veto on the laws, and, thereby, a power to suspend their operation, by which this Government is made to depend upon the will of each and every State. The right of States to annul the laws and suspend the operations of the Government is not derived from the constitution, but is a high and transcendental power, above the constitution and above all law; it is an abstraction from the idea of sovereign power, and a refinement on the theory of Government. The people of the States have not delegated this veto to the Legislatures; it is a judicial, and not a legislative power; if it pertains to the sovereign power of the State, it must be a reserved power to the people, to be exercised by them in their sovereign capacity. But, whether a State, or the people of a State, have the right to a negative on the laws, is a question to be determined, by whom? By the State? That is to be the judge in its own cause. Or, to be submitted to the majority of the people of all the States? Or, to the Supreme Court? It is a "controversy in which the United States are a party."

Admitting the power of the State, and the right to decide for herself, then each and every State in the Union has a constitutional veto on the laws of the United States; then the General Government must, or perhaps each of the States must, have a similar power to suspend the laws of any other State, when it exercises any sovereign power that is inhibited to the States, or that comes in collision with the General Government; and this also, the Government and each State must decide for itself. What a scene of confusion!

Again: each State, then, and the smallest State, with the smallest majority in the State, may suspend the laws within her jurisdiction. Then the action of the Government must depend on the concurrent will of each and all the States. Then the laws made by a majority of the people, and of the States, may be controlled and counteracted by a small, nay, the smallest minority. The Government, if it could be so called, would be absurd in theory, and impracticable in principle.

By the constitution, checks and balances were provided; majorities required; a veto conferred on the President; and a Supreme Court, to decide all questions under the constitution. All which were ridiculous precautions, if each State could exercise the veto, decide all questions for herself, and annul the expressed will of the majority. And what then becomes of the great political maxim, "that absolute acquiescence in the decisions of the majority—the vital principle in republics—from which there is no appeal but to force, the vital principle and the immediate parent of despotism!"

If this veto is the legitimate right of a State, she ought not to be controlled, resisted, or coerced. She may therefore peaceably withdraw from the Union, and must virtually dissolve the Union, because the laws must cease to operate, (the tariff for example) unless they operate throughout; and besides, could the Union continue, separated by an intervening State? This Union can then only exist as long as twenty-four States concur in opinion. If this principle is true, it ought to have been inserted in the constitution. But it was not. And if the principle is acknowledged, then this constitution was not only imperfect in its organization, but is a political monster, born incapable of living, and containing a principle of self destruction.

The Union must dissolve peaceably, whenever the caprice, the passion, or the ambition, of a few aspiring men of a State may will it, or it must be maintained by force. It is either disunion, or civil war; or, in the language of the times, disunion and blood.

It is time to calculate, not the value, but the duration of the Government.

But we are told no such consequences will ensue. That it is a safe remedy—a necessary check—a salutary restraint upon this uncontrolled majority—a new balance in the constitution, that will regulate all its motions. As soon as this new State power is acknowledged, there will be no more unconstitutional laws, no further encroachment on the rights of the States. "The injured and oppressed States will assume her highest political attitude." She exercises her negative preventive power, she declares the law void—"the necessary consequence," says the gentleman from Tennessee, [Mr. GAUNDY] "is, it must cease to operate in the State, and Congress must acquiesce, by abandoning the power, or obtain an express grant from the great source from which all power is drawn. The General Government would have no right to use force." "This will at all times prove adequate to save this glorious system of ours from disorder and anarchy." The parties claiming to exercise the power must call a convention of the States, and unless three-fourths of the States will consent to amend the constitution, and confer the power, it must cease to exercise it. Thus a law passed in the usual form, with majorities in both Houses, approved by the President, may be annulled, by the veto of any State, and every power taken from Congress, unless three-fourths of the States are now willing to grant it. Let us see how this will operate. Suppose the twenty-fifth section of the Judiciary Act annulled, the jurisdiction of the court over all cases provided for by it must cease. Again, the tariff has been declared a palpable violation of the constitution; it must, therefore, cease to operate; then the Supreme Court must not take any cognizance of any case arising under it, and Congress must not employ force; it is therefore unnecessary to resist the laws, and there will be no rebellion or treason. But then there will be no revenue. Congress has a right to lay duties for revenue. How much of this tariff is for revenue? for so much it is constitutional, as well as duties on articles not made in the country, and therefore not for the protection of domestic industry. What must be done in such a dilemma?

Every power which has been at any time denied to Congress would have ceased. The Bank, after it had

gone into operation, would have been compelled to shut its doors, and close the concern. All crimes not enumerated in the constitution would be stricken from the statute book; the embargo would have been declared inoperative; the 25th section of the Judiciary Act would have been rendered void; the Cumberland road, and subscriptions to canals, grants of land, and all internal improvement, would have been suspended on the veto of a single State. The Judiciary law could not have been repealed, and Louisiana and Florida could not have been acquired.

Such is the *vis inertia*, that it is extremely difficult to get more than a bare majority for any measure. Some do not like its principle or its policy: some are indisposed to change: some do not like the time or the mode of proposing it. There are always reasons enough for opposing any proposition. Most great questions in deliberate bodies are carried by small majorities. The embargo—the war—the bank—the tariff, are striking instances. The constitution of the United States was adopted in Virginia, 89 to 79. Her late constitution was passed by a majority of only 15. It cannot, therefore, be reasonably expected that three-fourths of the States will ever concur in granting any power to Congress that may be previously declared unconstitutional. The powers of the Government will be constantly frittered away, until it has no power to do good—no means to protect—no energy to act—no principle of union.

But is the theory true, that, when the majority has pronounced, and the presumptions are all in favor of the law, and it is suspended at the instance of a single State, that Congress are to be presumed in error, and must obtain the sanction of three-fourths of the States? Is it not rather more compatible with the theory and principles of the Government, that the complaining party, the resisting State, should call the convention and make the appeal, and assure herself that she is right? A majority can repeal the law, and save further trouble.

This negative is supposed to be necessary to the security of the States, and the protection of the minority; but its real operation will be to destroy the force and energy of the administration. "What may, at first sight, appear a remedy, is, in reality, a poison: to give the minority a negative upon the majority, which is always the case when more than a majority is requisite to a decision, is, in its tendency, to subject the sense of the greater number to that of the lesser. Congress, (under the confederation) from the non-attendance of a few States, have been frequently in the situation of the Polish Diet, when a single veto has been sufficient to put a stop to all their movements. The sixtieth part of the Union has several times been able to oppose an entire bar to its operations. This is one of those refinements which, in practice, has, in effect, the reverse of what is expected from it in theory."—[Federalist.]

The wise men who framed this constitution knew, from the defects and infirmities of the confederation, what was necessary to remedy the errors and correct the evils of that system. They knew that it had been, in its operation upon States only, totally inadequate to the object of its institution; that this Government must look beyond the States, and operate directly through the agency of the people, and upon the people. They knew the necessity of a high court, to decide all questions arising under it; the want of a judiciary power crowned the defects of the confederation. "Laws are a dead letter, without courts to expound and define their true meaning and operation." "This is more necessary, when the frame of the Government is so compounded that the laws of the whole are in danger of being contravened by the laws of the parts."—[Federalist.]

They knew it was necessary to have a power to decide on all cases that contravened the authority of the Union, and to prevent the exercise of the inhibited powers by the States, and all other questions which it was foreseen might

arise under the new Government. This presented a question of exceeding great difficulty: two plans were proposed, one to give power to the General Government to revise the laws of the States, and the other, the right to use force. Mr. Pinckney proposed, "to render these prohibitions effectual, the Legislature of the United States shall have power to revise the laws of the several States that may be supposed to infringe the powers exclusively delegated by this constitution to Congress, and to negative and annul such as do."

Mr. Randolph proposed—"The Legislature to negative all laws passed by the several States, contravening, in the opinion of the National Legislature, the articles of union, or any treaty, and to call forth the force of the Union against any member of the Union failing to fulfil its duty under the articles thereof."

Upon more mature consideration, however, it was determined to extend the jurisdiction of the Supreme Court to all cases that could arise under the constitution, or the laws, or treaties. It was essential to make the judiciary power co-extensive with the legislative power.

The constitution, therefore, provided that the judicial power should extend—

1. To all cases in law and equity arising under the constitution.
2. To all cases under the laws of the United States.
3. To all cases under treaties made by them.
4. To all cases affecting ambassadors, ministers, and consuls.
5. To all cases of admiralty and maritime jurisdiction.
6. Controversies wherein the United States are a party.
7. Controversies between two or more States.
8. Controversies between a State and citizens of another State.
9. Controversies between citizens of different States.
10. Controversies between citizens of the State claiming lands under grants of different States.
11. Controversies between a State or citizen, and foreign States, citizens, or subjects.

Here is power granted to try all imaginable cases that can be described; all cases in law and equity, admiralty, or maritime jurisdiction; all that arise under the laws and constitution, and treaties, and then it extends to all controversies in which the United States may be a party, and especially those that arise under the constitution and in execution of the laws. Cases, in general, must operate upon individuals and corporations, and not upon sovereign States. Thus, for example, under the tariff, if goods are introduced and not entered, they will be seized under the revenue laws—then it is a question in law arising under the laws of the United States: if they resist the seizure, it is opposition to the laws; the courts will proceed to judgment, and the President is authorized to call on the Executives of the States for the militia to execute the laws. If they refuse the militia, on the call of the President, then it is the Massachusetts case; if they oppose the laws by force, how will they escape the crime of treason, and how will that differ from the Western insurrection? And all these are controversies to which the United States are a party; if they enter the goods, and suit is instituted on the bond, the court will hear any defence, but they must decide, although the constitution, the power of the United States, or the sovereign power of a State, may be incidentally drawn in: when judgment is obtained and execution issued, notwithstanding a sovereign State may be interested, by her agents, it must be executed as in the Pennsylvania case, to which I shall presently advert.

It is a suit arising under the laws, and a controversy in which the United States are a party, and therefore within the judicial power of the courts, expressly delegated by the constitution. The courts will proceed in the execution of the laws, and in the regular administration of justice. Every law, so far as it acts on individuals, must be

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enforced by the courts, and no State law can stop them. All controversies, in which the United States are a party, gives jurisdiction of all cases where her sovereign power is called in question; and all questions of inhibited powers to the States arise directly under the constitution.

The laws, in general, operate on the rights of individuals claiming under the sovereign power of the United States. Thus, the sovereignty of the United States made a bank; the sovereignty of Maryland undertook to tax it; the United States denied the right; the court decided this act of sovereignty, on the part of Maryland, to tax it, void. Here, the corporation claim rights under the constitution and law of the United States; it is under the constitution, and the law of the United States it will often happen that questions will arise between individuals claiming rights and powers under the two Governments. The wise heads that framed the Judiciary Act saw this, and made the necessary provision of the 25th section. This presents an admirable system, perfect in all its parts, harmonious in all its operations, which establishes justice, ensures domestic tranquility, and preserves the Union.

In the other alternative, I see nothing but confusion and disorder, and, in the end, disunion and anarchy. In pursuance of this organization of the court, one hundred and seven points or principles have been decided, under the constitution, each of which involved some disputed question with regard to the power of the General Government, or of the States, or of the courts. It has fulfilled the design of its institution; it has settled most of the doubtful points that necessarily arose in putting this great machinery in operation. It has given form and consistency to the constitution, and uniformity to the laws. It has preserved its own high character, in the midst of political conflicts, and, by its purity, elevation, dignity, and learning, maintained the confidence of the people; and it will hold this place as long as its members pursue the even and quiet tenor of their way, high above the hopes of office, or the reachings of ambition. But, if they enter the political arena, and become aspirants there, they will catch the passions of the people, and the spirit of parties, and they will perform their duties under their influence. They will either conform their opinions to the party they attempt to propitiate, and thus vary them from time to time, or degrade the court with shameful disagreements, until it becomes a cabal instead of a court; they will lose, as they will deserve to lose, the confidence of the country.

The following list will exhibit the nature and number of the causes decided. The same case is sometimes counted under different heads:

1. Declaring acts of Congress unconstitutional,	2 cases.
2. Declaring acts of Congress constitutional,	6
3. Declaring State laws constitutional,	9
4. Declaring State laws unconstitutional,	26
5. Affirming judgments of State courts,	14
6. Annuling judgments of do.	14
7. Assenting to appeal of jurisdiction,	7
8. Acquiescing in do.	21
9. States parties really and nominally,	6
10. States parties incidentally,	4
11. Opinions against the President,	2
12. Opinions in favor of the President,	2
13. Opinions against the Secretary of State,	2

It may be remarked that each of these cases involves some principle of sovereign power. The right of the court to decide, then, between individuals, has not been denied. No State has interposed. The opinions are generally approved by professional men throughout the country. They prove the necessity, and demonstrate the independence of the tribunal. They have decided twenty-six State laws to be unconstitutional; that is, interfering with the rights of the General Government; which, considering these as twenty-four States, are not equal to the number of decisions against the acts of Congress.

Now, upon the principle assumed in debate, of the right of a sovereign to decide these questions of sovereignty for itself, the General Government ought to have declared, through Congress, that these acts were void. Each sovereign State, having an interest in the case, would have a right to interpose her veto, and then the State must cease to act under it. But is not this judicial mode much easier and safer? Suppose the State executes prohibited laws, and there is no tribunal to decide. The two authorities would come directly in conflict. The court has annulled the judgments of State courts in fourteen cases, which drew in question the constitution, laws, or treaties of the United States, but has affirmed as many, which shows that they have no bearing against the rights of States; and which, if it had no other effect, has preserved the uniformity so essential to the administration of justice under them. It shows, also, the indispensable necessity of the twenty-fifth section of the Judiciary Act; it exhibits the fact that, while only eight questions have arisen on the constitutionality of acts of Congress, thirty-five have occurred on that of State laws. In all these cases the line has been distinctly drawn between the two powers, and the two jurisdictions; all parties acquiesce, and the whole system moves with the greatest harmony.

But it is said they are the creatures of the Government. How? They are members of the States, created by the people and by the States, to decide for all the people, and for all the States. They decide principles that act every where, and upon every class and interest, and must operate in all time. They must sustain the jurisdiction you have conferred upon them, and no more. Their character, talents, and fame, are the best security, and the highest guarantee, for the faithful performance of their duty. They are selected for their signal qualifications, and will probably be of the dominant party when appointed; they are independent in their office; they decide before the whole country, and under the scrutiny of a learned and watchful profession, and subject to the jealous care of the State tribunals. The court is permanent, whilst the executive and legislative branches are continually changing. Opinions, parties, and men, are undergoing constant revolution, while the principles of the Government, the construction of the constitution, and the interpretation of the laws, remain fixed. The Judiciary is the only principle of stability in the Government.

It was undoubtedly the intention of the convention to constitute a Supreme Court to decide all questions of law or sovereignty, and the words are as general and as ample as the language admits. But, in addition to this, it is the duty of the President to take care that the laws be faithfully executed, and Congress have power to provide, and they have provided, that the President may call forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions. Besides, the Congress have power to suspend the *habeas corpus* in cases of rebellion and invasion. This superintending power of the Government was understood perfectly by the framers of it. To secure the citizens of the respective States from being punishable as traitors to the United States, when acting expressly in obedience to the authority of their own State, it was proposed, in the convention, to add: "Provided that no act or acts done by one or more of the States against the United States, or by any citizen of any one of the United States, under the authority of one or more, shall be deemed treason, or punished as such; but, in case of war being levied by one or more of the States, against the United States, the conduct of each party towards the other and their adherents, respectively, shall be regulated by the laws of war and of nations"—which was not adopted; which sufficiently explains the views of the convention. But, after the adoption of the constitution, the State of North Carolina proposed, as an amendment, that no State should be declared in rebellion

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but by the consent of two-thirds of the States present—which was also not adopted.

If this is the true interpretation of the meaning of the constitution, they will take upon themselves a heavy responsibility who undertake, upon a mere abstract theory of right, to resist or to interfere with the regular and legal operations and functions of the different branches of the Government, at the will and pleasure of the States. Having entered into civil society, and distributed the power into different hands, they contract the obligation of obedience; they are bound by the constitution which they have sworn to support.

This question is reduced to a narrow compass. The right to resist an usurpation, or a tyranny, is not denied; the right to use all the peaceful modes of redress, not doubted. It has been admitted that the Supreme Court may decide all cases between individuals. But it is said the States now claim the right to decide when the General Government exceed their authority, because that is a sovereign power. I have endeavored to show that the power to decide all questions under the constitution has been conferred on the Supreme Court; and, if so, the question is concluded, whatever may be the form of the Government.

If this is a pure and simple confederation of States, they are bound by the constitution, by all they have stipulated, and they are obliged by their duty and by their oath to submit to the court all matters of which they have jurisdiction; that is, every case arising under the constitution and laws, and every controversy to which the United States are a party; and they are, moreover, bound to show that, to decide on the unconstitutionality of a law is an exception, and not included in this grant; they are bound to show that, in such a union of States, for certain great objects, each State has a right to decide, definitively, for herself, when the power is exceeded. The convention intended to provide for all cases that could occur; if they have failed to remedy the evil that was foreseen, they have made a Government which, instead of being a splendid fabric of human invention, is utterly impracticable, and which must exist only by the forbearance of the States.

This was the defect of the confederation; it had not the sanction of the people; it was ratified only by the State Legislatures; and, therefore, reasoning from these theories of Government, it was said each Legislature had a right to repeal the law, and thereby annul the confederation. It is said, in reply to this, in the *Federalist*:

"However gross a heresy it may be to maintain that a party to a compact has a right to revoke that compact, the doctrine itself has had respectable advocates. The possibility of a question of this nature proves the necessity of laying the foundations of the National Government deeper than in the mere sanction of delegated authority. But the fabric of American Empire ought to rest on the solid basis of the consent of the people. The streams of national power ought to flow immediately from the pure original fountain of all legitimate authority."

The right of a State to annul a law of Congress must moreover depend on their showing that this is a mere confederation of States; which has not been done, and cannot be said to be true, although it should not appear to be absolutely a Government of the people. It is by no means necessary to push the argument, as to the character of the Government, to its utmost limit; the ground has been taken, and maintained with great force of reasoning, that this Government is the agent of the supreme power, the people. It is sufficient for the argument that this is not a compact of States; it may be assumed that it is neither strictly a confederation nor a National Government; it is compounded of both—it is an anomaly in the political world—an experiment growing out of our peculiar circumstances—a compromise of principles and opinions—it is partly federal, partly national.

"The proposed constitution is, in strictness, neither national nor federal; it is a composition of both; in its foundation, it is federal, not national; in the sources from which the ordinary powers of the Government are drawn, it is partly federal, partly national; in the operation of these powers, it is national, not federal; in the mode of amendment, it is neither wholly federal nor wholly national."—[*Federalist*.]

This was the great question solved by the convention: whether this Government should be a confederation, founded on an equality of States, or a Union, upon the principle of population. The large States contended for representation of the people, the small States for equality of States. The parties were nearly balanced, and upon this ground the great struggle was conducted. A majority of the people could not consent to be governed by a minority in the great concerns of this Government; while the small States thought their safety consisted in maintaining their equal share of the power. A majority of the convention was in favor of the popular principle; the House of Representatives was formed upon a representation of the people; the States were equally divided in the formation of the Senate, which led to a compromise, by which that branch was formed on the principle of equality of States, and the election of President was rendered, in the first instance, popular, but upon a compound principle, growing out of the compromise. The confederation was abandoned, as too defective to remedy; the federative principle was retained, so far as to protect the rights of the small States, while it preserved those of the people of the large States, by the division and organization of the Legislative department, by which no law or treaty can be made without the concurrence of a majority of the people and of the States. The rights of both were further protected by the veto of the Executive. The States are a part of the machinery of the Government, and constitute one great whole, and "a more perfect Union," under the style of "We the people of the United States." This Government, thus constituted for certain purposes, acts for the people collectively, and directly upon the people of the Union, without any reference to the States. It does not act by States, or upon the States. It levies taxes, imposes, and duties, upon the people; it administers justice in the States, upon individuals; it commands the militia, &c. Now, having entered into this Government, by whatever name it may be known, so checked and balanced, with so many guards and precautions, what is the principle upon which it is founded? Certainly, that a majority of the people and of the States should pass all laws, and that these should be the supreme laws of the land, and that every question of power under the constitution and laws should be decided by the Supreme Court.

This, I think, has been shown by the substitution of the Supreme Court in the place of the other modes recommended, to give Congress the control of the State laws: by giving, in express terms, jurisdiction of all controversies in which the United States are a party; by the contemporaneous construction of the constitution in the Judiciary Act; by declaring the laws supreme; by giving the President power to call out the militia, and making it his duty to execute the laws. The court has uniformly exercised jurisdiction, which has been approved, on an open appeal to the States. The President has carried the judgments, by force, into effect. The State tribunals have acknowledged the authority, and such is now the opinion of three-fourths of the people and of the States of this Union.

It was believed, by those who framed the constitution, that the laws would be supreme, and would be enforced by the National Judiciary. Mr. Monroe, in his message, in December, 1824, says, the Supreme Court "decides, in the last resort, on all great questions which arise under our constitution, involving those between the United

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States, individually, between the States and the United States." Chief Justice Spence, 19 Johnson 164, says, "I consider that court as paramount, when deciding on an article of the constitution, and an act of Congress passed under its express injunction."

In the case of *Cohens vs. Virginia*, "It (the counsel) maintains that, admitting the constitution and laws to have been violated by the judgment, it is not in the power of the Government to apply a corrective. They maintain that the nation does not possess a department capable of restraining, peaceably, and by authority of law, any attempts which may be made, by a part, against the legitimate powers of the whole; and that the Government is reduced to the alternative of submitting to such attempts, or of resisting them by force; they maintain that the constitution of the United States has provided no tribunal for the final construction of itself, or of the laws or treaties of the nation, but that this power may be exercised, in the last resort, by the courts of every State in the Union." The court, however, decided in favor of the power of the court.

It has been objected by the gentleman from South Carolina, [Mr. SIMMS] that a bare majority of the Supreme Court may decide the most important questions of State rights. The answer is, that no provision was made in the constitution; none was thought necessary. It is in the power of Congress at all times to change it, and to require a large majority. This has been tried, and always resisted.

It is objected, that, when the court is composed of seven, there may be three on each side, and one may decide; but this is favorable to the States: for if they affirm the constitutionality of a law, they only sanction what has been previously declared by all the other branches of the Government. If a majority of one member decides against the law, his opinion countervails the weight of all the majority by which the law was passed; so that, when the constitutionality of a law is doubted, a single member, when there is a disagreement, may decide against the power of the Government. If more than a majority are required to declare a State law unconstitutional, by parity of reason more than a majority must be required to declare an act of Congress unconstitutional.

Having examined the question upon principle, let us see if there is any precedent or authority for it. I believe there are but two gentlemen who have avowed the opinion. The gentleman from New Hampshire marched boldly up to the very boundary of the question, and stopped short; he refused to vouch for the nullifying power, by which I infer it is not, in his opinion, the true democratic doctrine.

There is no precedent except the Virginia and Kentucky resolutions; they are merely declaratory that the States are parties to the compact, and that, in case of a palpable, dangerous, and deliberate violation of the constitution, the State has a right to interpose. But how? By annulling the law? No; but by declaring the act of Congress unconstitutional, and referring the question to the other States. It is a protest on the part of the State, and an appeal from Congress to the State authorities, who are also parties. The last Virginia resolution is in these words, after expressing the most sincere affection for their brethren of the other States: "The General Assembly doth solemnly appeal to the like dispositions of the other States, in confidence that they will confer with this Commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional, and that the necessary and proper measures will be taken by each, for co-operating with this State in maintaining, unimpaired, the authorities, rights, and liberties, reserved to the States, respectively, or to the people;" and for this purpose they were transmitted to the several States.

In the debate, Mr. Mercer said: "The State believed

that some of its rights had been invaded by the late acts of the General Government, and proposed a remedy, whereby to obtain a repeal of them. The plan contained in the resolutions appeared the most advisable; force was not thought of by any one." "Nothing seemed more likely to produce a temper in Congress for a repeal, than a declaration similar to the one before the committee, made by a majority of States, or by several of them." "We do not wish," [said Mr. M.] "to be the arm of the people's discontent, but to use their voice." "They (the States) can readily communicate with each other in the different States, and unite their common forces for the protection of their common liberty." Mr. Barbour said: "The gentleman from Prince George had remarked, that these resolutions invited the people to insurrection and to arms; but, if he could conceive that the consequences foretold would grow out of the measure, he would become its bitterest enemy;" "but it would appear by reference to the leading feature in the resolutions, which was their being addressed, not to the people, but to the sister States, praying, in a pacific way, their co-operation in arresting the tendency and effect of unconstitutional laws."

General Lee said: "If the law was unconstitutional, he admitted the right of interposition; nay, it was their duty; every good citizen was bound to uphold them in fair and friendly exertions to correct an injury so serious and pernicious."

But the object of these resolutions is more clearly and explicitly set forth by Mr. John Taylor, who introduced the resolutions. In his reply to the apprehensions of civil commotion, to which the resolutions were said to have a tendency, he said: "Are the republicans possessed of fleets and armies? if not, to what could they appeal for defence and support? To nothing but public opinion; if that should be against them, they must yield. They had uttered what they conceived to be truth, in firm, yet decent language; and they had pursued a system which was only an appeal to public opinion."

He maintained that the fifth article of the constitution had provided a remedy against encroachments, by Congress on the States, and upon the rights of each other. By the article, "two-thirds of Congress may call upon the States for an explanation of any such controversy as the present, by way of amendment to the constitution, and thus correct an erroneous construction of its own acts, by a minority of the States, while two-thirds of the States are also allowed to compel Congress to call a convention, in case so many should think an amendment necessary for the purpose of checking the unconstitutional acts of that body." He said "the will of the people and the will of the States were made the constitutional referee in the case under consideration. The State was pursuing the only possible and ordinary mode of ascertaining the opinion of two-thirds of the States, by declaring its own, and asking theirs. He hoped these reprobated laws would be sacrificed to quiet the apprehensions even of a single State, without the necessity of a convention, or a mandate from three-fourths of the States. He said, "firmness and moderation could only produce a desirable coincidence between the States." "Timidity would be as dishonorable as the violent measures, which gentlemen on the other side recommended in cases of constitutional infractions, would be immoral and unconstitutional."

Thus it appears that there is nothing in these resolutions that looks to the right of the State of Virginia herself to annul an act of Congress; on the contrary, it is the very reverse. It is a declaration that the law, in their opinion, violates the constitution; that the State has a right, as a party to the compact, to interpose, by referring it to the consideration of the other parties to the compact: the language is too plain, and too explicit, to require comment.

Two very important amendments were introduced,



which evinced still farther that it was not their intention to annul the laws, or to claim the right to interpose in that way. The first was: they declared, in the first of the resolutions, that the alien and sedition laws were unconstitutional, and not law, but utterly null and void, and of no force or effect. These nullifying expressions were stricken out, upon the motion of Mr. Taylor himself. They were, no doubt, originally inserted merely to express the opinion that the necessary effect of their being unconstitutional was that they were not law, and null and void; but it is evident it was not in the contemplation of the Legislature or of the author of them, that the Legislature, who was merely submitting the subject by way of appeal to the other States, could make the laws void by their declaration. Mr. Taylor said the plan proposed might eventuate in a convention. He did not admit or contemplate that a convention might be called; he only said that, if Congress, upon being addressed to have the laws repealed, should persist, they might, by a concurrence of three-fourths of the States, be compelled to call a convention. The second amendment was in the third clause: "The compact in which the States alone are parties." The word alone, stricken out on the motion of Mr. Giles. It had been said that the people only were the parties to the compact, and the resolution declared that States alone were parties. Mr. Giles said, "the General Government was partly of each kind;" and, therefore, moved to strike out alone.

The opinion of Mr. Jefferson, which has been quoted in this debate, relative to calling a convention, the proper arbiter in questions of sovereignty, correspond with those of the Legislature. In his letter to W. C. Nicholas, in September, 1799, then about to proceed to Kentucky, directing what was necessary to avoid the inference of acquiescence, and to procure a concert in the general plan of action, he recommended resolutions, first, answering the committee of Congress and the States that replied: second, making protestation against the precedent and principle, and reserving the right of making this palpable violation of the Federal compact the ground of doing in future whatever we might now rightfully do, should repetitions of these and other violations of the compact render it expedient; third, expressing, in affectionate and conciliatory language, our warm attachment to the union with our sister States, and to the instrument and principles by which we are united." He says, "Mr. Madison does not concur in the reservation proposed above, and from this I recede readily, not only in deference to his judgment, but because, as we should never think of separation, but for repeated and enormous violation, so these, when they occur, will be cause enough of themselves."

I hold in my hand a letter from George Nicholas, of Kentucky, in November, 1798. He was a conspicuous member of the Virginia convention—an able lawyer and statesman—a distinguished republican, and a leading and influential man, in the day of the Kentucky resolutions. I read from this letter to show the views entertained then of the remedy against unconstitutional laws. "If you had been better acquainted with the citizens of Kentucky, you would have known that there was no just cause to apprehend an improper opposition to the laws from them. The laws we complain of may be divided into two classes, those which we admit to be constitutional, but consider as impolitic, and those which we believe to be unconstitutional, and therefore, do not trouble ourselves to inquire as to their policy, because we consider them as absolute nullities. The first class of laws having received the sanction of a majority of the Representatives of the people of the States, we consider as binding on us, however we differ in opinion from those who passed them as to their policy; and although we will exercise our undoubted right of remonstrating against such laws, and demanding their repeal as far as our numbers will justify us in making such a demand, we will obey them with promptitude, and to

the extreme of our abilities, so long as they continue in force. As to the second class of the unconstitutional laws, although we consider them as dead letters, and, therefore, that we might legally use force in opposition to any attempts to execute them; yet, we contemplate no means of opposition, even to those unconstitutional acts, but an appeal to the real laws of our country. As long as our excellent constitution shall be considered as sacred, by any department of our Government, the liberties of our country are safe, and every attempt to violate them may be defeated by means of law, without force or tumult of any kind." He quotes the following to Hamilton: "The complete independence of the courts of justice is peculiarly essential in a limited constitution: by a limited constitution I understand one which contains specific exceptions to the legislative authority, such, for instance, as that it shall pass no bill of attainder, no *ex post facto* law, and the like; limitations of this kind can be preserved in practice no other way than through the medium of the courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the constitution void. Without this, all reservations of particular rights or privileges amount to nothing." "It is more rational to suppose that the courts were designed to be an intermediate body between the people and the Legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the law is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges as, a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the Legislative body. If there should happen to be any irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the constitution ought to be preferred to the statute, the intention of the people to the intention of their agents. As long, therefore, as the Federal courts retain their honesty and independence, our constitution and our liberties are safe;" "but resistance ought not to be appealed to, except in cases of extreme danger and necessity: let all good men unite their efforts to prevent the United States from being brought to that crisis."

On the 14th November, 1799, four days after this letter, the Kentucky Legislature entered its solemn protest against the laws which had been declared unconstitutional. The States of Maryland and Ohio had questions about the Bank of the United States, which were submitted to the Supreme Court. The constitutionality of the embargo, which involved an immense amount, was settled by the Supreme Court. In fine, every question that has arisen in forty years, under the constitution, has been satisfactorily settled; and they have established many great and difficult principles, which have now become the settled rule of construction and the law of the land; and they will go on in the execution of this high duty, until they are stopped by the want of power in the Executive to execute the judgments of the court, the power of a State to annul the laws to the contrary notwithstanding.

But, happily for us, this question of the power of the court, and the necessity and expediency of establishing another tribunal to decide on cases involving the sovereign power of the two Governments, has been formally submitted to the States, in a strong case, by a large State, and under the most imposing forms; and was as solemnly rejected. The State of Pennsylvania, in 1803, complained of an infringement of her State rights, by an unconstitutional exercise of power in the United States' courts: that no provision had been made in the constitution for determining disputes between the General and State Governments, by an impartial tribunal, when such cases occur. The Legislature "Resolved, That, from the con-

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struction which the United States courts give to their powers, the harmony of the States, if they resist encroachments on their rights, will frequently be interrupted; and if, to prevent this evil, they should, on all occasions, yield to stretches of power, the reserved rights of the States will depend on the arbitrary power of the courts."

"To prevent the balance between the General and State Governments from being destroyed, and the harmony of the States from being interrupted, *Resolved*, That our Senators in Congress be instructed, and our Representatives requested, to use their influence to procure an amendment to the constitution of the United States, that an impartial tribunal may be established to determine disputes between the General and State Governments."

These resolutions were submitted to all the States. I hold in my mind the answers of nine States, refusing the proposition, to wit: Virginia, North Carolina, Maryland, Georgia, Tennessee, Kentucky, New Jersey, Vermont, and New Hampshire, without one affirmative State.

Mr. J. then read the answer of the State of Virginia, which was agreed to unanimously, as follows:

"THURSDAY, January 11, 1810.

"Mr. Peyton, from the committee to whom was referred that part of the Governor's communication which relates to the amendment proposed by the State of Pennsylvania to the constitution of the United States, made the following report:

"The committee, to whom was referred the communication of the Governor of Pennsylvania, covering certain resolutions of the Legislature of that State, proposing an amendment of the constitution of the United States, by the appointment of an impartial tribunal to decide disputes between the States and Federal Judiciary, have had the same under their consideration, and are of opinion that a tribunal is already provided by the constitution of the United States, to wit, the Supreme Court; more eminently qualified, from their habits and duties, from the mode of their selection, and from the tenure of their offices, to decide the disputes aforesaid, in an enlightened and impartial manner, than any other tribunal which could be created.

"The members of the Supreme Court are selected from those in the United States who are most celebrated for virtue and legal learning, not at the will of a single individual, but by the concurrent wishes of the President and Senate of the United States: they will, therefore, have no local prejudices and partialities. The duties they have to perform lead them, necessarily, to the most enlarged and accurate acquaintance with the jurisdiction of the Federal and State courts together, and with the admirable symmetry of our Government. The tenure of their offices enables them to pronounce the sound and correct opinions they may have formed, without fear, favor, or partiality.

"The amendment to the constitution, proposed by Pennsylvania, seems to be founded upon the idea that the Federal Judiciary will, from a lust of power, enlarge their jurisdiction, to the total annihilation of the jurisdiction of the State courts—that they will exercise their will, instead of the law and the constitution.

"This argument, if it proves any thing, would operate more strongly against the tribunal proposed to be created, which promised so little, than against the Supreme Court, which, for reasons given before, have every thing connected with their appointment calculated to ensure confidence. What security have we, were the proposed amendment adopted, that this tribunal would not substitute their will and their pleasure in place of the law? The Judiciary are the weakest of the three departments of Government, and least dangerous to the political rights of the constitution; they hold neither the purse nor the sword; and, even to enforce their own judgments and decisions, must ultimately depend upon the Executive arm. Should

the Federal Judiciary, however, unmindful of their weakness, unmindful of the duty which they owe to themselves and their country, become corrupt, and transcend the limits of their jurisdiction, would the proposed amendment oppose even a probable barrier in such an improbable state of things?

"The creation of a tribunal, such as is proposed by Pennsylvania, so far as we are able to form an idea of it from the description given in the resolutions of the Legislature of that State, would, in the opinion of your committee, tend rather to invite, than to prevent, collision between the Federal and State courts. It might also become, in process of time, a serious and dangerous embarrassment to the operation of the General Government.

"*Resolved, therefore*, That the Legislature of this State do disapprove of the amendment to the constitution of the United States proposed by the Legislature of Pennsylvania."

The Governor of Pennsylvania, by direction of the Legislature, transmitted the proceedings to the President of the United States. He said he was "consoled with the pleasing idea that the Chief Magistracy of the Union is confided to a man who is so intimately acquainted with the principles of the Federal constitution, and who is no less disposed to protect the sovereignty and independence of the several States, as guarantied to them, than to defend the rights and legitimate powers of the General Government; who will justly discriminate between opposition to the constitution and laws of the United States, and that of resisting a decree of a judge, founded, as it is conceived, in an usurpation of power and jurisdiction not delegated to him by either; and who is equally solicitous, with himself, to preserve the union of the States, and to adjust the present unhappy collision of the two Governments, in such a manner as will be equally honorable to them both."

To which Mr. Madison replied: "Considering our respective relations to the subject of these communications, it would be unnecessary, if not improper, to enter into any examination of some of the questions connected with it; it is sufficient, in the actual posture of the case, to remark that the Executive of the United States is not only unauthorized to prevent the execution of a decree, sanctioned by the Supreme Court of the United States, but is expressly enjoined, by statute, to carry into effect any such decree, where opposition may be made to it." He adds, that no legal discretion lies with the Executive to decline steps which might lead to a very painful issue.

The proceedings were transmitted to Congress, who made no report thereon. The Governor of Pennsylvania determined to resist; the marshal proceeded to execute the judgment; the troops were drawn out; but the Governor finally withdrew, and the marshal performed his duty. These are all the authorities I have met with. I have seen nothing that justifies the idea of the power of a State to annul the acts of Congress. They all look to an appeal to the other States—to conventions of the people, or to decisions of the courts. It is to be regretted that this idea has been suggested: some, in moments of passion, may seek this violent remedy for partial and temporary evils. If the power was undoubted, it is one which might be kept from the people. It is the only secret I would keep from them; the power by which a small majority of a State may produce anarchy, confusion, and civil war. Let us rather teach them how well they are, and how happy they ought to be; how free and how prosperous; show them their relative condition in the scale of human existence and political society; show them the miserable state of the mass of the people in every other country; show them the wretched state of pauperism, and what we have recently read of the condition of a portion of the people in the freest government of Europe: let us teach them to enjoy the good they have.

It has been said, the people have the power to break

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down the Government. That is a question of force. The majority can no doubt destroy a government, as easily as make it. A majority of the numbers are presumed to have a majority of the force, and therefore the minority submit to be governed by them, to avoid an appeal to force. But a minority can no more destroy the Government than they can make one; much less can a single State in a confederacy claim the right to control and counteract all the other States, unless that power has been conceded to each of the members of the Union by the compact, which is not pretended in this case.

This Government was formed with all the checks and balances that were deemed necessary to protect the minority, whether of the people or of the States. This disposition to the exercise of power in the head, and the tendency to resistance in the members, was well understood. Propositions were made to protect the minority by additional guards; by requiring the concurrence of two-thirds. This was rejected in all cases, except in the ratification of treaties, and in amendments to the constitution.

The principle of requiring more than a majority had been tried under the confederation. It was found to paralyze the arm of Government; to take from it all energy, all ability to exert its own power, and to render it weak and inefficient. It is now said that "constitutional government and a government of a majority are utterly incompatible; it being the sole purpose of a constitution to impose limitations and checks upon the majority. An uncontrolled majority is a despotism; and government is free, and will be permanent, in proportion to the number, complexity, and efficiency, of the checks, by which its powers are controlled." Without entering into any discussion upon this abstract theory of government, which has puzzled the wisest heads and confounded the clearest understandings, it is enough to say, that this is an objection to all governments, and to the principles of the constitution, which is not more perfect than any other human invention, but is, perhaps, quite as free from error and difficulty as any other system that could be devised, and more perfect than any one which the States would now adopt: for no majority will consent to be controlled in the exercise of their powers by a complicated system of checks. But the objection to the power of a majority is as good against all oppressive laws as against unconstitutional laws.

Whatever defects may appear in the theory, in the abstract it must be confessed, it has preserved, so far, domestic tranquillity, provided for the common defence; it has regulated commerce, carried on war, made peace, established justice, and formed a more perfect union. In fine, it has overcome every difficulty, and surmounted every obstacle; it has proved itself adequate to all the purposes of a great empire in peace or war.

Beyond this Union I do not venture to look; beyond that, all is darkness.

I have thus endeavored to show [said Mr. J.] that there exists no cause of sectional jealousy or prejudice, but every motive of interest and patriotism, to cherish the most friendly feelings and amicable sentiments among the people of this Union.

I have endeavored to show that this Government was instituted by the people of the several States for great national purposes; that over these they are sovereign.

That the States are not alone parties to the compact, and consequently have not the right to annul the laws; and if they had, the Government would be impracticable.

That the Supreme Court was instituted to decide all controversies in which the United States are parties.

That there is no authority for this nullifying doctrine; on the contrary, the most distinguished names are expressly against it.

That there is no precedent to justify it: the resolutions of Virginia and Kentucky being intended only as appeals to the other States to repeal the obnoxious laws.

I conclude that, from the will of the majority, constitutionally expressed, there is no appeal but to the *ultima ratio populi*.

I saw, or I thought I saw, rising in this country, a party, under a new and popular appellation of democratic republicans—a sort of ultra republicans, more pure and more wise than the great republican party that has administered this Government for nearly thirty years; which, under the specious name of State rights, is waging a war upon the Union—upon the constitution—upon the Supreme Court, and upon the different sections and interests of the country; which denies to the General Government power to protect domestic industry, to make internal improvements, to charter a bank, and even power to protect itself—a party which, by connecting itself with the dominant party, is aiming, through that influence, to obtain the ascendancy, and establish its principles.

Sir, we are told that this is to become the true republican doctrine, which consists in a restricted construction of the constitution, and denying to the General Government every essential power, and every beneficial use of it. This party is composed of the fragments of all parties: the democracy of the North, as it is ostentatiously called by way of pre-eminence, with federalists, and radicals, and liberals, of the South; and the real republican party, by whom all these great measures of the country have been carried, are to be pushed out of place. Indeed, sir, we are told that we are in favor of unlimited powers, and overstrained constructions of the constitution. In fine, there is a new set of republicans, with a new creed, and higher tests, that will leave us, and all those with whom we have acted, the old republican party, far behind. What is to become of the democracy of New York, Pennsylvania, and all the West, that have advocated these doctrines? What becomes of your several republican administrations, under which these laws passed? Where was the republican party then?

The tariff was passed among the first acts of this Government, bearing on its title protection to domestic industry; no objection was taken then, although many members had just taken part in the convention. This was a contemporaneous construction of the constitution. When the celebrated report of General Hamilton was written, he was certainly not aware that the power of the Government to encourage, by duties, the system of manufactures he recommended, could be doubted.

This system of protection has been recommended successively by each of the Presidents. The tariff of 1816 was laid with a view to revenue as well as to sustain the manufactures which had arisen during the war.

The double war duties, and the difficulty of procuring supplies, and the consequent high prices, had encouraged extensive establishments of manufactures, which, upon a return to peace, and to regular commerce and ordinary duties, would have been overwhelmed by foreign competition. Besides this, all saw that the real independence of the country required that the principal necessities of life, of which we had the raw material, should be produced at home, and it was upon these grounds the tariff of 1816 was recommended to the American people. It was argued that the protection of manufactures was necessary to security; that without them industry would be without the means of production; that manufactures, agriculture, and commerce, combined, were indispensable to a flourishing state of the currency and the finances; that a system of internal improvements should be added; that liberty and union were inseparable; that disunion comprehended almost the sum of our political dangers. I refer to the speeches in Congress at that session. These considerations dictated the letter of Mr. Jefferson to Austin. [Extracts of some of which are subjoined.] I have only time to allude to this subject, and to say the tariff has been several times before Congress, under different administra-

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tions, and has received the support of the main body of the republican party, and to refer to the decisive opinion of Mr. Madison.

Sir, the system of Internal Improvements has now become more an object of resistance than any other power of the Government. Yet, all acknowledge that it produces beneficial effects; that the General Government has exclusively all the means afforded by commerce for all the national works necessary to facilitate the intercourse, social and commercial, among the States; that their power and means are inadequate; that, while you have exclusive authority to form harbors, deepen channels, erect light-houses, and do every thing external which is necessary or useful to aid the foreign commerce of the country, you have no power to make a road or a canal, or any thing internally useful to benefit the commerce among the States, although the latter is an hundred fold more extensive and more valuable than the former. Sir, it is not my purpose to speak of its constitutionality, or of its utility; but to show that this system has been devised and brought into activity by the republican party.

Among the first things that strike us was the early attention of General Washington and Mr. Jefferson to the necessity and practicability of connecting the Atlantic with the West, either by the Potomac or the Hudson; and among the first acts of Congress were resolutions for a mail road through the States to the Southern extremity. A compact was entered into with the Northwestern States to appropriate a portion of the proceeds of the public lands to making a road leading towards those States, under which the Cumberland road has been made, and will be continued to Missouri, commencing under Mr. Jefferson, and receiving appropriations under each republican administration since.

In looking into the Record, I perceive that, "At the session of 1817-18, a Committee of the House of Representatives submitted a report, in which this power is expressly claimed under the constitution; and on the 14th March, 1818, the sense of the House, after a discussion of many days, was taken upon the following naked resolution:

*"Resolved, That Congress has power, under the constitution, to appropriate money for the construction of post roads, military and other roads, canals, and for the improvement of water courses."*

The resolution having been adopted, Yeas 90, Nays 75—the Record proceeds:

"Mr. Lowndes then remarked that, after the decision of this House this day, there could be no doubt that a large majority of the House entertained the conviction of the power of Congress to appropriate money for the purpose of constructing roads and canals. The sense of the House being thus ascertained; and the obstruction removed to any proposition embracing that object, he moved that the report lie upon the table.

"The motion having been agreed to—

"Mr. Tucker, of Virginia, reported a bill making further appropriations for the Cumberland road.

"Of the seven Representatives from South Carolina, who voted on this question, four, viz: Messrs. Lowndes, Middleton, Ervin, and Simkins, voted for the resolution—against it, Messrs. Bellinger, Earle, and Tucker.

"Of the Georgia delegation, two-thirds were in its favor—Yeas, Messrs. Forsyth, Abbot, J. Crawford, and Terrell—Nays, Messrs. Cobb, and Cook."

Appropriations have been annually made since, for various objects of this kind, and advocated by the leading men of the republican party.

The Bank of the United States is also another dangerous and unconstitutional exercise of power; and yet, in 1792, at the commencement of the Government, before parties had time to assume a very decided form, the charter was passed, thirty-nine to nineteen, nearly two to one, al-

though it was an implied power against which there was great jealousy, and the necessity of the bank not so pressing as it has since become to the operations of the Government, and to the greatly extended commerce and exchange of the country.

This charter was renewed in 1816. It was carried by the leaders of the republican party, upon full debate. It has been since that time in successful operation. It has received and disbursed more than three hundred millions of the public money. It has performed all the financial operations of the Government. It has distributed a large real capital into different sections of the country. It has restored a sound and uniform currency, and a medium of exchange safe and economical. Sir, at the conclusion of the war the statesmen of this country turned their minds inward upon the internal policy of administration. Taught by the experience of the wants and sufferings of the people during the war, they saw the necessity of changing the laws and adopting a wiser system of policy. This system consisted of protection to domestic industry; in opening communications between the different sections of the country; encouraging internal as well as external commerce; the payment, by gradual contributions, of the public debt; the restoration of a uniform, sound currency, and a medium of commerce and exchange. This system was devised and carried into effect by the leading members of the republican party, who had carried us through the war. Sir, I hold in my hand extracts of several speeches at that period, that fully illustrate what I have said, but I have not time to read them now.

But, after this system has been adopted and carried into effect by all branches of the Government, while they have, at every session since, received the approbation of Congress, and the uniform sanction of a majority of republican States, it is said the General Government, "by its democratic agents, has been, in the main, adhering to one construction, a strict and rigid construction;" and we are gravely asked, if our judicial agents have not been, with constancy and silence, adhering to a different construction, and sliding onward to consolidation. The court can do no more than sanction the constitutionality of acts of Congress; they cannot create power; they can only exercise the power conferred on them; they cannot create laws; they can only approve. There has been at no time a majority in either branch of the Legislature in favor of a construction so strict as to deny the Government the power to protect domestic industry, to make appropriations for national improvements, or to charter a Bank of the United States; nor were these ever considered as the test of the republican party.

There has been, at all times, since the independence of the country, a party founded in principle, intelligent, honest, and patriotic; who had doubts and fears of this Government. They opposed its adoption; they have steadily resisted it in the exercise of its powers; they have been always embodied, always firm and consistent; but they never constituted a majority of the republican party. These measures have become the settled policy of the country, and no matter by what popular names you may address yourself to the people, they will look to the great interests involved in the principles of these parties. It is not the momentary success of a political chief, or the triumph of the leaders of a party, or the distribution of the honors and favors of the Government among the active, restless, and violent partisans, that will reconcile the body of the people to the sacrifice of their great and essential interests; they will be no longer amused by names; they will look to principles, to things, to realities, to the effect of the Government upon their prosperity and happiness.

But, in claiming these powers, they do not claim the right to exercise them injuriously or oppressively on any portion of the Union. They must be exercised with great wisdom and moderation. The Government must be felt in its beneficial effect upon the country.

The public debt will be paid. We shall remove seven or eight millions of duties on articles, mostly of prime necessity, not made in the country. This will so far relieve the people, and remove a portion of the tax upon labor; many manufactures will, by that time, have obtained a decided ascendancy; errors will be discovered in the tariff; and a general and beneficial modification may take place, under a prudent and moderate spirit of conciliation. Such, I trust, will be the happy issue of this contest. Under any modification, however, there must be a surplus, a portion of which may go to great national improvements: the sum annually required for these objects will be comparatively small.

The Bank of the United States is not dangerous or injurious; on the contrary, it has exercised a most salutary influence upon the financial and commercial affairs of the country. But do those gentlemen who see danger in the bank, see none in a great National Bank, founded on the revenues and credit of the Government, in the hands of a dominant party, with immense capital and unlimited powers? They see no danger of this political machine, by which the distribution and management of fifty millions of dollars will be placed in the hands, not of statesmen, but of a divan at the capital, with five hundred agents, selected for their wealth and influence, stationed at the great commercial points, with power over the fortunes of the whole community—a controlling power capable of wielding every other power! They see no danger in this augmentation of Executive patronage, now exercised with such dreaded effect: no danger from this fatal instrument of political corruption: no danger from this potent engine of political vengeance! They see, without alarm, this tremendous power sweeping over the States, touching every man; controlling every interest; regulating commerce; subsidizing the press; seducing public men; subduing public opinion, and corrupting the principles of Government; not only wielded by the actual administration, but a prize to be fought for by the parties that already disturb and distract the country, and menace the Union.

Sir, [said Mr. J.] we have heard much of the history of parties and their principles. Sir, I desire to set that right before the Senate. At the formation of the constitution, there were many statesmen and patriots, who were in favor of the confederation, and of preserving the power and equality of the States: but they have seen so clearly the evils and defects, as well as the total inefficiency of that Government, that a majority were in favor of establishing another, to exercise powers necessary to the protection of all the States. There may have been a few who preferred a stronger Government: some perhaps a monarchy. This constitution, which was known to be an experiment, the operation of which could not be foreseen, was the result of a compromise of all those opinions. This Government was a new creation in the political world; it was naturally and necessarily an object of fear, and jealousy, and distrust, by the people of the States.

Sir, I hold in my hand extracts from the speech of Patrick Henry, in the Virginia convention for the adoption of the constitution. The most zealous and eloquent opponent of it.

"We, sir, want no such project as a grand seat of government for thirteen States, and perhaps for one hundred States hereafter."

Page 140. "Far better would it be for us, to continue as we are, than to go under that tight energetic Government. I am persuaded of what the honorable gentleman says, that separate confederacies will ruin us: in my judgment they are evils never to be thought of, till a people are to be driven by necessity. When he asks my opinion of consolidation of one power, to reign over America with a strong hand, I will tell him, I am persuaded of the rectitude of my honorable friend's opinion, [Mr. Mason] that one Government cannot reign over so extensive a coun-

try as this, without absolute despotism. Compared to such consolidation, small confederacies are little evils, though they ought to be resorted to but in case of necessity."

142. "I call for an example of a great extent of country, governed by one Government, or Congress; call it what you will. To me it appears there is no check in that Government: the President, Senators, and Representatives, all immediately or mediately are the choice of the people. Tell me not of checks on paper.

"Without real checks it will not suffice that some of them are good. A good President, or Senator, or Representative, will have a natural weakness, virtue will slumber, the wicked will be continually watching, and consequently you will be undone. Where are your checks?"

"Nobility would not be so dangerous as the perilous cession of powers contained in this paper. When you give power, you know not what you give."

"We ought to be extremely cautious, in giving up this life, this soul of money, this power of taxation, to Congress. What powerful check is there here, to prevent the most extravagant and profligate squandering of the public money? What security have you in money matters?"

144. Objects to the Federal Judiciary operating over the whole country, and on the people. "Are we not told that it shall be treason to levy war against the United States, and a man may be dragged many hundred miles, to be tried as a criminal."

"There are to be a number of places fitted out, for arsenals and dock yards, in different States; it results that you are to give into their hands all such places as are fit for strong holds—fortifications, and garrisons, and magazines, and depositories of arms."

145. "Arming, organizing, and disciplining the militia."

145. "Congress, by the power of taxation, by that of raising an army, and by the control over the militia, have the sword in one hand, and the purse in the other; let him candidly tell me, where and when did freedom exist, when the sword and the purse were given up from the people? Unless a miracle in human affairs interposed, no nation ever retained its liberty after the loss of the sword and the purse."

146. "We are told that this Government, collectively taken, is without an example; that it is National in this part, and Federal in that part. The Senators are voted for by the State Legislatures—so far it is Federal. Individuals choose the members of the first branch—here it is National. It is Federal in conferring general powers, but National in retaining them."

"It is not to be supported by the States—the pockets of individuals are to be searched, for its maintenance. What signifies it to me that you have the most curious anatomical description of it, in its creation. To all common purposes of legislation it is a grand consolidation of Government. Under this system, he says, there were no powers left to the States, but to take care of the poor, and mend the highways," &c.

147. "I beg gentlemen to consider: Is this a Federal Government? Is it not a consolidated Government for all purposes almost? Is the Government of Virginia a State Government after this Government is adopted?"

"The Congress can both declare war and carry it on, and levy your money as long as you have a shilling to pay."

149. "Congress has a discretionary control over the time, place, and manner, of elections."

Consolidation was applied by the opposers of the constitution to that instrument. These quotations from Patrick Henry show his understanding of it. General Washington used the word in the same sense—consolidation of the Union.

But, sir, this constitution was ably defended, in the conventions, in the public papers, and by the most eminent men of the time, and was finally adopted and put in operation.

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*Mr. Foot's Resolution.*

[SENATE.]

In the execution of the powers of the Government, it was natural that those who had opposed the delegation of power to the General Government should rally as a party, to resist or restrain the exercise of them; while others although friendly to the new Government, were willing to guard the States against the possible danger of encroachment. These two classes constituted the body of the opposition to the two first administrations.

This early period of the Government was marked by two extreme ultra opposite parties, both equally zealous and patriotic, but both equally wide of the true understanding of the constitution, which reason and common sense has since set right, and both have disappeared.

Among those friendly to the administration, who, no doubt, contributed much to prejudice the public mind against the Government, were a few who believed in the necessity of a stronger Government, and who maintained that the words "general welfare" were a substantive grant of power. There was, on the other hand, a party, but few in number, who maintained that the power was limited by the express grant; that it could not be enlarged by construction, or increased by implication. But neither of the two parties who divided the country are chargeable with the extravagance of these opinions. They both knew that the Government, instituted for great purposes, must have commensurate powers; that it must have the right to make all the laws necessary and proper to carry the Government into effect. The one was disposed, perhaps, to enlarge the construction, the other to limit it. This difference of principle was more distinctly illustrated at a subsequent period, when the republican party itself separated; a portion of them became radicals, and the other liberals; both running into extremes, and both pushing each other into extremes. They waged a war of some violence against each other: both aimed, under their respective leaders, at the power of the Government. The main body of the republican party occupied the safe ground between them. They both failed, because they pushed their doctrines to an unreasonable and impracticable extent; these will divide the politicians, and form a line of separation, until the principles are settled by repeated decisions, and confirmed by time. I will quote some of the declarations of public men in the first Congress:

Mr. Madison objected to this amendment, "because it was impossible to confine a Government to the exercise of express powers; there must necessarily be admitted powers by implication, unless the constitution descended to recount every minutiae. He remembered the word 'expressly' had been moved in the Convention of Virginia, by the opponents of the ratification of the constitution, and, after full and fair discussion, was given up by them, and the system allowed to retain its present form."

Mr. Sherman coincided, "observing that corporate bodies are supposed to possess all powers incident to a corporate capacity, without being absolutely expressed."

Mr. Tucker thought every power to be expressly given that could be clearly comprehended within any accurate definition of the general power.—Page 234, vol. 2, *Lloyd's Debates*.

There is great delicacy, and acknowledged difficulty, in fixing the precise limits of granted and incidental power, of construction and implication. But this should teach us great caution and moderation upon all doubtful points—to bear and forbear. When a power, however, has been claimed, as necessary to carry the greater powers into effect, after it has been fully discussed and repeatedly settled, and especially at different and distant periods, it becomes a duty to submit to the will of a majority, or to change the constitution in the prescribed mode.

I concur with what my colleague has so well said, of the spirit of party, of its reckless and violent course, of its unhappy influence and fatal tendency. Parties are the natural and necessary result of that independence of think-

ing and freedom of action which belongs to our institutions. There are two parties in every free country, which, by whatever name they may be known, or whatever principles they may profess, contend for the power of the Government. It is a contest between those who govern and those who are governed; between those who are in and those who are out; the King's ministers and the people; the court and the country; the administration and the opposition; sometimes contending for principle, but always for power, patronage, and place; those who are in, generally claiming power; while those who are out, as steadily resist its pretensions and its encroachments. It has become an established maxim, that whigs in power became Tories, and Tories in opposition became ultra whigs, until, in the course of sixty years, the Tories disappeared or became blended with the whigs—as the federal name will become in time extinct, or blended with new parties as they arise. The whigs, when left free, when the opposition was withdrawn, divided (as all parties will) into different parties, under the popular titles of reformers and radicals, emanations of the whigs, always claiming to be the real friends of liberty and of the people; as we have seen the radicals and liberals springing out of the republican party here; and in twenty years after the triumph of that party, we see them arrayed against each other, under five or six different leaders, as we see the opposition benches in England now composed. The same thing has occurred in France. The exclusion of the liberals left the royalists in possession of power and without opposition; having no common enemy to hold them together, they immediately divided; and, at length, the two extremes of ultra royalists and liberals being thrown together in the opposition, united in favor of liberal principles, just as we have seen the two extremes of radicals and liberals unite for a common object, and become extreme radicals.

The republican party have had the Government in their hands for thirty years, while the federal party had it but twelve. Let us enter into a comparison of the measures of the two parties.

The bill incorporating the Bank of the United States passed in 1792, by a great majority; of thirty-nine votes, eleven were republican. In 1811, the bill was rejected; in 1816, a great change had been made in public opinion, and it became a law, and its constitutionality was determined by the Supreme Court. In 1829, the President makes the following communication:

"The charter of the Bank of the United States expires in 1836, and its stockholders will most probably apply for a renewal of their privileges. In order to avoid the evil resulting from precipitancy in a measure involving such important principles, and such deep pecuniary interests, I feel that I cannot, in justice to the parties interested, too soon present it to the deliberate consideration of the Legislature and the people. Both the constitutionality and the expediency of the law creating this bank are well questioned by a large portion of our fellow-citizens; and it must be admitted by all, that it has failed in the great end of establishing a uniform and sound currency.

"Under these circumstances, if such an institution is deemed essential to the fiscal operations of the Government, I submit to the wisdom of the Legislature whether a national one, founded upon the credit of the Government and its revenues, might not be devised, which would avoid all constitutional difficulties, and, at the same time, secure all the advantages to the Government and country that were expected to result from the present bank." Yet, sir, at the same time, the Committee of Ways and Means in the House of Representatives, and the Committee of Finance in the Senate, both report that it is both constitutional and expedient; that it has established a uniform and sound currency; that it has equalized exchange to every necessary and practicable extent, and that a national bank would be dangerous, inexpedient, and unnecessary.

The tariff passed under the first administration as a protecting measure. It was not questioned. In 1816 the leading republicans supported it, as they did in 1824 and 1828. It has been recommended to Congress by the several Presidents.

The 25th section of the Judiciary Act of 1789, which gives the Supreme Court power over certain causes decided by the State tribunals, was considered as extending the powers of the court and of the General Government over the State authority and State courts, to an extent not contemplated by the constitution. It declares that a final judgment in the highest court of a State, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity, or where is drawn in question the validity of, or an authority exercised under any State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision is in favor of such their validity, or where is drawn in question the construction of any clause of the constitution, or of a treaty or statute of, or commission held under, the United States, and the decision is against the title, right, privilege, or exemption, specially set up or claimed by either party, under such clause of the said constitution, treaty, statute, or commission, may be re-examined, and reversed, or affirmed, in the Supreme Court of the United States; and yet, in 1815, a law was passed, which greatly extended this power, and gave authority to the court to try, in the Circuit Courts, any action or prosecution before any State court, for any thing done or omitted to be done by an inspector or other officer of the customs, after a decision in such court; and to either party within six months of the rendition of the judgment to remove the cause to the Circuit Court of the United States, and to try and determine the facts and the law in such action *de novo*, as if the same had been originally commenced there, notwithstanding judgment in the State court. Yet this last act, which extends the judicial power much beyond the 25th section, was passed under a republican administration, and has never been complained of.

The proclamation of neutrality, a wise and prudent measure, was considered a stretch of power; yet, a few years afterwards it became the duty of the Executive to revive, by his own authority, the non-intercourse law, which he had suspended.

The appointment of a Chief Justice of the Supreme Court to a foreign mission was strongly disapproved; and so, afterwards, was the appointment of a Secretary of the Treasury to the same place.

An act to punish frauds on the Bank of the United States was, in the Kentucky resolutions, declared to be a palpable violation of the constitution, it being a crime not enumerated in that instrument. But, under Mr. Jefferson's administration, an act passed to punish counterfeiting checks on the United States Bank, which has not attracted the slightest notice since.

Each of the Presidents of the United States have recommended the subject of education to Congress. Mr. Jefferson recommended an exploring party, with a view to obtain commercial and geographical knowledge.

Mr. Madison, on the Executive authority, accepted the mediation of Russia, and appointed three ministers to treat of peace, which was generally approved. Yet Mr. Adams did not venture to assume the responsibility of accepting the invitation to the assembly at Panama, and referred the subject, with due deference, to the Senate. But the incidental remark that "although the Executive was competent to send a minister," made without motive and without object, became a subject of severe censure upon him and his administration.

Under Mr. Jefferson's administration, the republican party found it necessary, to preserve their party, to institute a sort of central power, at the capital, called a cau-

cus, to regulate the nomination of President, to enforce party discipline, and to control the popular will—a self-created body, dictating to the people, directing public opinion, and perpetuating their own power. Yet, under Mr. Monroe's administration, it became unpopular, and was put down and utterly abandoned.

Under Mr. Jefferson's administration, the compacts were formed with the Western States, by which the Cumberland Road was commenced, and has been since carried on, through those States; which was the foundation of that system of improvement, and which exerted every power that has since been the subject of so much discussion and so much hostility, real or feigned, to the administration of Mr. Adams.

It has happened in this country, as it has in every free country, that the party in power have rather a tendency to exert, if not to increase their power, while those who are out have a tendency to deny and to resist the power claimed or exerted. The republican party questioned all the acts of the federal administration; but, as soon as they changed places, the federal party became the liberal party; they took the side of the people and the States, and undertook the defence of the constitution, and to set bounds to power. The repeal of a law relating to the Judiciary was called a flagrant violation of the constitution; the acquisition of Louisiana was declared to be without authority, and dangerous to the Union; and the embargo was declared a violation of the compact, and destructive of commerce.

The same thing has occurred, but in a more striking manner, with regard to the power of arbitrary removal. It has been violently opposed and indignantly resisted.

The constitution has conferred no power expressly on the President to remove from office. It was either accidentally omitted, or with a view to fix the tenure and duration of office by law.

On the organization of the Government, the question arose in Congress. A portion of that body believed that no such power appertained to the Executive, and that that power could only be conferred by law. A majority, however, believed that he possessed the power by implication, but derived it from different sources: one party holding that the power was incidental to the appointing power, and therefore held concurrently with the Senate; the other party deriving it as incidental to the Executive power; the two concurring that he had the power, although differing essentially in the manner in which it was to be exercised. All parties saw the necessity of placing this power in confidential hands, to be exerted when urgent circumstances demanded it. As the President was charged with the faithful execution of the laws, he seemed to be the most proper depository of this power, to be used only when necessary to the faithful and prompt execution of the laws.

The incumbent was appointed to office without any limitation, except such as the Legislature might prescribe. He was to hold it, while he was competent to its duties, and worthy the trust. This was the known and universal tenure by which all office was held. When there is no period fixed by law, the President has no right to assume that legislative function, and none being fixed, it presupposes that none was intended. When the duration has been established by law, it presupposes that no shorter period can be contemplated; and the President has no power to defeat the legislative intention. If rotation is a wise principle, that must be declared by the Legislature, not by the Executive. If men have only a temporary and qualified property in office, that tenure, however imperfect, must depend on the law, and the President cannot interpose his power to deprive a citizen of his rights, without a gross abuse, and the most unwarranted assumption of power.

When the officer becomes incapacitated by disease, or disqualified by crime, so as to be unfit for the place, it be-

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*Mr. Foot's Resolution.*

[SENATE.]

comes the duty of the President to remove him, and fill the vacancy with a single eye to the faithful execution of the laws.

The power was not given to swell his patronage, to enable him to establish a political test and a cruel proscription—to reward friends and punish enemies. It was conferred on him to be exerted wisely and humanely for just cause, and in cases of necessity, and for the public good. It was confided to his sound legal discretion, so that the members of Congress, who acknowledged the right, did not think it liable to abuse, or capable of being misunderstood; but Mr. Madison said, if the power is abused, the President will be responsible by impeachment.

Sir, the dangerous nature of this patronage, its tendency to corrupt all branches of Government, its liability to abuse, and the inadequacy of the correction by impeachment, were strong objections to the constitution itself; for proof of which I read from a communication made by Luther Martin to the House of Delegates.

The elevated and patriotic sentiments of President Washington, in regard to the exercise of this power, are contained in a letter to a soldier and officer of the Revolution, an aid-de-camp and devoted friend. They are so characteristic, so suitable to the dignity of his character, and so worthy of him, that I will take leave to read it:

"To you, sir, and others who know me, I believe it is unnecessary for me to say, that when I accepted the important trust committed to my charge by my country, I gave up every idea of personal gratification that I did not think was compatible with the public good. Under this impression, I plainly foresaw that part of my duty, which obliged me to nominate persons to offices, would, in many instances, be the most irksome and unpleasant; for, however strong my personal attachment to one might be—however desirous I might be of giving him a proof of my friendship, and whatever might be his expectations, grounded on the amity which had subsisted between us—I was fully determined to keep myself free from every engagement that could embarrass me in discharging this part of my administration. I have, therefore, uniformly declined giving any decisive answer to the numerous applications which have been made to me, being resolved that, whenever I shall be called upon to nominate persons for those offices which may be created, I will do it with a sole view to the public good, and will bring forward those who, upon every consideration, and from the best information I can obtain, will, in my judgment, be most likely to answer that great end. . . . The desire which I have that those persons, whose good opinion I value, should know the principles on which I mean to act in this business, has led me to this full declaration; and I trust that the truly worthy and respectable characters in this country will do justice to the motives by which I am actuated in all my public transactions."

A charge was made against Mr. Adams, the elder, though as far as appears without cause, that he had removed men from office for political purposes: it became the ground of the severest reproaches, and of general animadversion.

Mr. W. C. Nicholas, a member of the convention, and a leading republican, while speaking on the Virginia resolutions, expressed his opinion, which I will also take the liberty to read:

"The conduct of the Executive in bestowing offices, more in the style of rewards for the support of particular measures, than from any regard to the general merits of the citizens called to fill them, and upon the same ground removing from office every man who ventures to hazard an opinion in opposition to any of the measures that have been pursued, necessarily created alarm. He mentioned the removal from office of Mr. Tenche Cox and Mr. Gardiner, in support of what he had said, and expressed a fear that, by these means, that numerous and influential

class of citizens, who ought to consider themselves as the public servants, might be made the creatures of Executive power; and if, said Mr. Nicholas, the day should ever come that the office of President should devolve upon an ambitious man, public offices might be made the most powerful instruments to promote his views. The influence would operate upon all those who expect or want public employment."

I refer also to the opinion of Matthew Lyon, as a republican partisan of that day. It is an extract from the publication upon which I believe he was prosecuted:

"As to the Executive, when I shall see the efforts of that power bent on the promotion of the comfort, the happiness, and the accommodation of the people, that Executive shall have my zealous and uniform support; but when I shall, on the part of the Executive, see every consideration of public welfare swallowed up in a continual grasp for power; when I shall behold men of real merit daily turned out of office, for no other cause but independency of sentiment; when I shall see men of firmness, merit, years, abilities, and experience, discarded in their applications for office for fear they possess that independence, and men of meanness preferred, for the ease with which they take up and advocate opinions, I shall not be their humble advocate."

Mr. George Nicholas, in the letter to which I have before referred, expresses his views of the administration. He says:

"As long as the speaker or writer approves their measures, he may not only proceed with safety, but he will be thanked and paid for it. If he praises handsomely, he will be taken into favor. If he defines the object of his flattery, he will confess he has melted his heart. It is said a pleasant song has been paid for by an office, and that many have been given for addresses, and that more than one has been taken from those who refused to be addressers."

Mr. Cooper was the editor of a newspaper, and on retiring from the paper he published his views of public affairs: from which I read the following:

"I can best illustrate my meaning by supposing a case. Let me place myself, therefore, in the President's chair, at the head of a party in this country, aiming to extend the influence of the Government, to increase the authority and prerogative of the Executive, and reduce to a mere name the influence of the people. How should I set about it? What system should I pursue?"

"The more completely to enlist the ambitious, the needy, and the fashionable, under my banners, I would take care it should be known that no place, no job, no countenance, might be expected by any but those whose opinions and language were implicitly and actively coincident with my own—a principle that I would strictly carry through every appointment in my immediate gift, and under my control."

"With the same view, I would encourage a naval (or I suppose any other) establishment. These measures would leave a vast sum of money to expend in rewarding and gaining over adherents by offices, posts, and contracts."

"Such," said he, "appear to me the obvious measures for a man to adopt, placed in a situation to aim at power, independent of the people."—*Mr. Cooper's Address, 1799. See preface.*

Sir, there is much more of this in the writings of that time; and when we recur to the intemperance of the language, and the exasperation of the party feelings which it indicates, does it not excite our surprise that only eleven were removed by General Washington, and eleven by Mr. Adams? They never claimed the right to remove without cause; these were all removed for causes deemed, in the exercise of a sound discretion, to be proper.

Yet these few cases, arising under such circumstances, gave serious alarm to the republicans of that day. They saw in it the assumption of power, a dangerous increase



of patronage, and its tendency to abuse. The language I have quoted shows the public sentiment.

The claim of doubtful power is always unpopular, the abuse of it odious. The very names of proscription and persecution, [with their historical associations, were disgusting and revolting. The slightest pretence was seized on, either to guard against an incipient abuse, by arresting it at the threshold, or for political effect, knowing the sensitiveness of the public mind, and the honest prejudices of the people against any unjust exercise of power in their rulers.

At that time the removal of an individual was a matter of such serious importance, and of such rare occurrence, that it became a subject of public discussion and general notoriety. It was very difficult, when strong suspicions existed of a political motive, to satisfy the people that the cause of removal was sufficient, and that it was not done in the wantonness of power to remove an opponent, to reward a friend and favorite, to increase patronage, to silence opposition, and restrain the freedom of opinion. The Executive was compelled, in his own defence, to give the reasons, and to justify himself before the country.

It was in this state of the public feeling on this question, that Mr. Jefferson came into office; and his first declaration was a pledge of his principles: "And let us reflect," said he, "that having banished from our land that religious intolerance under which mankind so long bled and suffered, we have gained little if we countenance a political intolerance as despotic, as wicked, and capable of as bitter and bloody persecutions." These are noble and elevated sentiments, worthy a citizen and patriot called upon to undertake the duties of the first Executive office of his country.

Three days after this declaration, he says: "I believe, with others, that deprivations of office, if made on the ground of political principles alone, would revolt our new converts, and give a body to leaders who now stand alone. Some I know must be made; they must be few as possible; done gradually, and bottomed on some malversation or inherent disqualification."

Again he says: "I lament sincerely that unessential differences of opinion should ever have been deemed sufficient to interdict half the society from the rights and the blessings of self-government; to proscribe them as unworthy of every trust."

He complained that, by a system of exclusion, one party had monopolized all the offices; that it was his duty to correct the procedure; that he "would proceed with deliberation and inquiry, that it may effect the purposes of justice and public utility with the least private distress, that it may be thrown as much as possible on delinquency, or oppression, or intolerance, or anti-revolutionary adherence to our enemies." "A few examples of justice on officers who have perverted their functions to the oppression of their fellow-citizens, must, in justice to those citizens, be made. But opinion, and the just maintenance of it, shall never be a crime in my view, nor bring injury on the individual. Those whose misconduct in office ought to have produced their removal, even by my predecessor, must not be protected by the delicacy due only to honest men."

He says: "Mr. Adams's last appointments I set aside as far as depends on me. Officers who have been guilty of gross abuse of office, such as marshals packing juries, &c. I shall remove, as my predecessor ought to have done; the instances will be few, and governed by strict rule, and not party passion. The right of opinion shall suffer no invasion from me; those who have acted well will have nothing to fear, however they may have differed from me in opinion; those who have done ill, however, have nothing to hope." Mr. Jefferson went into office avowing as a principle, "equal and exact justice to all men, of whatever sect or persuasion, religious or political."

Notwithstanding the circumstances in which he was placed, and after all this note of preparation, the instances seem to be few, and governed by principle. He knew that this Government depended on the right of suffrage, and the freedom of opinion, and the liberty of action; that the people would not tolerate any invasion of this right. Even his popularity could not have withstood the force of public opinion, if he had boldly assumed and openly abused the power of removal.

Mr. Jefferson removed no man connected with either of the Executive Departments. That is a striking fact. He required their talents, their experience, and their services. He established no political test; he instituted no inquiry into private opinions. No auditor, comptroller, register, treasurer, or clerk, was removed, although they had been in general opposed to his election. No foreign minister was recalled. No collector or postmaster of any of the large cities was removed. There was scarcely an office of any value made vacant.

After being in office ten months, he nominated to the Senate ninety persons, of which, twenty-one were vacancies left by his predecessor, nineteen were vacancies by death, promotion, resignation, or expiration of commission, six restorations of persons who had been removed, twenty-one of persons appointed in the last days or hours of his predecessor, fourteen removals for misconduct, four of officers of courts of justice; the particular reasons for the others unknown.

We see that, during an administration of eight years, he removed only thirty-six persons, holding offices in the customs, marshals, district attorneys, consuls, &c. They were inferior offices, and we can yet, after a lapse of so many years, account for most of these.

This exercise of power, however mild and moderate, did not come with a good grace from that party which had so recently denounced the practice in such severe and bitter terms, as anti-republican, arbitrary, oppressive, and cruel; and Mr. Bayard, a distinguished member of Delaware, in a speech delivered in the House of Representatives in 1802, not knowing the cause of the removals, and supposing them entirely arbitrary, and for political reasons, said:

"No innocence, no merit, no truth, no services, can save the unhappy secretary who does not believe in the creed of those in power." Again: "It is in this path we see the real victims of stern, uncharitable, unrelenting power." And again: "And when I see the will of a President precipitating from office men of probity, knowledge, and talents, against whom the community has no complaint, I consider it a wanton and dangerous abuse of power. And when I see men who have been the victims of this abuse of power, I view them as the proper objects of national sympathy and commiseration."

This was the language used against Mr. Jefferson, by a distinguished leader of the party opposed to him, in debate upon this question.

Sir, this power, whenever exercised by any administration, has produced the same expression of feeling. The power over the opinions, over the happiness, and the fortunes of so many persons, is a power that must be in its nature a tyranny, and, therefore, revolting.

No great minister in England or France at the present day would think of touching the officers and clerks in the departments. They must look beyond all this low and vulgar strife for place; they must build their fame upon great principles, masterly ability, and pre-eminent services.

It is very questionable whether the King has the prerogative of removing without control; it is very certain, a minister who should attempt it would be himself responsible to Parliament, as well as the people. It has not been tried in sixty years, and perhaps never will again; no minister dare stoop to that desperate expedient.

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*Mr. Foot's Resolution.*

[SENATE.]

"You set out," says the author of Junius, in a letter to the Earl of Hillsborough, signed Lucius, and dated on the 10th of September, 1768, "with asserting, that the crown has an indisputable power of dismissing its officers, without assigning a cause. Not quite indisputable, my Lord; for I have heard of addresses from Parliament, to know who advised the dismissal of particular officers. I have heard of impeachments attending a wanton exercise of the prerogative, and you, perhaps, may live to hear of them likewise. Such an exercise of the prerogative appears to have been attempted during the unfortunate administration of Lord Bute. On this occasion, the Marquis of Rockingham, a conspicuous friend of America in her colonial controversies with England, and universally respected, as well for his understanding as for his mild but determined integrity, is described to have mentioned in severe terms, 'the general sweep through every branch and department of the administration; the removals not merely confined to the higher employments, but carried down, with the minutest cruelty, to the lowest offices of the State, and numberless innocent families, which had subsisted on salaries from fifty to two hundred pounds a year, turned out to misery and ruin, with as little regard to the rules of justice as the common feelings of compassion.' The Marquis said that this and similar conduct had thrown the whole country into a flame."

But the officers of the Executive departments reside in the District of Columbia; they have no vote; they are almost disfranchised. It is an extraordinary incident in the history of the country, that no man was ever dismissed from either of them, without necessity, from the establishment of the Government, and, that no removal has been made, without cause, since the year 1803, until the present administration.

The President, on coming into office, has boldly assumed the right to remove all officers, at his will, and he has made a full sweep. He has dismissed, without reason or apology, many of the ablest and most experienced officers and clerks; he has removed almost all the numerous officers of the customs, from the highest to the lowest; he has displaced many of the ablest officers of the courts and of the land offices; he has superseded near five hundred postmasters; he has recalled the public ministers without necessity, and at great expense.

They are, in general, men of fair character, and of great experience in office, who, in many instances, received them as the reward of faithful services to the country in other civil and military trusts; among them many who served during the revolutionary war. They have been rudely thrust out, without the slightest acknowledgment of their services; nay, in many cases, under dark imputations; their families thrown upon the world, doomed to penury and want; and themselves left, in the winter of their years, living instances of the ingratitude of their country.

Sir, it is not my purpose to speak of the private distress, with the history of which we have sickened, of the dismay that spread over the land; of the anxiety that preyed upon the minds of so many, who have since suffered all they feared.

I look, sir, far beyond all this: to the power exerted, not to the victim of it; to that power which will subvert the constitution—a power that destroys all the balances of the constitution, and draws after it all the other powers of the Government.

The President claims all the patronage of the Government, the entire disposition of eight thousand offices, and all the honors and emoluments. He holds in his hands all that can tempt the avarice, or excite the interest, or animate the ambition of man—a power capable of embodying the talent, organizing the press, and drawing after it a band of political adventurers—a power that will concentrate a force which will more, by a single impulse, with a

momentum that will overrule the constitution, and bear down the people themselves.

The President had power enough. It was already too great an object of ambition. He exercised an absolute veto on the laws: he executes them, and thereby, to a certain extent, claims to decide on them: he presides over all the departments of the Government, commander-in-chief of the army and navy, with power to call out the militia, and, as such, all the power that belongs to that rank, by the usages of war; and now is to be added a power over eight thousand office-holders, with a host of contractors and jobbers, with the hundreds of thousands of expectants.

It is not merely that you consolidate all power in the hands of the Executive, but you convert this Government into a great electioneering machine, in which not only that high office, but all the offices, and honors, and emoluments, become the prize to be fought for by contending parties. The people will be kept in a constant state of excitement and agitation; they will be arrayed under distinct leaders, seeking only their personal advancement; they will be bribed with their own money; the field of jobbing, speculating, plundering, office-building, and office hunting, thus enlarged, will present a scene of disgusting intrigue and gross corruption.

The great principles of the Government, and the predominant interests of the States, will be lost in the absorbing contests for power and place. The press, destined to be the organ of truth, the friend of the people, and the palladium of liberty, will become venal and mercenary; it will become violent and virulent; it will minister to the passions, descend to gross personal abuse, and vile detraction and falsehood; it will lose its power and its dignity. It must be pure to preserve its influence; it must be free to preserve our liberty.

As more numerous objects of political interest and ambition are presented, partisans will increase, not only in numbers, but in activity and violence; parties will become more malignant and rancorous. The elections will not depend on the personal claims of candidates, but upon the successful combinations of political leaders, who will form cabals at the capital, divide the country into factions, perpetuate their own power, and take from the people the choice of their rulers. Sir, I see, in the exercise of this power, that which will destroy this Government.

During the late contest, we were told that this power would be freely exercised. It had the effect to alarm those in office, and it either silenced them, or drove them to the necessity of openly espousing the cause; and to this influence may be ascribed the uncommon heat and excitement that pervaded the country. It was the hopes of office acting upon the whole body of the people, that aroused a band of adventurers and aspirants, and set in motion the worst passions of the human heart.

When the triumph came, it was publicly announced that the "President would punish his enemies and reward his friends." It has been but too faithfully executed. The power of removal in all cases at the will of the Executive, has been assumed and exercised; and a general proscription, without limitation of time, and without regard to talent or public service, has been proclaimed. The country is treated as a conquered province, and the offices distributed among the victors, as the spoils of the war. He has bestowed the highest offices upon the members of Congress; he has selected the leaders of the dominant parties of the large States; he has rewarded the leading editors of newspapers with lucrative offices, and other places have been conferred on the most active of the elite.

Sir, I make no personal objection to this, but I see here much a combination of interests, and such a concentration of power, that the people themselves will not be able to resist it. This influence over Congress, this control of

the press, this union of interests and discipline of party, will create a governmental power in the centre, that will direct the public will. The whole patronage will be employed to corrupt the people; every thing will be venal; and a system will be gradually introduced that will be fatal to the constitution. I see in it the workings of that spirit that has destroyed every free Government.

There is no difference of opinion here, [said Mr. L.] with one or two exceptions, upon the proper exercise of this power. The power of removal, in cases of inability, incompetency, or crime, or when the public interest and the faithful execution of the laws required it, was necessary, we all agree, to be vested in the President, to be wisely and discreetly exercised in cases calling for it. But to assume the power for other purposes, and especially to remove faithful public servants, for political reasons only, to replace them with new and untried men, to augment his own patronage, and reward his adherents, is as generally disapproved. The doctrine is totally disavowed and repudiated here.

It is a sacred trust, committed to his charge by his country, upon his sound and honest discretion; to pervert it to other purposes is a usurpation and an abuse of the power. He is no doubt a judge of the disqualifications, and so are we of the motives which govern his judgment.

Patronage, created by the President himself, merely to provide for his friends and augment his power, is dangerous and odious. It assumes what was not intended by the constitution; it gives him an ascendancy that disturbs, if it does not destroy, all the balances of the Government; which makes all public men the creatures of his will; gives him an undue influence over the minds of the people, by the hopes of favor it creates. It makes him the source of all power, and the centre of a system around which all the other powers must revolve.

Sir, I regret that this great question should arise at a period of political excitement so inauspicious to the decision of it; but I am happy to see the general agreement with regard to the limitation of the power. Locke ranks it among the breaches of trust in the Executive Magistrate, which amount to a dissolution of the Government, if he employs the force, the treasure, or the offices of society, to pre-engage the elections, or to corrupt the Representatives: "What is it but to poison the very fountain of public security?"

This question of Executive power is the great principle that lies at the bottom of every contest in every free country—a contest for power between those in power, and those who, on the part of the people, resist it. That was the struggle between the whigs and the tories; the tories were the advocates of power; the whigs, after a long and eventful conflict, obtained the ascendancy, and set bounds to prerogative. That is the contest now going on in France between the King's ministers and the Liberal party. It is a contest, however, (in whatever country it may occur) in which the people will prevail.

But it is said, how is it known that removals are made without cause? I answer, because it has been so announced in the official papers; because the removals are general; because no causes are assigned; because, in many instances, the letters of dismissal state that there is no personal objection; because the fact is not denied, and cannot be denied. It being apparent, then, that the President has power only to remove for valid cause, and having exceeded his authority, by removing many persons enjoying the confidence, and having high claims upon the country, and about which there seems to exist but little difference of opinion, the question occurs, Where is the remedy? All concur that he is amenable to the people, and that he must answer upon his responsibility; but this is a slow remedy, and does not put an end to the abuse, or restore the injured citizen. The constitution is violated, the rights of the citizen trampled on, a dangerous

prerogative, never before acknowledged, exercised; and we are told that impeachment is the only proper remedy. How! impeach a President coming into power at the head of a party, with a majority in both Houses? That is ridiculous; and how shall the Senate find him guilty, when they advise and consent to the appointment of the successor? When they co-operate in the illegal deprivation? Whatever may be thought of the right to remove, none can doubt that, when the Senate have consented to fill the vacancy, that completes the removal, and operates a destitution of office.

The only question about which there is a serious difference of opinion, is, whether the Senate have a right to inquire into the propriety and legality of the removal; or, whether they must act upon the nomination as in a regular vacancy, and leave the President to his accountability to the people, or to the House of Representatives. Let us examine this question.

If the power of removal is incident to the appointing power, then the Senate, being a part of that power, would participate in that removal, and would therefore have a right to be informed of the reasons and causes of it. There are eleven different classes of officers that are appointed for four years, but removable by the President. The intention of the Legislature then, manifestly is to fix the duration of office, unless special causes make the removal necessary. This numerous class, constituting an immense body of patronage, expires, and leaves vacancies to be filled under each administration. Is not this power enough to gratify the ambition of any man? Yet, in many cases, after a recent confirmation by the Senate, they have been removed, without any assignable cause. Thus the President defeats the law; and must the Senate stand by and see the infraction of the law; the injury of the citizen, and the usurpation of power, and then lend it the sanction of their name, to perfect the work? Does it not appear more consonant with their high character to look into the causes which have deprived a citizen of his legal rights?

The President, it is said, has no right to institute a new mission; yet, if he assumes the power during the recess, and then sends the nomination, according to this new doctrine the Senate would have no right to question the act of the President. For that, it is said, he is responsible; but not to us. They could only inquire into the character of the minister, and approve the nomination of a minister to a mission which they disapproved. But the Senate have always exercised their judgment with regard to the propriety of a mission.

In the reduction of the army, the President misconstrued the law; nominated certain officers to places to which they were not in the opinion of the Senate entitled, and deprived other officers of their rights by dismissal. Yet the Senate refused to confirm the nominations. They did look beyond the character of the nominees, and rejected the nominations. They did not sanction the error by approving it, and leave the President to his responsibility.

It is urged, here, that the removal has taken place; the injury is done, and the rejection of the nomination will not restore the removed officer to his place. The Senate did not think so. In the military cases to which I have alluded, even where there was an honest difference of opinion, they rejected the nomination, and thus, as far as possible, repaired the injury. That is the precedent to follow now. Reject the nomination, pass a resolution declaring the sense of the Senate; if necessary, hold a conference, and compare opinions. I cannot believe that the President will exercise a doubtful power, against the general sense of the Senate. He will explain the causes of removal, and acquiesce in their judgment; or, otherwise, the Senate will be a mere register of Executive edicts. But the Senate has adopted a different opinion. They disapprove of the establishment of a political test, and the whole system of proscription and removals. They be-

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*Mr. Foote's Resolution.*

[SENATE.]

lieve he has no power to remove without cause; that this power has been improperly exercised; but that they have no right to interfere with his duties, or to exercise any check or control over him; that they must quietly permit the constitution and the rights of the citizen to be violated. Thus the nominations are approved, while the removals are declared illegal. And thus it appears to the people that the Senate approves the whole system; and thereby breaks the force of public opinion, and destroys responsibility. The Senate cannot escape the conclusion, that, knowing a removal to be illegal, they have ratified the nomination to fill the vacancy thus created. What power may not the President exercise, and, under this construction, what may we not be compelled, on our own principles, to sanction? Certainly, every assumption of power; and what importance will be a third power in the Government, that imposes no checks, and becomes the passive instrument of the other departments, but to protect every usurpation?

Sir, when these numerous vacancies have been created, and no cause assigned, I take it for granted there is no cause; and I see no necessity of making the inquiry why the removal is made. The President asks my advice and consent: he must give the information, or I will withhold it. This has been the practice of the Senate. They must construe the constitution for themselves; they must withhold their assent to what they believe to be illegal. This would lead to satisfactory explanation, and the evil would be arrested.

One objection to the right to inquire into causes of removals, and reject nominations founded on the abuse of power, is, that thereby we prejudice a matter which may come before us by impeachment. To which, I answer, first, that this is as strong, when we confirm, and thereby tacitly approve. How could we find him guilty, when we have sanctioned the act? Secondly, we propose to reject all nominations, whether the error has arisen from mistake or other cause; whether the removal was made by the President with the intention to do wrong or not. We merely determine the fact that wrong has been done. Third, we prevent the necessity of impeachment, by putting the President right. Fourth, this objection would be equally against every attempt to investigate any possible abuse of power.

It is not denied [said Mr. J.] that the President has the power of removal; nay, it is acknowledged to be his duty, whenever the case demands it; a right that ought to be exercised freely and justly; and when the cause is announced, the Senate will not strictly inquire into it. But, in the question now pending, it is known that the power of removal, in all cases, without cause and without control, is claimed. The President disclaims any evasion. It is not denied, although it is too much to avow, that the President has removed officers for the double purpose of removing men for their political opinions, and conferring offices on those who have supported his election. There are things which it is worse to avow than to do, and the question is, whether the President has this power over the fortunes of so many persons, and the happiness of so many families? Whether it is a dangerous power that is liable to great abuse? Whether it does not place in the hands of the Executive a power that will bring every other department, and every individual, within its influence? Whether it is possible to preserve this Government?

The Senate does not concur with the President, but he is permitted to proceed, because they believe they have not the right to interfere; that he must be left to the ineffectual remedy of appeal to the people, or to impeachment.

[Mr. JOHNSTON was asked if he would give way for a motion to adjourn. He said he would not detain the Senate at this late hour; he would at some convenient time conclude the remarks, if the Senate should be disposed to hear them. He asked their indulgence, however, for a few moments longer.]

We can feel no solicitude for this power of removal, [said Mr. J.] except what results from the effect it will have upon the country. The constitution will be what it is determined to be, and you are to fix the construction. The President exercises the power that will become an example and a precedent; the Senate refuses to interfere, and that sanctions the usurpation. The next President will do the same. You have a practical construction to the constitution.

Looking to it as a power, it is no longer yours; your patronage is exhausted; you have nothing more to give; and the applicants are as numerous and importunate as they were at the beginning. You have nothing to give but promises, and they nothing to expect but disappointment. Upon the principles you have established, these offices will be for those who succeed to you; they are already armed in anticipation, with the whole of this immense patronage; and it will exercise an influence as adverse to you as it was favorable in the last contest.

My colleague has misapprehended the views I presented to the Senate some time since, with regard to the policy of this administration. It was not my intention in those remarks to censure Congress with extravagance. I stated it was a part of a system, during the last administration, to represent it as a very extravagant administration; to accuse them of enormous abuses, and to promise great reformatory measures; that, after waiting a year, with majorities in both Houses, I had seen nothing to redeem the pledges given to the people. All the appropriations have passed under my eye; the estimates on which they were founded were copied from those of the last year. The great expenditures of the Government are fixed by laws which you have not attempted to change, and must therefore remain the same. The recall of our foreign ministers had created an unnecessary increase of fifty thousand dollars to the diplomatic expenses. I did not complain of the money, if the public interest required the change of ministers, but of the motive and the necessity of that change. Whether the public good demanded it; whether it was a wanton exercise of power; whether it was a part of the sweeping proscription; and whether the money was not uselessly thrown away, the people would judge. I did not complain of the mode in which the money was obtained, although there were no appropriations for this object, and they were specifically made for other purposes. If the new missions were necessary, the money was a matter of little consequence. Sir, I read parts of the famous retrenchment report, with a view to show the expenses and abuses of the Government, which had been pointed out to the people, and the promises of economy and reform. This report, of which ten thousand copies had been printed, had filled the public mind with the extravagance and waste of the last administration. The people were deceived and abused, and they will now know the truth. I considered that report, with several others, as mere party engines, a mere electioneering manoeuvre: it had its day, it produced its effect, and it will pass away with the delusion it created, like the other delusions of the times. I referred to the abuses pointed out, but which I did not so characterize, and asked if they were abuses still, and where was the remedy. These abuses are abuses no longer; they are permitted to sleep; no economy has been introduced; no retrenchment. You have, by way of commentary on your professions, appropriated thirty thousand dollars for printing, this session, more than the last long session. You propose to increase the pay of the foreign ministers; of which I approve. You propose to increase the pay in the navy; which I think is proper and necessary. You ask for more departments and more clerks, and more assistants. These I have no doubt the public service requires; but they are a strange commentary upon the report of the committee, and your promises to the people.

But, sir, you propose to effect this economical reform, how? By cutting down the institutions of the country, and by suspending all internal improvements; by changing the policy of the Government.

You propose to dismiss, without ceremony, a large number of officers of the navy, who have devoted their lives to your service; and this is the economy. And do you believe the people will justify this violation of the rights of your officers? Sir, I agree to increase their rank and pay, and to reduce the establishment by accidental vacancies, but never to confer the power of removal, and then give, as proposed, power to the President to increase the number.

Sir, my colleague has stated at full length all the reforms which have been introduced; on his own statement they amount to very little. The money has been drawn from the treasury for forty years, in a mode regulated by law and custom; no loss has been sustained; none apprehended; and now it is said, and with some pride, that another check has been found out to guard against what has never happened.

Sir, I made no charge of extravagance; I passed no censure except upon the report, which I felt it my duty to expose, because I know such desperate expedients, even if they have momentary success in deceiving the people, will always recoil upon their authors. I think no statesman should descend into that arena. The great distinctive difference between parties and those who administer the Government, are principles, and the character and talents of those who personate the principles and represent the parties in the administration of the affairs of the country. It is to this issue every contest between honorable men should be brought. We should address the understanding of the wise and the good, not the passions or the prejudices of the weak or the ignorant.

I have advocated every scheme for the better organization of the Executive departments, every bill for improving the operations of the Government. I will go into every expenditure; introduce economy where it can be done; retrenchment where it is necessary; but, let the merit be in the reformations, not in vain protestations and empty promises; not in making reform the jest and the scorn of the people.

Mr. JOHNSTON here gave way, and the Senate adjourned over to Monday.

MONDAY, APRIL 5, 1830.

#### DONATIONS TO DEAF & DUMB INSTITUTIONS.

On motion of Mr. MARKS, the bill making an appropriation of a township of land for the support of the New York Institution for the education of the Deaf and Dumb, was taken up for consideration.

The question being on the amendment heretofore proposed by Mr. MARKS, to embrace within the provisions of the bill the institutions in the States of Pennsylvania and North Carolina,

Mr. BURNET suggested the propriety of including the State of Ohio, which had petitioned for a similar appropriation to the Deaf and Dumb Asylum of that State.

Mr. MARKS accepted the proposition as a part of his amendment.

Mr. DICKERSON expressed a hope that his State (New Jersey) would be added to the provisions of the bill.

Mr. BURNET said he would not offer any objections to this proposition. He remarked, that, to avoid the trouble of introducing separate bills in relation to each particular State, it would be well to embrace all which had institutions of this nature, already chartered, and now in full operation.

Mr. KING inquired of Mr. DICKERSON, whether a Deaf and Dumb Institution had been chartered by the Legislature of New Jersey, as this bill was intended for in-

stitutions already incorporated. If we make an appropriation for one State, why not, he asked, extend the provisions of the bill to all the States where these institutions are incorporated?

Mr. DICKERSON replied in the affirmative.

Mr. MARKS stated, that, in Pennsylvania, the institution was incorporated by the Legislature many years ago, and possesses an annuity of eight thousand dollars. There were seventy-five pupils now maintained and educated in it, some of whom were from New Jersey and Maryland. By the last census it appeared there were five hundred of this unfortunate class of persons for whom this institution was designed, in the State of Pennsylvania alone.

Mr. KING said he would move to recommit the bill, with instructions to embrace in its provisions all the States which are now omitted. He could not see why Congress should be called upon to legislate, session after session, for individual States. If it be the intention to continue such appropriations, why confine them to particular States? He moved to recommit the bill, to include all the States which now are in, and which may hereafter be admitted into, the Union.

Mr. SANFORD said the bill would be lost for this session, if now recommended, as proposed by the gentleman from Alabama, and he hoped, although he was favorable to its objects, that he [Mr. KING] would not press his motion. If the bill be reported agreeably to the instructions, it may come before us too late to be acted upon. He therefore hoped the gentleman would consent to let it pass as it is.

Mr. BARTON moved to strike out all after the enacting clause, and insert a substitute embracing all the States not already provided for by such grants.

Mr. KING said the amendment offered by Mr. BARTON perfectly answered the objects he had in view, and he would therefore withdraw his motion.

Mr. BARNARD agreed to the propriety of the proposition of Mr. BARTON, but thought the better course to pursue would be, to give these donations of lands to the States which have already incorporated institutions of this character, and to defer providing for other States until they shall have also chartered institutions. Although he was favorable to the objects of the amendment, yet, as its only tendency now would be to embarrass the bill, he hoped it would be rejected.

Mr. MCKINLEY said that, so far from the amendment embarrassing the bill, it would relieve it from all embarrassment, as the disposition of it would tend to establish one of two principles in relation to the bill itself; that is, whether the principle of it should be adopted as a general principle, or rejected altogether. This ought to be done; and if it is right to appropriate thus for one State, it is right for all; and if it is not right for all, it is not right for one. It would be incorrect to legislate in favor of any one State, as it is certain that in all the States there are some deaf and dumb people in proportion to the population of each. Let the principle be tested, he said; he would vote for the amendment, as it would have that effect.

Mr. LIVINGSTON considered it his duty to express his sentiments on this bill. By it, it is intended to make an appropriation of the public lands for the support of institutions of private charity in individual States. That was the object of the bill, and nothing else; and looking to that constitution which all are so anxious to preserve, I would ask [said Mr. L.] from what part of the constitution this authority is derived, which the bill proposes to exercise. These are public lands, to be sure; but our obligations in the disposition of them, are the same as in the appropriation of the funds of the country. The constitution says we shall dispose of the public funds for the general welfare. Of this, there are two constructions: one is, that these appropriations shall be made under certain expressed powers in the constitution, which [Mr. L. said] was his construction; and the other was the liberal

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Donations to Deaf and Dumb Institutions.

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doctrine—that Congress has the power to appropriate for purposes not inimical to the constitution. The public lands are intended for the benefit of all—for the common benefit. Where, he asked, was the difference between the objects for which the public lands and the public funds were intended? The common benefit and the general welfare appeared to him to be synonymous. What, then, are the objects of this bill? One gentleman proposes to give a township of the public lands to one State—next it is proposed to include three other States; and lastly, the gentleman from Alabama (Mr. KYLE) proposes to extend the provisions of the bill to all the States of the Union, and to those which may in future be admitted into it. Where, he asked, was the authority for this, but in those general words in the constitution, “the common benefit?” We cannot [said Mr. L.] make this appropriation under such a power; and if we can do it, my ideas of the constitution have been hitherto grossly erroneous. My idea is, that such subjects ought to be left to the care of the States themselves; that the public lands are entrusted to us to be disposed, not for the purpose of relieving poverty and distress, but for general, and not for particular purposes. In one State, suppose there are a certain number of destitute people, and in another State a certain number of deaf and dumb; are we to provide for each of these classes? And if for only one class, I would be glad to know what part of the constitution points out the distinction. If this bill is to be adopted, then shall we become the superintendents of the domestic concerns of the States. I would be glad to know [continued Mr. L.] why we should make an appropriation for the support of a deaf and dumb institution in New Jersey, and not of a marine hospital in any seaport town in the United States.

Mr. L. stated the course he had always pursued in reference to the disposition of the public lands, although it was possible he may have had, in some instances, unknown to himself, varied from it. With respect to the new States, he considered it was a duty Congress had to perform—which it was obliged to perform by the terms of the donations of these public lands—to appropriate what was necessary to carry on the operations of these States. Next he considered it necessary to give them public lands for the maintenance of their public institutions, because we possess those lands, and have consequently stopped the sources whence they would draw taxes to enable them to support these institutions. Therefore [Mr. L. said] he always gave his vote in favor of appropriations for any reasonable purpose, when required by the States in which the lands lie. He also would vote, and had voted, for any measure which, in his judgment, would have the effect of improving the value of the public lands. The more facilities which were afforded for the improvement of these lands, by canals, roads, &c. the more he thought the public treasure would be increased. Mr. L. concluded by saying he could not, in his conscience, vote for the bill, or for any of the modifications proposed, however laudable and just he admitted the objects of them to be.

Mr. McKINLEY said his object was to test the sense of the Senate on the principle of the bill. He proceeded to reply to the arguments of Mr. LIVINGSTON, and contended that on Congress devolved the power of giving a construction to the constitution. He argued that the power of Congress, as to the appropriation of the public lands, was, that the lands should be disposed of for the common benefit of all the States, including the State making the grant of these lands to the United States. He asked if the gentleman from Louisiana believed the proper construction of the words “common benefit,” in the constitution, was that appropriations of the public lands should be made to the United States only. These lands were given to the United States by the States to aid in paying off the debt of the revolutionary war. When that debt shall be paid, and a surplus shall be found remaining, he asked

what was to be done with that surplus? Are not the lands which the States of Georgia and Virginia ceded to the United States, to be then appropriated for the common benefit of all, including the States themselves? In addition to the Virginia and Georgia grants, the United States purchased lands from foreign Governments. All these are to be appropriated for the use and benefit of all. When a surplus shall be left, after the public debt is paid, how is it to be disposed of? The gentleman from Louisiana [Mr. LIVINGSTON] is in favor of appropriating the public lands for purposes of internal improvement when applied to national objects. There will be more difficulty in deriving from the constitution the power to effect these objects—to determine on the objects which will answer the description of national ones, than the power which he now denies to Congress. Mr. McK. then briefly recapitulated his arguments.

Mr. BARTON said that the power proposed to be exercised here was the same as that under which the 16th section of each township of public land was granted for seminaries of public learning. Some call this a compact, and others an exercise of the legislation of Congress. But suppose [said Mr. B.] it is a compact, we receive an equivalent: for we can ask no higher compensation for these donations than the education of the deaf and dumb. Education he conceived to be the highest order of national compensation, and a compensation of a great and noble character, considering the unfortunate but interesting objects for whose education the appropriation is intended. Mr. B. said, he did not think it necessary to go into the constitutional argument, but he was not aware that any greater constitutional objections could be urged against this bill than the bill making an appropriation of public lands for the carrying on of public works in Alabama was liable to, which had just passed the Senate.

Mr. LIVINGSTON said his arguments had not been answered by the gentleman from Alabama; and having repeated them, he proceeded to notice what had fallen from that gentleman. He admitted, with him, that the States have declared that the public lands should be applied for the common benefit of all, including that of each State, and that each State, in relinquishing its lands to the United States, had an ulterior motive—after the public debt should have been paid, after the debt of the Revolution should have been discharged—namely, its own peculiar advantage. But he [Mr. McKINLEY] had asked what disposition ought to be made of the surplus, after the debt is paid. To this question, Mr. L. said he would answer, first, to relieve the people of all their taxes, if the revenue derived from the public lands would be sufficient for the support of Government. We have now two hundred millions of acres of public lands, which, at the rate of two dollars, would yield us four hundred millions of dollars; the interest of which would be sufficient to carry on the operations of Government. This would be a new era in Government; a people living without paying, and a Government existing without the support of taxes. Here [said Mr. L.] is a proposition to appropriate for a poorhouse in one State, and another proposition for the same in all the States; and these objects are said to be for the common benefit. If this system is persevered in, we shall have no limits to the exercise of this power but our own good will and pleasure. Mr. L. denied the analogy contended for by the gentleman from Missouri, [Mr. BARTON] between this case and that making appropriations for public seminaries in the new States. He said he would vote against the bill. He saw the length to which Congress would be obliged to go if the principle were adopted. Establish the principle of it, and hereafter it will be quoted as a precedent for measures which will require a more extensive construction of the powers of Congress than even now is advocated. No answer can then be given to such an argument; but all will be swept away by

the doctrines of general construction. Then the powers of the State Governments will all be consolidated here, and the next step will be to a monarchy: for consolidation and monarchy are inseparable.

Mr. MARKS said that this bill introduced no new principle. There were many precedents for it. He instanced the appropriation, made in 1818, for the support of the Connecticut Asylum for the deaf and dumb, and that made in 1826 to a similar institution in Kentucky. That was the time, he said, to have raised an opposition to the principle, and not now. He instanced also the appropriation of ten thousand dollars to the sufferers of Alexandria by the fire which some years ago took place there. There was no difference, he thought, between appropriating the proceeds of the public lands directly, and the lands themselves, as in this case is proposed. That appropriation of the public money was made unanimously. He viewed this case as the gentleman from Missouri, [Mr. BARTON] that we should adopt this bill on the same principle that we make appropriations of public lands for the support of schools in the new States. We have [said Mr. M.] passed a bill appropriating three hundred thousand dollars for the benefit of Alabama, to aid her in making internal improvements, on the ground that it is also for the benefit of the United States. Would any one venture to say that the object of this bill is not more national and more for the common benefit than improvements in Alabama? He said he would vote for the bill, as it established no new principle.

Mr. MCKINLEY and Mr. LIVINGSTON again addressed the Senate, severally stating and explaining their views in relation to the bill.

Mr. BARTON said he rose to answer one part of the argument of the gentleman from Louisiana; he referred to what he [Mr. L.] said, in case this bill should pass: that precedent would be followed by precedent, until our Government would become a consolidation of the powers of the States; that the republic would be overthrown, and a monarchy substituted, and finally perhaps it would end in a despotism or in anarchy. That is not the process, [said Mr. B.] that is not the route which the Government will take in removing from republicanism to despotism. He would here remark, that, if Congress stepped beyond the powers granted by the constitution, we have the Judiciary branch to correct us, and confine us within our constitutional limits. But the gentleman from Louisiana did not state the proper process by which this Government may arrive at monarchy or despotism. Permit me to suggest [said Mr. B.] what I conceive to be the certain order of effecting this change. It is to render the Executive unrestrained and uncontrolled in his prerogatives. He was not going to argue now the removing power of the President, nor was he going to move to take up the resolutions he offered a few days ago on that question, but he was proceeding to suggest what he deemed a more likely way to arrive at despotism than Mr. L. had done. It is what General Washington called a "combination," that would rally round a military leader, dazzling the population by his achievements. The next step would be to have a Senate, (or some body having the name by which that body in France corresponding to a Senate is called) that could be driven from its post, and say that the President cannot be held responsible, till the end of his term, for any unconstitutional exercise of his power; that then is the proper time to call him to an account. As if the people did not know that the whole mischief was done during the exertion of his power—as if the people did not know that this was but a new version of the old story—"shutting the stable door after the horse was stolen," or like the administering of medicine to a dead person. This, too, to be told, by way of enabling the people—

[The VICE PRESIDENT said the question before the Senate was not the exercise of the Executive powers.]

Mr. B. said that he would then suggest an idea which he hoped would be in order, and applicable to the argument of the gentleman from Louisiana. Jupiter and Juno (and when he mentioned Homer he did not mean to quote him, although, if he happened to misquote, it would be more excusable than the misquotation of Shakspeare in relation to Banquo's ghost)—Jupiter and Juno, he repeated, are always, when introduced by Homer on any important occasion, concealed in impenetrable darkness, that they cannot be recognized by those against whom the celestial arms are raised. This is the mode to adopt, to enable the President to establish a monarchy. Now, with great deference, [said Mr. B.] I consider that illustration as put to my purpose. As to the constitution, that is a *res adjudicata*—it is settled; and if we have trespassed beyond its limits, there is a restraining power in the Judiciary.

Mr. HAYNE said, whenever he heard the constitution mentioned on the floor, he knew at once what its fate would be—that it would be voted down. He remembered that a venerable Senator from North Carolina formerly said that the constitution was dead and buried. He pronounced its funeral discourse, and it would be now as impossible for human talent to revive it, as it is for man to raise the dead. The gentleman from Louisiana need not expect to succeed. He [Mr. H.] did not rise to discuss the question, but to remark what will be the natural consequences of this decision. He was glad that the gentleman from Alabama moved to carry out the principle of the bill to its legitimate consequences. He proposed, if an appropriation is to be made to one State, that it be extended to all. That was just, fair, and honorable. He would be glad the provisions of the bill had been extended farther, so as to embrace every charity in the country, and to give each a township. This is the true question—the length, depth, and breadth of the principle. What difference should be made between a community and a State? It is said, nothing can be more elevated in a national point of view than to extend the blessings of education; but why not also make appropriations for lunatic asylums? why not provide for the aged and poor? He did not allude, of course, to the army and navy, (that was a different question) but to the aged and destitute of the United States. Could any thing be more god-like than to relieve them? Why not include, also, almshouses, and go on through all the circles of public and private calamities?

The gentleman from Pennsylvania [Mr. MARKS] said we had given donations to people who suffered by fire in Alexandria, and asked, should any difference be made in appropriations of land and money. And are we thus [asked Mr. H.] to provide for persons who have suffered from the elements, by land or sea—for all who have met with misfortune—are all to be provided for? What will this end in? The United States will then have jurisdiction of all charities in the country, and next be called upon to make appropriations for them. He said he did not mean to go into the constitutional question, but to state the principle which we must act upon hereafter, if this bill is passed. Precedents have been quoted to support the bill, which in turn will become precedent for another exercise of a greater power. He wished to explain the responsibility which gentlemen would have to act under in supporting the bill, and on the third reading of it he would call for the yeas and nays.

Mr. FOOT asked a division of the amendment. He wished to separate the appropriations for institutions already chartered from those intended for future institutions.

The question on the several amendments was put, and decided in the affirmative.

Mr. MCKINLEY moved an amendment going to make it the duty of the Secretary of the Treasury to select from

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*The Indians.—Pursers in the Navy.*

[SENATE.]

among the lands subject to entry at private sale the township of land granted to any State within which such lands may lie; which was agreed to.

Mr. BARTON then moved to add to the bill "and the institutions hereafter incorporated shall sell said townships within five years after their incorporation;" which was also agreed to.

Mr. NOBLE, with a view to afford the Senate further time for reflection on the amendments, moved that they should be printed, and, with the bill, laid on the table; which was agreed to—ayes 25.

TUESDAY, APRIL 6, 1830.

## THE INDIANS.

On motion by Mr. WHITE, the bill to provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the river Mississippi, was considered in Committee of the Whole; and

Mr. WHITE, who reported the bill, explained its object, and, anticipating objections, he discussed at large the rights of the Indians, the rights of the States, and the power of the General Government, in reference to the right of the former to self-government within the limits of a sovereign State, against the will of such State, &c.

Mr. FRELINGHUYSEN then rose, and said that he desired to make some remarks on the subject of the bill, but, as he was much indisposed, and it was now late, he would move an adjournment.

At the request of Mr. McKINLEY, Mr. F. withdrew his motion, and Mr. McK. moved to add to the 4th section these words:

"And, upon the payment of such valuation, the improvements so valued and paid for shall pass to the United States, and possession shall not afterwards be permitted to any of the same tribe."

After some conversation between Messrs. FORSVTH, SPRAGUE, and McKINLEY, on the effect intended by the amendment, and before the question on the amendment was taken, an adjournment took place.

WEDNESDAY, APRIL 7, 1830.

## PAY OF PURSERS IN THE NAVY.

The bill "regulating the duties and providing for the compensation of pursers in the navy" being taken up for a second reading,

Mr. HAYNE, in explanation of the bill, stated the practice, which now prevails, of furnishing supplies to the officers and crews of the public armed vessels of the United States. The present mode of making the usual supplies is, said he, from the stores of the pursers, who distribute and make the necessary purchases on their own account. This practice tends to profuseness, as the purser is induced to pass off as much as he possibly can, no matter at how high a price he may lay his stores up. There were many other abuses, which, taken altogether, render a change necessary, and it is to remedy these evils in the system that the bill is recommended. It is proposed that the supplies usually furnished by pursers, shall be in future laid in by Government, under the direction of the Navy Department, and shall be committed to the care of the purser of the ship, who is to furnish them to the officers and crew, according to the accustomed mode of requisition, and at an advance of ten per cent. upon the prime cost of such supplies. Pursers are required to account, and are held responsible for all supplies confided to their care; and they are also bound to give such security as will be satisfactory to the Secretary of the Navy for the faithful performance of their duties. The bill proposes to change the compensation of pursers to a fixed annual salary, which is to be graduated

according to the rank of the vessel in the line. A distinction is also proposed to be made between their pay while at sea, or on land service. Those regulations have been made on just and moderate principles. The Secretary of the Navy is authorized to make such other regulations as he may consider necessary to give full effect to the provisions of the bill. These views which he had expressed, Mr. H. said, were concurred in by the Commissioners of the Navy, and it was believed, if acted upon, would promote the comfort of the crews of our armed vessels; would prevent abuses, and save money to the country.

Mr. HOLMES inquired why the supplies should not be distributed to the officers and crews at the invoice prices of them, since it was proposed by the bill to give a per annum compensation to the pursers, and why ten per cent. was fixed upon as an advance upon them?

Mr. HAYNE replied, that the committee experienced some difficulty in settling this matter, as suggested by the gentleman from Maine. He considered the per centum fixed upon as just and necessary; for, suppose [said Mr. H.] the United States ought not to make any thing in furnishing the supplies, was it not known that many articles of sea stores were perishable? The committee doubted whether ten per cent. would be sufficient to meet contingent losses. Some thought that fifteen or twenty per cent. would be little enough.

Mr. FOOT remarked, that the compensation to pursers, as specified in the fourth section of the bill, was different. It is proposed to give a purser on board of a ship of the line at the rate of two thousand five hundred dollars a year; on board of a frigate, two thousand dollars; on board of a sloop of war, one thousand six hundred dollars; and on board of any other vessel, one thousand three hundred dollars. Mr. F. said he knew no reason why a purser of a ship of the line, who has the best accommodations, who undergoes no more risk than, and is liable only to the same penalty as, the purser of a frigate, should have a larger compensation; nor, on the same principle, could he see why the purser of a sloop of war should have a smaller compensation than the purser of a frigate.

In small vessels, in vessels less than half the size, and less than half the crew of a ship of the line, the penalty and risk were the same. If the object is to pay for services, they are all entitled to the same sum.

Mr. HAYNE said that the compensation was intended to be graduated on the responsibility and trust of the pursers. Is it not manifest that, in a large ship, the trouble and responsibility will be double that of a small vessel? It was this consideration which suggested the discrimination in their salaries. Whenever pursers are on shore in the discharge of their duty at a navy yard or station, the bill provides that they shall receive the same pay as pursers on board a frigate; and, while absent on leave, or waiting orders, or absent on furlough, they shall receive the same allowances made to lieutenants under the same circumstances. These were the views of the Committee on Naval Affairs, and were recommended by the Navy Commissioners as judicious regulations.

Mr. FOOT observed, in reference to that part of the fourth section which provides that each purser shall receive the same pay as when on board of his ship, while settling his accounts at the seat of government, that, as the expenses were equal, the compensation ought to be the same.

Mr. HAYNE said it was intended to suppose the continuance of the cruise, at the end of the cruise; to consider the purser, with respect to his compensation, still on a cruise, as his labor and responsibility were the same. If the first principle (graduating the pay of pursers) was a correct one, then this followed as a legitimate consequence.

Mr. HOLMES said he was not satisfied with these.



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reasons. If the purser of a large ship was longer settling his accounts than the purser of a small vessel, then there ought to be no discrimination.

Mr. HAYNE, in reply, referred the gentleman to the proviso in the fourth section of the bill, which limits the time of remaining at the seat of government to one month.

Mr. DICKERSON said the bill proposed to allow pursers absent on leave, waiting orders, or on a furlough, the same pay and allowances made to lieutenants under the same circumstances. He wished to know what lieutenants did receive.

Mr. HAYNE replied that they received half pay.

Mr. DICKERSON said that abuses in this respect prevailed. He considered the allowance proposed to be given to pursers while in the navy yard, was too great. He submitted that such compensation to pursers, while not on actual service, was too great.

Mr. HAYNE said, motives of economy suggested this provision. The moment they come on shore they are attached to the navy yard, and, while absent on furlough, they are to receive the same as lieutenants, who receive but five hundred dollars while absent, &c. It was indispensable to allow them something while not at sea, in order to keep up their connexion with the navy. This, [said Mr. H.] is doing nothing more than we ought to do. The abuses referred to by Mr. D. would be corrected under the bill, as the Secretary of the Navy was thus empowered.

Mr. DICKERSON did not believe it was necessary to pay them so much for the purpose of keeping up their connexion with the navy. They will willingly remain in the ranks without it, and he thought it was improper to pay them while off duty. That a whole corps should be paid at all times when out of service he could not agree, and would therefore vote against the provision.

Mr. FOOT moved to amend that part of the bill fixing the compensation for pursers, while settling their accounts at the seat of government, so that each purser should, in that case, have the pay of a purser of a sloop of war. Here there was no difference in the responsibility of any, and he thought the compensation of all should be the same.

Mr. HAYNE said he would not object to this amendment. The argument was strong that the compensation of all should be as their troubles are, the same. The rate of a sloop of war was a fair medium between a ship and a schooner.

The amendment was agreed to.

Mr. FOOT said there was great inequality, if not injustice, in graduating the pay of pursers as proposed in the fourth section of the bill. If a purser of a frigate is to have two thousand dollars, why should so wide a distinction be made between the purser of a ship of the line, who is to receive two thousand five hundred dollars, and of a sloop of war, who is to receive only one thousand six hundred dollars? I presume, [said Mr. F.] a purser on board of a sloop of war, on the West India station, would have great reason to complain; for although there is more responsibility as to the issuing of the supplies, yet on the bond there is the same responsibility.

Pursers ought not to be reduced in rank; but there may be pursers who have been long in the service in small vessels, and he therefore thought so great a distinction as this ought not to be kept up.

Mr. F. moved to amend the bill, so that, instead of giving, as it now proposes, one thousand six hundred dollars to the purser of a sloop of war, "and one thousand three hundred dollars to the purser of any other vessel," it should read, and "to the purser on board of a sloop of war" or "of any other vessel, one thousand five hundred dollars per annum."

Mr. HAYNE opposed this amendment. The commit-

tee had fixed upon the graduation of the pay proposed in the bill as recommended by the Navy Commissioners. He considered the rates were reasonable, and showed they were proportioned as nearly as could be to the trouble and responsibility incurred by the respective officers.

The amendment was negatived.

Mr. FOOT moved to amend the same section so as to reduce the salary of a purser of a ship of the line from two thousand five hundred dollars to two thousand dollars, being the salary proposed for a purser of a frigate.

Mr. HAYNE opposed this amendment. He said there could be no better reason for reducing the salary of a purser of a ship of the line to that of the purser of a frigate, than there is for reducing the latter to that of a sloop of war. He dwelt again on the necessity of giving an excess of compensation equivalent to the greater degree of trouble and responsibility attached to the office of purser of a large vessel. The greater number of the crew of large vessels he adduced as an additional reason why regard should be had to the consequent labor that must be undergone.

Mr. FOOT considered that the pay of pursers ought not to be greater than that of the commanding officers of the navy.

Mr. SMITH, of Maryland, said there was no principle whatever in the amendment. Take the case of collectors in New York and Baltimore; in the former place the collector has double the responsibility, and double the salary.

After a few observations from Mr. FOOT in reply, The question on the amendment was decided in the negative.

Mr. DICKERSON said he was opposed to the difference of compensation proposed in the bill when pursers are at sea and on shore. The bill proposes to give them, when discharging their duties at the navy yard, the same pay as pursers of frigates. He considered this too much; the difference of the service did not justify such a compensation. He moved to reduce the sum to the pay of pursers of sloops of war.

Mr. WOODBURY, admitting the responsibility to be less in such cases, did not object to the reduction, on the part of the Committee on Naval Affairs.

The amendment was agreed to.

Mr. DICKERSON moved to strike out the words "and while absent on leave, or waiting orders, or absent on furlough, they (pursers) shall receive the same pay and allowances made to lieutenants under the same circumstances." He thought that paying them while not in service was too much like pensioning. He moved the amendment to try the sense of the Senate on it, although he was aware of the necessity of keeping them connected with the navy.

Mr. SILSBEE expressed a hope that the amendment would not prevail, unless it was the intention of gentlemen to drive them out of the service at once. They ought [said Mr. S.] to be kept in connexion with the navy, and if you agree to this proposition, the consequence will be, they must quit the service. He trusted the Senate would not adopt it; for, if we do, we may as well say to them at once, "go—leave the service." He did not consider their proposed pay as more than reasonable and just.

Mr. DICKERSON said he would withdraw his amendment, though he did not think it required so large a sum to keep the pursers in the service.

Mr. HAYNE said, if it had been agreed to, the only effect of it would be to double the expense of the Government in this respect: for they would all, of necessity, be attached to some navy yard or station, instead of being allowed leave of absence, as heretofore. The whole bill has been suggested by considerations of reform in the department of the Government.

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Mr. FOOT said he might have misapprehended the bill, but he was of opinion that it was neither calculated to reform nor to decrease our expenses. The first section of the bill proposes that all articles be provided by Government, under the direction of the Navy Department. Now, any one who is at all acquainted with our foreign stations knows that it is often necessary to make purchases at foreign ports. Each ship must then have an agent, or a new department must be created—a purchasing department, Mr. F. supposed.

Mr. WOODBURY said the second section of the bill provides that, where there is no navy agent to make the necessary purchases, the purser shall be permitted to purchase any articles for the use of the crew, and then only in an emergency, and on the authority of the commanding officer; for which purchase vouchers will be required. Mr. W. stated that particular instances had occurred where their emoluments had been supposed to reach, in a year, eight or ten thousand dollars, and that a reduction would excite less general competition for the office.

The bill was then ordered to be engrossed for a third reading.

#### THE INDIANS.

The Senate resumed, as in Committee of the Whole, the consideration of the bill to provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the river Mississippi.

Mr. McKINLEY withdrew the amendment which he proposed to the fourth section, yesterday, intending, as he said, to offer it at a different stage of the bill.

Mr. FRELINGHUYSEN then rose in reply to Mr. WHITE, and spoke about two hours. At about three o'clock he gave way for a motion to adjourn.

THURSDAY, APRIL 8, 1839.

#### PAY OF PURSERS IN THE NAVY.

The bill "regulating the duties and providing for the compensation of pursers in the navy," was taken up, and read the third time; and the question being on its passage,

Mr. FOOT said that sufficient information had not been obtained to induce him to agree to the passage of this bill. He had examined into the amount of compensation now given to pursers, and he found that this bill proposed an entire change in relation to it. The number of pursers in the service, according to the blue book, is forty-three, and their compensation, at six hundred and sixty dollars per annum, the present allowance, amounts to twenty-eight thousand three hundred and eighty dollars. By this bill the compensation of the purser of a ship of the line is fixed at two thousand five hundred dollars a year, while the captain has but one thousand nine hundred and thirty dollars; and the purser of a frigate is to have two thousand dollars, which also exceeds the pay of a captain, unless he is commanding a squadron. The purser on board of a sloop of war is to have one thousand six hundred dollars, and of any other vessel one thousand three hundred dollars, both of which salaries exceed that of a master commandant, who, under the present regulations, receives but one thousand one hundred dollars. Their pay is proposed to be made greater, also, than that of a lieutenant, who only receives nine hundred and fifty dollars per annum. They are to receive, too, while not in service, the same pay as a lieutenant. Mr. F. said he could not see what possible public advantage could be derived from this alteration. The whole number of ships [he said] was twenty-five; and allowing a purser to each, the increase of expenditure, according to a calculation he made, would be thirty-three thousand three hundred dollars; the expense, according to the present system, being twenty-eight thousand three hundred and eighty, and according to the proposed plan sixty-one thousand six hundred and

eighty dollars. The bill proposes an increase of pay more than one hundred per cent. of what it now is, while the officers who perform services at sea, with the exception of the captain of a squadron, receive not more than the purser of a second rate vessel.

Mr. HAYNE said if there was any thing certain in the world, it was, that the operation of this bill would be to reduce the compensation of pursers one-half. The object of the committee was to reduce their compensation, and there was no doubt whatever but that the bill would produce that effect. Notwithstanding this, it was very true that the change would produce an additional charge on the treasury. Mr. H. said, he would explain the subject, by stating the operation of the existing and the proposed rule, and then gentleman could decide which was the better. It has been felt as an evil, of which every one connected with the navy has complained, that the crew have been invariably divested of their entire pay by the pursers, who are authorized to lay up stores of goods, and who derive the greater part of their compensation by the sales of these goods to the sailors, at advanced prices.

The United States, as has been observed, allow a compensation to the pursers; but this is not their only compensation; it is the smallest part of it. They are permitted [said Mr. H.] to carry out stores, and sell them at a profit to the ship's company; and, although attempts have been made to regulate these profits, they have, on some articles, it is known, amounted to sixty per cent. Under this system, what must be the effect? And he would appeal to all who were connected with the navy, to those who know what effects such causes would produce on the human character. He repeated, that the purser was permitted to lay up the stores, and, to enable him to do so, money was advanced to him by the United States. By the regulations, he is authorized to sell them at a per centage; thus [Mr. H. said] making it his interest to purchase the goods at a high price, and to dispose of as much as possible. He is not dependent on his salary, but on the profits to be derived from the sale of the stores to the sailors, who are induced to purchase so much, and at so high a price, that, at the winding up of their accounts, their pay is exhausted by the purser. The operation of the law [said Mr. H.] was cruel and unjust towards these men, who were the most liable of any to be imposed upon. By the existing regulations, the purser is induced to screw from the sailor his last farthing. It was impossible [he said] to avoid frauds, under the present system. The purser had the opportunity and the means to lay up the stores at one price, and charge them at another. Mr. H. said he was not authorized to say that such a practice was general, but one case of this character had been reported by the Navy Department. It appeared on the trial of a purser, at a late court martial, that he had bought goods at one dollar and fifty cents, and sold the same at three dollars and fifty cents. The frauds of the purser were detected, he was found guilty, and cashiered. Abuses had been so interwoven in the system, that they must be practised while it continues. Mr. H. said he understood the profits of a purser, in this way, for a single year, were ten thousand dollars; and this was not improbable, for they were not required to render an account of their sales. That such abuses did prevail, no gentleman would deny. By the bill, the goods are to be purchased by Government, under the direction of the Navy Department, and furnished to the sailors at an advance of ten per cent. instead of allowing the purser to draw from the crew ten thousand dollars beyond his pay, as in the instance he had alluded to. Why, he asked, appoint pursers at a salary of seven or eight hundred dollars, and pay them the balance out of the pockets of the poor hard-working sailors, who, of all others, required to be defended from imposition? It was an act of common justice, and it was due to our sailors, to their comfort and happi-

ness, to protect them. Mr. H. then recapitulated his arguments of yesterday, and, in conclusion, read an extract from the report of the Navy Commissioners, in recommendation of the measure proposed.

Mr. FOOT said there was no doubt that the emoluments of pursers would, in many instances, be reduced one-half, nor was there any more doubt that their pay, when unemployed, would be increased. He admitted the evil existed, but he considered the bill not calculated to remove it. The saving proposed by allowing the pursor ten per cent. reminded him of the saving made some time ago by the Navy Agent in extra postages. He was, however, in favor of the first section of the bill, but he objected to that part of the bill increasing the pay of pursers to that of the highest navy officers. As the provisions of the bill would not, in his opinion, correct the evil, and as it would cause an additional expense of thirty odd thousand dollars, if adopted, with an additional commission of ten per cent. to be allowed by the United States, he felt it his duty to oppose it.

Mr. BELL opposed the bill, on the ground that neither the talents nor experience required to perform the duties of pursor, or the responsibility attached to the office, justified so high a salary as the bill contemplated. Many revenue officers handle and are entrusted with more money and property than any pursor, and yet have not a salary of more than one thousand dollars a year. Any person qualified to fill the office of clerk, if a man of probity, was competent to discharge the duties of pursor. The situation was much sought after, as the services required were not difficult; and, if the salary was even less, we would find many anxious to accept of it, sufficiently qualified. We hear [said Mr. B.] much talk about reform and retrenchment. He would be glad, he said, to see some of it practised.

Mr. DICKERSON said he believed reform was necessary with respect to pursers, but he did not think this was the best way to effect it, by increasing their salaries. The abuses were enormous, and, to remedy them, he would suggest, to give to the pursers the salaries they have, and inflict a penalty on them for whatever abuse in office they may be guilty of. Let them sell out the goods at a fair price, and, if they behave dishonestly, discharge or cashier them, but do not raise their salaries. What reason, he asked, was there for raising them to the grade of lieutenants, when not on service? Is it because they have heretofore made too much, and we do not like to reduce them at once? Is it through a desire to save, not the United States, but these officers? If a proper accountability were enforced, the power of the Department would reach them; and he believed their present compensation was amply sufficient, without increasing it. Applications for this office were numerous, and it was generally thought that the office of pursor is the direct road to fortune. Although believing it to be the intention of the Committee to produce a reform of these abuses, yet considering the bill ineffectual for that object, he would vote against its passage; and, as he wished to record his name, he asked for the yeas and nays, and they were ordered.

Mr. TAZEWELL said he would vote for the bill, because it was recommended by the Navy Commissioners, although he had himself but little confidence in the success of the experiment. He had proposed to alter the rations, and to assimilate them to those of the French or British navy, which, if done, would render this officer, if at all necessary, merely a commissary, and would make the seamen more secure, and frauds less frequent; but others, more conversant with the matter than he was, recommended this bill, and he was willing to make the experiment. This was not a new plan. Complaints like the present had been formerly made in relation to the issuing of tobacco—a very important article in the consumption of sailors. The pursers had been in the habit

of purchasing tobacco at high prices, charging accordingly, and made enormous profits. The Government, to remedy the evil, purchased the tobacco for cash ship, and, in most cases, the tobacco, in a few months, became damaged, was condemned, and the pursor had to purchase more. Such will be the case here, he feared; and lay up stores how and when you will, they will become damaged, and be condemned, and somebody must buy others in their stead, and that somebody will be the pursor. But, as navy officers of experience have recommended this measure, he would vote for it, although he had no confidence in it, and but little in his own plan. His proposition was to alter the component parts of the ration, so as to allow the sailors to select what luxuries they thought proper, in lieu of the unnecessarily large quantities they now receive.

Mr. HOLMES said he was disposed to try the experiment. All saw and admitted the evil. He would vote for the bill.

Mr. BENTON opposed the plan proposed, as not calculated to effect its object, although, he was sure, suggested by the best motives. He said, a similar experiment was tried to remedy the abuses and impositions practised towards the Indians by the agents appointed to deliver them their goods, on the part of the United States. That experiment cost the country three hundred thousand dollars, and, notwithstanding, this had lasted for upwards of thirty years. He recommended the practice adopted in the army. The soldiers, he said, were as subject to imposition as sailors. There they have sutlers, and the soldiers may purchase from them, or not, as they please. In reply to the objection which might be urged against this, that sailors, being at sea, had no choice left, but were obliged to purchase from the pursers, Mr. B. said that the average time which our vessels were absent from a port, was not more than three months—a space of time for which they could, while in port, easily provide themselves in all necessities.

Mr. HAYNE replied that, under the existing system, all admitted that evils prevailed, and that a remedy was required. When an inquiry is made as to the proper remedy—and he submitted that every gentleman wanted light on the subject—ought we not, he asked, to make application for information to those who are acquainted with the whole system, with the nature and extent of the evils, and who are competent to recommend measures to correct those evils? He thanked gentlemen for giving the Naval Committee credit for good intentions, however they have failed in carrying them into effect; but he had to inform gentlemen that, at every step the Naval Committee took, they felt the want of that practical knowledge of the matter which was necessary for their progress, and had to apply for information to those experienced naval officers, the Commissioners of the Navy. It was in conformity with their suggestions and recommendations the provisions of the bill were framed, with the exception of some slight variation. The measures recommended by the gentleman from New Jersey have been resorted to, and have failed; and he would submit whether, on such subjects as this, gentlemen ought not to distrust their judgments. As to the remedy of the gentleman from Virginia [Mr. TAZEWELL] to alter the rations, he did not think it inconsistent with this bill, and if he [Mr. T.] wished to offer it, there was a bill before the Committee to which it could be appended. He would suggest that the President should be authorized to alter the rations from time to time, and that they should not be fixed by law as they now are. He would not say that the rations of our navy should be the same as that of the British or French. In the British navy, the sailors are freed to drink several quarts of beer a day, to make them red-faced; and if the gentleman would look into the rations of the French navy, he did not think that he [Mr. T.]

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The Indians.

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would consent to put our sailors on such and so small an allowance.

Mr. H. again stated the benefits which would result to the sailors, and to the United States, from the adoption of this bill, and then proceeded to notice the objections of Mr. BAXTER, who had remarked that the experiment proposed had been tried with the Indians, and had failed. There was a wide difference, [said Mr. H.]; there was no analogy whatever between the two cases. In this bill guards are proposed which will effectually prevent any abuses. The supplies are to be laid up on requisition, on the order of the Navy Department, and will be subject to inspection. An invoice of them is to be given to the commander of the ship and to the purser, who is to give a receipt for them, when confided to his care. He is then held responsible for all, and has to keep regular accounts with the officers and crew. It is thus impossible that the stores will not be laid in well, and that any frauds or impositions can take place. The situation of sailors and soldiers was, he said, quite different. The soldier may purchase from the sutler or not, as he pleases, as he has another vendor to resort to, but the sailor has no such chance—there is no competition at sea—the purser has all in his own power. When on shore he may act as the soldier. This bill may not, [said Mr. H.] succeed; but as those most skilled in such matters advise that it will remedy an existing evil, the committee thought it their duty to lay it before the Senate.

Mr. FOOT said that the bill would cause an increase not only of the expense of pursers, but an increase of expenses, exclusive of that, to the United States. If sugar is laid up here at twelve and a half cents a pound, and the vessel sails for the West Indies, there sugar of the same quality can be had for two and a half cents a pound. Slops, as they are called, can be purchased in the Mediterranean much cheaper than here; yet by each of these the United States will be a loser. He suggested to fix the premium at ten per cent on issues, and to let the compensation of pursers stand as it now is.

Mr. SMITH, of Maryland, said that he understood the chairman of the Committee [Mr. HAYS] to state that the money was advanced by Government in long voyages. Suppose, then, that a vessel goes to the Pacific for three years, and that Government advances thirty thousand dollars, the interest on that sum would be equal to the purser's pay. In reply to what had been said by Mr. BAXTER, Mr. S. said he was correct in stating that the general time of a voyage at sea was three months, but not so in stating that all a sailor had to do when he arrived in port, was to go ashore and buy what he wanted. The sailor has not money: he takes none to sea with him, and if he did, [said Mr. S.] he would throw it overboard, likely. But suppose Jack asks the purser for ten dollars; whether to go on shore for a frolic or buy a coat; the purser refuses him. Jack then says, I want a pair of boots. A sailor [said Mr. S.] never wants boots; but this case had, to his knowledge, occurred. Jack, of course, gets the boots; he is charged fifteen dollars for them; he goes on shore and sells them for two dollars, all which he spends. This, [said Mr. S.] is in reply to the remedy suggested by the gentleman from Missouri, and this would be the result of it. He said he would vote for the bill.

The question was then put on the passage of the bill, and decided in the affirmative, by yeas and nays, 34 to 10.

#### THE INDIANS.

The Senate resumed the bill to provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the Mississippi.

Mr. FRELINGHUYSEN moved to add to the bill the following:

"Sec. 9. That, until the said tribes or nations shall choose to remove, as by this act is contemplated, they shall be

protected in their present possessions, and in the enjoyment of all their rights of territory and government, as heretofore exercised and enjoyed, from all interruptions and encroachments.

"Sec. 10. That, before any removal shall take place of any of the said tribes or nations, and before any exchange or exchanges of land be made as aforesaid, that the rights of any such tribes or nations, in the premises, shall be stipulated for, secured, and guaranteed, by treaty or treaties, as heretofore made."

Mr. MCKINLEY then renewed the amendment which he heretofore offered to the 4th section, in the following words:

"And upon the payment of such valuation, the improvements so valued and paid for shall pass to the United States; and possession shall not afterwards be permitted to any of the same tribe."

Mr. FRELINGHUYSEN addressed the Senate about two hours, in continuation of his speech heretofore commenced, when he gave way for an adjournment.

FRIDAY, APRIL 9, 1830.

The bill to provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the river Mississippi, was resumed, in Committee of the Whole, with the amendment offered by Mr. FRELINGHUYSEN.

Mr. F. addressed the Senate nearly two hours in continuation and conclusion of his speech on the subject.

[His speech, as delivered on the three several days, was as follows:]

I propose an amendment, Mr. President, to this bill, by the addition of two sections in the forms of provisos. The first of which brings up to our consideration the nature of our public duties, in relation to the Indian nations; and the second provides for the continuance of our future negotiations, by the mode of treaties, as in our past intercourse with them. The following is the amendment:

[See previous day's proceedings.]

The first of these sections discloses the real object sought by this bill, seemingly composed of harmless clauses. It supposes that the design of the system of which the present bill forms but a part, is really to remove all the Indian tribes beyond the Mississippi, or, in case of their refusal, to subject them to State sovereignty and legislation. The honorable Senator [Mr. WHITE] who yesterday addressed the Senate, found it necessary so to consider it; and to anticipate and endeavor to meet all such objections to this course of policy, as he deemed worthy of a refutation.

Sir, I prefer that this latent object should be put fully before us, that we and the nation may look at it, and freely scrutinize it. At an early stage of the present administration, its views and opinions on the interesting subject of our Indian relations were developed in language not to be mistaken. It is greatly to be regretted, sir, that our present Chief Magistrate did not pursue the wise and prudent policy of his exalted predecessor, President Washington, who, at a time of collision and difficulty with these tribes, came before the Senate, and laid open to them, in propositions for their approbation, the various important subjects involved in our relations. The annexed extract from the Journals of the Senate illustrates the principles of Washington's administration. It follows:

"SENATE, August 22, 1789.

"The President of the United States came into the Senate, attended by General KNOX, and laid before the Senate the following state of facts, with the questions thereto annexed, for their advice and consent."

This was a most important document. It developed all the collisions that existed between the Indian tribes and the States; and referred to the consideration of the Se-

nate certain leading principles of policy which he thought it was wise to pursue. These principles are embodied in seven distinct interrogatories; the fourth of which submits to the Senate "whether the United States shall solemnly guaranty to the Creeks their remaining territory, and maintain the same, if necessary, by a line of military posts." This question "was wholly answered in the affirmative" by that body, and the blank (for an appropriation of necessary funds) was ordered to be filled at the discretion of the President of the United States. Again, on the 11th of August, 1790, President Washington sent a special message to the Senate by his Secretary, the subject matter of which he introduces by the following suggestion:

*"Gentlemen of the Senate:*

"Although the treaty with the Creeks may be regarded as the main foundation of the future peace and prosperity of the Southwestern frontier of the United States, yet, in order fully to effect so desirable an object, the treaties which have been entered into with the other tribes in that quarter, must be faithfully performed on our part."

He then proceeds to remind the Senate, that, by the treaty with the Cherokees, in November, 1785, (the treaty of Hopewell) "the said Cherokees placed themselves under the protection of the United States, and had a boundary assigned them;" that the white people settled on the frontiers had openly violated the said boundary by intruding on the Indian lands; that the United States in Congress assembled, on the first day of September, 1788, laid, by their proclamation, forbidden all such unwarrantable intrusions, enjoined the intruders to depart without loss of time; but that there were still some refractory intruders remaining. The President then distinctly announces his determination to exert the powers entrusted to him by the constitution, in order to carry into faithful execution the treaty of Hopewell, unless a new boundary should be arranged with the Cherokees, embracing the intrusive settlement, and compensating the Cherokees in the cessions they shall make on the occasion. And in view of the whole case, he requests the advice of the Senate, whether overtures shall be made to the Cherokees to arrange such new boundary, and concludes his communication with the following emphatical question: "3d. Shall the United States stipulate solemnly to guaranty the new boundary which may be arranged?"

It produced as pointed a response: for the Senate

*"Resolved,* In case a new or other boundary than that stipulated by the treaty of Hopewell shall be concluded with the Cherokee Indians, that the Senate do advise and consent solemnly to guaranty the same." A new boundary was arranged by a second treaty; the solemn guarantee was given to the Cherokees; and cogent, indeed, should be the causes that now lead us to think or speak lightly of such sacred obligations.

I lament, sir, that so bright and illustrious a precedent was not regarded, and that the President had not yielded to the safe guidance of such high example; and I deplore it more because it was concerning these very tribes, in the State of Georgia, that General Washington chose to confer with his constitutional advisers.

Instead of this just proceeding, the present administration have thought proper, without the slightest consultation with either House of Congress; without any opportunity for counsel or concert, discussion or deliberation, on the part of these co-ordinate branches of the Government, to despatch the whole subject in a tone and style of decisive construction of our obligations and of Indian rights. It would really seem, sir, as if opinion was to be forestalled, and the door of inquiry shut forever upon these grave questions, so deeply implicating our national faith and honor. We must firmly protest against this Executive disposition of these high interests. No one branch of the Government can rescind, modify, or

explain away, our public treaties. They are the supreme law of the land, so declared to be by the constitution. They bind the President and all other departments, rulers and people. And when their provisions shall be controverted; when their breach of fulfilment become subjects of investigation; here, sir, and in the other Hall of our Legislation, are such momentous concerns to be debated and considered. That we may freely exercise these essential powers, and review the proclaimed opinions of the Executive, I have submitted the first branch of the amendment. We possess the constitutional right to inquire wherefore it was that, when some of these tribes appealed to the Executive for protection, according to the terms of our treaties with them, they received the answer that the Government of the United States could not interpose to arrest or prevent the legislation of the States over them. Sir, it was a harsh measure, indeed, to faithful allies, that had so long reposed in confidence on a nation's faith. They had, in the darkest hour of trial, turned to the ~~axis~~ which the most solemn pledges had provided for them, and were comforted by the conviction that it would continue to shed upon them a pure and untarnished beam of light and hope. Deep, indeed, must have been their despondency, when their political father assured them that their confidence would be presumptuous, and dissuaded them from all expectation of relief.

The instructions that have proceeded from the War Department to the agents of Indian affairs have excited just and strong jealousies of the measures that are now recommended. They have prompted this amendment, in the hope that, by some public and decided expression of our disapprobation, a train of political management with these tribes may be arrested, and our country saved from the dishonor of buying over the consent of corrupted chiefs to a traitorous surrender of their country. I will read a part of these instructions; they are from the War Department, to Generals Carroll and Coffee, of the date of 30th May, 1829: "The past (remarks the Secretary, in respect to Indian councils) has demonstrated their utter aversion to this mode, whilst it has been made equally clear, that another mode promises greater success. In regard to the first, (that by councils) the Indians have seen in the past, that it has been by the result of councils that the extent of their country has been from time to time diminished. They all comprehend this. Hence it is that those who are interested in keeping them where they are alarm their fears, and, by previous cautioning, induce them to reject all offers looking to this object. There is no doubt, however, but the mass of the people would be glad to emigrate; and there is as little doubt that they are kept from this exercise of their choice by their chiefs and other interested and influential men," &c. Again: "Nothing is more certain than that, if the chiefs and influential men could be brought into the measure, the rest would implicitly follow. It becomes, therefore, a matter of necessity, if the General Government would benefit these people, that it move upon them in the line of their own prejudices, and, by the adoption of any proper means, break the power that is warring with their best interests. The question is, how can this be best done? Not, it is believed, for the reasons suggested, by means of a general council. There, they would be awakened to all the intimations which those who are opposed to their exchange of country might throw out; and the consequence would be—what it has been—a firm refusal to acquiesce. The best resort is believed to be that which is embraced in an appeal to the chiefs and influential men, not together, but apart, at their own houses, and, by a proper exposition of their real condition, rouse them to think of that; whilst offers to them of extensive reservations in fee simple, and other rewards, would, it is hoped, result in obtaining their acquiescence."

Let us analyze this singular state paper. It does not

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relish the congregation of Indian councils. In these assemblies, they deliberate and weigh the policy of measures; they calculate the results of proposed improvements. These councils embody the collected wisdom of the tribes. Their influence is of the authority of law; the people look to them for protection. They know that in the multitude of counsellors there is safety. Hence nations, far in advance of the Indians, always meet in council, when their great interests are to be promoted or defended. But these special agents are discouraged from hoping that the objects can be obtained in this good old fashioned way. The Indians are too wise to be caught when the net is spread so fully in sight. They are directed to avoid all associations; and, with the public purse in hand, to take the chiefs alone; to approach individually, and at home; "to meet them in the way of their prejudices." I admire the ingenious clothing of a most odious proposal.

A strong hint is suggested to try the effect of terror, and, by a proper exposition of their real condition, rouse them to think upon that, and to follow this up with large offers to them of extensive reservations in fee simple, and other rewards." The report made by one of these agents to the War Department, dated September 2d, 1829, still further discloses the nature of the exigencies to which the Indians are to be subjected, to constrain their removal. The agent observes, "The truth is, they (Cherokees) rely with great confidence on a favorable report on the petition they have before Congress. If that is rejected, and the laws of the States are enforced, you will have no difficulty in obtaining an exchange of lands with them." It may be true, that if we withdraw our protection, give them over to the high-handed, heart-breaking legislation of the States, and drive them to despair, that when improper means fail to win them, force and terror may compel them. We shall have no difficulty, the agent assures the War Department. Sir, there will be one difficulty, that should be deemed insurmountable. Such a process will disgrace us in the estimation of the whole civilized world! It will degrade us in our own eyes, and blot the page of our history with indelible dishonor!

Now, sir, I have brought this measure before the Senate, and wait with intense anxiety to hear the final disposition of it. Where is the man that can, in view of such policy, open the door, or afford the slightest facility to the operation of influences that we should blush with honest shame, could we, in an unguarded moment, consent to have employed with our equal in the scale of civilization? It is not intended, sir, to ascribe this policy exclusively to the present administration. Far from it. The truth is, we have long been gradually, and almost unconsciously, declining into these devious ways, and we shall inflict lasting injury upon our good name, unless we speedily abandon them.

I now proceed to the discussion of those principles which, in my humble judgment, fully and clearly sustain the claims of the Indians to all their political and civil rights, as by them asserted. And here, I insist that, by immemorial possession, as the original tenants of the soil, they hold a title beyond and superior to the British Crown and her colonies, and to all adverse pretensions of our confederation and subsequent Union. God, in his providence, planted these tribes on this Western continent, so far as we know, before Great Britain herself had a political existence. I believe, sir, it is not now seriously denied that the Indians are men, endowed with kindred faculties and powers with ourselves; that they have a place in human sympathy, and are justly entitled to a share in the common bounties of a benignant Providence. And, with this conceded, I ask in what code of the law of nations, or by what process of abstract deduction, their rights have been extinguished?

Where is the decree or ordinance that has stripped these

early and first lords of the soil? Sir, no record of such measure can be found. And I might triumphantly rest the hopes of these feeble fragments of once great nations upon this impregnable foundation. However mere human policy, or the law of power, or the tyrant's plea of expediency, may have found it convenient at any or in all times to recede from the unchangeable principles of eternal justice, no argument can shake the political maxim, that, where the Indian always has been, he enjoys an absolute right still to be, in the free exercise of his own modes of thought, government, and conduct.

"In the light of natural law, can a reason for a distinction exist in the mode of enjoying that which is my own? If I use it for hunting, may another take it because he needs it for agriculture? I am aware that some writers have, by a system of artificial reasoning, endeavored to justify, or rather excuse the encroachments made upon Indian territory; and they denominate these abstractions the law of nations, and, in this ready way, the question is despatched. Sir, as we trace the sources of this law, we find its authority to depend either upon the conventions or common consent of nations. And when, permit me to inquire, were the Indian tribes ever consulted on the establishment of such a law? Whoever represented them or their interests in any Congress of nations, to confer upon the public rules of intercourse, and the proper foundations of dominion and property? The plain matter of fact is, that all these partial doctrines have resulted from the selfish plans and pursuits of more enlightened nations; and it is not matter for any great wonder, that they should so largely partake of a mercenary and exclusive spirit toward the claims of the Indians.

It is, however, admitted, sir, that, when the increase of population and the wants of mankind demand the cultivation of the earth, a duty is thereby devolved upon the proprietors of large and uncultivated regions, of devoting them to such useful purposes. But such appropriations are to be obtained by fair contract, and for reasonable compensation. It is, in such a case, the duty of the proprietor to sell: we may properly address his reason to induce him; but we cannot rightfully compel the cession of his lands, or take them by violence, if his consent be withheld. It is with great satisfaction that I am enabled, upon the best authority, to affirm, that this duty has been largely and generously met and fulfilled on the part of the aboriginal proprietors of this continent. Several years ago, official reports to Congress stated the amount of Indian grants to the United States to exceed two hundred and fourteen millions of acres. Yes, sir, we have acquired, and now own, more land as the fruits of their bounty than we shall dispose of at the present rate to actual settlers in two hundred years. For, very recently, it has been ascertained, on this floor, that our public sales average not more than about one million of acres annually. It greatly aggravates the wrong that is now meditated against these tribes, to survey the rich and ample districts of their territories, that either force or persuasion have incorporated into our public domains. As the tide of our population has rolled on, we have added purchase to purchase. The confiding Indian listened to our professions of friendship: we called him brother, and he believed us. Millions after millions he has yielded to our importunity, until we have acquired more than can be cultivated in centuries—and yet we crave more. We have crowded the tribes upon a few miserable acres on our Southern frontier: it is all that is left to them of their once boundless forests; and still, like the horse-leech, our insatiated cupidity cries, give! give!

Before I proceed to deduce collateral confirmations of this original title, from all our political intercourse and conventions with the Indian tribes, I beg leave to pause a moment, and view the case as it lies beyond the treaties made with them; and aside also from all conflicting claims

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between the confederation, and the colonies, and the Congress of the States. Our ancestors found these people, far removed from the emanations of Europe, exercising all the rights, and enjoying the privileges, of free and independent sovereigns of this new world. They were not a wild and lawless horde of banditti, but lived under the restraints of government, patriarchal in its character, and energetic in its influence. They had chiefs, head men, and councils. The white men, the authors of all their wrongs, approached them as friends—they extended the olive branch; and, being then a feeble colony and at the mercy of the native tenants of the soil, by presents and professions, propitiated their good will. The Indian yielded a slow, but substantial concurrence; granted to the colonists an abiding place; and suffered them to grow up to man's estate beside him. He never raised the claim of elder title: as the white man's wants increased, he opened the hand of his bounty wider and wider. By and by, conditions are changed. His people melt away; his lands are constantly coveted; millions after millions are ceded. The Indian bears it all meekly; he complains, indeed, as well he may; but suffers on; and now he finds that his neighbor, whom his kindness had nourished, has spread an adverse title over the last remains of his patrimony, barely adequate to his wants, and turns upon him, and says, "away! we cannot endure you so near us! These forests and rivers, these groves of your fathers, these firesides and hunting grounds, are ours by the right of power, and the force of numbers." Sir, let every treaty be blotted from our records, and in the judgment of natural and unchangeable truth and justice, I ask, who is the injured, and who is the aggressor? Let conscience answer, and I fear not the result. Sir, let those who please, denounce the public feeling on this subject as the morbid excitement of a false humanity; but I return with the inquiry, whether I have not presented the case truly, with no feature of it overcharged or distorted? And, in view of it, who can help feeling, sir? Do the obligations of justice change with the color of the skin? Is it one of the prerogatives of the white man, that he may disregard the dictates of moral principles, when an Indian shall be concerned? No, sir. In that severe and impartial scrutiny which futurity will cast over this subject, the righteous award will be, that those very causes which are now pleaded for the relaxed enforcement of the rules of equity, urged upon us not only a rigid execution of the highest justice, to the very letter, but claimed at our hands a generous and magnanimous policy.

Standing here, then, on this unshaken basis, how is it possible that even a shadow of claim to soil, or jurisdiction, can be derived, by forming a collateral issue between the State of Georgia and the General Government? Her complaint is made against the United States, for encroachments on her sovereignty. Sir, the Cherokees are no parties to this issue; they have no part in this controversy. They hold by better title than either Georgia or the Union. They have nothing to do with State sovereignty, or United States sovereignty. They are above and beyond both. True, sir, they have made treaties with both, but not to acquire title or jurisdiction; these they had before—ages before the evil hour to them, when their white brothers fled to them for an asylum. They treated to secure protection and guarantee for subsisting powers and privileges; and so far as those conventions raise obligations, they are willing to meet, and always have met, and faithfully performed them; and now expect from a great people, the like fidelity to pledged covenants.

I have thus endeavored to bring this question up to the control of first principles. I forget all that we have promised, and all that Georgia has repeatedly conceded, and, by her conduct, confirmed. Sir, in this abstract presentation of the case, stripped of every collateral circumstance—and these only the more firmly established the

Indian claims—thus regarded, if the contending parties were to exchange positions; place the white man where the Indian stands; load him with all these wrongs, and what path would his outraged feelings strike out for his career? Twenty shillings tax, I think it was, imposed upon the immortal Hamplen, roused into activity the slumbering fires of liberty in the Old World, from which she dates a glorious epoch, whose healthful influence still cherishes the spirit of freedom. A few pence of duty on tea, that invaded no fires de, excited no fears, disturbed no substantial interest whatever, awakened in the American colonies a spirit of firm resistance; and how was the tea tax met, sir? Just as it should be. There was lurking beneath this trifling imposition of duty, a covert assumption of authority, that led directly to oppressive exactions. "No taxation without representation," became our motto. We would neither pay the tax nor drink the tea. Our fathers buckled on their armor, and, from the water's edge, repelled the encroachments of a misguided cabinet. We successfully and triumphantly defended for the very rights and privileges that our Indian neighbors now implore us to protect and preserve to them. Sir, this thought invests the subject under debate with most singular and momentous interest. We, whom God has exalted to the very summit of prosperity—whose brief career forms the brightest page in history; the wonder and praise of the world; freedom's hope, and her consolation; we, about to turn traitors to our principles and our fame—about to become the oppressors of the feeble, and to cast away our birthright! Sir, I hope for better things.

It is a subject full of grateful satisfaction, that, in our public intercourse with the Indians, ever since the first colonies of white men found an abode on these Western shores, we have distinctly recognized their title; treated with them as owners, and in all our acquisitions of territory, applied ourselves to these ancient proprietors, by purchase and cession alone, to obtain the right of soil. Sir, (said Mr. F.) I challenge the record of any other or different pretension. When, or where, did any assembly or convention meet which proclaimed, or even suggested to these tribes, that the right of discovery contained a superior efficacy over all prior titles?

And our recognition was not confined to the soil merely. We regarded them as nations—far behind us indeed in civilization, but still we respected their forms of government—we conformed our conduct to their notions of civil policy. We were aware of the potency of any edict that sprang from the deliberations of the council fire; and when we desired lands, or peace, or alliances, to this source of power and energy, to this great lever of Indian government we addressed our proposals—to this alone did we look; and from this alone did we expect aid or relief.

I now proceed, very briefly, to trace our public history in these important connexions. As early as 1763, a proclamation was issued by the King of Great Britain to his American colonies and dependencies, which, in clear and decided terms, and in the spirit of honorable regard for Indian privileges, declared the opinions of the Crown and the duties of its subjects. The preamble to that part of this document which concerns Indian affairs, is couched in terms that cannot be misunderstood. I give a little extract: "And whereas it is just and reasonable and essential to our interest and the security of our colonies, that the several nations or tribes of Indians with whom we are connected, and who live under our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories, as, not having been ceded to or purchased by us, are reserved to them or any of them as their hunting grounds," therefore, the Governors of colonies are prohibited, upon any pretence whatever, from granting any warrants of

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survey, or passing any patents for lands, "upon any lands whatever, which, not having been ceded or purchased, were reserved to the said Indians;" and, by another injunction in the same proclamation, "all persons whatever, who have either wilfully or inadvertently seated themselves upon any lands, which, not having been ceded to, or purchased by the crown, were reserved to the Indians as aforesaid, are strictly enjoined and required to remove themselves from such settlements."

This royal ordinance is an unqualified admission of every principle that is now urged in favor of the liberties and rights of these tribes. It refers to them as nations that had put themselves under the protection of the crown; and adverting to the fact that their lands had not been ceded or purchased, it freely and justly runs out the inevitable conclusion, that they are reserved to these nations as their property; and forbids all surveys and patents, and warns off all intruders and trespassers. Sir, this contains the epitome of Indian history and title. No king, colony, State, or territory, ever made, or attempted to make, a grant or title to the Indians, but universally and perpetually derived their titles from them. This one fact, that stands forth broadly on the page of Indian history, which neither kings nor colonies—neither lords, proprietors, nor diplomatic agents, have, on any single occasion, disputed, is alone sufficient to demolish the whole system of political pretensions, conjured up in modern times, to drive the poor Indian from the last refuge of his hopes.

The next important era in the order of time relates to the dispute of the colonies with Great Britain. The attention of the Congress on the eve of that conflict was called to the situation of these tribes, and their dispositions on that interesting subject. Then, sir, we approached them as independent nations, with the acknowledged power to form alliances with or against us. For, in June, 1775, our Congress resolved, "That the Committee for Indian Affairs do prepare proper talks to the several tribes of Indians, for engaging the continuance of their friendship to us, and neutrality in our present unhappy dispute with Great Britain." Again, on the 12th July, 1775, a report of the committee was agreed to, with the following clause at its head: "That the securing and preserving the friendship of the Indian nations, appears to be a subject of the utmost moment to these colonies." And, sir, the journals of that eventful period of our history are full of resolutions, all of which indicate the same opinions of those illustrious statesmen, respecting the unquestioned sovereignty of the Indians. I forbear further details. After the Revolution, and in the eighth year of our independence, in the month of September, A. D. 1783, the Congress again took up the subject of Indian affairs, and resolved to hold a convention with the Indians residing in the Middle and Northern States, who had taken up arms against us, for the purposes of receiving them into the favor and protection of the United States, and of establishing boundary lines of property, for separating and dividing the settlements of the citizens, from the Indian villages and hunting grounds, and thereby extinguishing, as far as possible, all occasion for future animosities, disquiet, and contention." If, at any point of our existence as a people, a disposition to encroach upon the Indians, and to break down their separate and sovereign character, could have been looked for, or at all excused, this was the time; when we had just come out of a long, severe, and bloody conflict, often prosecuted by our foes with unnatural barbarity, and to aggravate which, these very tribes had devoted their savage and ferocious customs. And yet, sir, what do we find? Instead of the claims of conquest, the rights of war, now so convenient to set up, the American Congress, greatly just, accord to these very Indians the character of foreign nations, and invite them to take shelter under our favor and protec-

tion; not only this, but adopt measures to ascertain and establish boundary lines of property between our citizens and their villages and hunting grounds.

Under the confederation of the old Thirteen States, and shortly before the adoption of the Constitution, on the 20th of November, 1783, a treaty was made with the Cherokee nation, at Hopewell. This treaty according to its title, was concluded between "Commissioners Plenipotentiary of the United States of America, of the one part, and the Headmen and Warriors of all the Cherokees, of the other." It gives "peace to all the Cherokees," and receives them into the favor and protection of the United States. And, by the first article, the Cherokees agree to restore all the prisoners, citizens of the United States, or subjects of their allies, to their entire liberty. Here, again, we discover the same magnanimous policy of renouncing any pretended rights of a conqueror in our negotiations with the allies of our enemy. We invite them to peace; we engage to become their protectors, and in the stipulation for the liberation of prisoners, we trace again the broad line of distinction between citizens of the United States and the Cherokee people.

Who, after this, sir, can retain a single doubt as to the unquestioned political sovereignty of these tribes? It is very true, that they were not absolutely independent. As they had become comparatively feeble, and as they were, in the mass, an uncivilized race, they chose to depend upon us for protection; but this did not destroy or affect their sovereignty. The rule of public law is clearly stated by Vattel—"one community may be bound to another by a very unequal alliance, and still be a sovereign State. Though a weak State, in order to provide for its safety, should place itself under the protection of a more powerful one, yet, if it reserves to itself the right of governing its own body, it ought to be considered as an independent State." If the right of self-government is retained, the State preserves its political existence; and, permit me to ask, when did the Southern Indians relinquish this right? Sir, they have always exercised it, and were never disturbed in the enjoyment of it, until the late legislation of Georgia and the States of Alabama and Mississippi.

The treaty next proceeds to establish territorial domains, and to forbid all intrusions upon the Cherokee country, by any of our citizens, on the pains of outlawry. It provides, that, if any citizen of the United States shall remain on the lands of the Indians for six months "after the ratification of the treaty, such person shall forfeit the protection of the United States, and the Indians may punish him, or not, as they please." What stronger attribute of sovereignty could have been conceded to this tribe, than to have accorded to them the power of punishing our citizens according to their own laws and modes; and, sir, what more satisfactory proof can be furnished to the Senate, of the sincere and inflexible purpose of our Government to maintain the rights of the Indian nations, than the annexation of such sanctions as the forfeiture of national protection, and the infliction of any punishment within the range of savage discretion? It is to be recollected, that this treaty was made at a time when all admit the Cherokees to have been, with very rare exceptions, in the rudest state of Pagan darkness.

It is really a subject of wonder, [said Mr. F.] that after these repeated and solemn recognitions of right of soil, territory, and jurisdiction, in these aboriginal nations, it should be gravely asserted that they are mere occupants at our will; and, what is absolutely marvellous, that they are a part of the Georgia population—a district of her territory, and amenable to her laws, whenever she chooses to extend them.

After the treaty of Hopewell was concluded and ratified, and in the year 1787, the States of North Carolina and Georgia transmitted their protests to Congress, in which



they complained of the course of transactions adopted with respect to the Indians, and asserted a right in the States to treat with these tribes, and to obtain grants of their lands. The Congress referred the whole matter to a committee of five, who made an elaborate report that disclosed the principles upon which the intercourse of the confederacy with these people was founded. It is material to a correct understanding of this branch of the subject, that we should advert to a limitation, subsisting at that time, upon the powers of the old Congress. The limitation is contained in the following clause of the articles of confederation: "Congress shall have the sole and exclusive right of regulating the trade and managing all affairs with the Indians not members of any other States; provided that the legislative right of any State within its own limits be not infringed or violated."

Upon this clause and its proviso, the committee proceed to report: "In framing this clause, the parties to the federal compact must have had some definite objects in view; the objects that come into view principally in forming treaties, or managing affairs with the Indians, had been long understood, and pretty well ascertained in this country. The committee conceive that it has been long the opinion of the country, supported by justice and humanity, that the Indians have just claims to all lands occupied by, and not fairly purchased from them." "The laws of the State can have no effect upon a tribe of Indians or their lands within a State, so long as that tribe is independent and not a member of the State. It cannot be supposed that the State has the powers mentioned," (those of making war and peace, purchasing lands from them and fixing boundaries,) "without absurdity in theory and practice. For the Indian tribes are justly considered the common friends or enemies of the United States, and no particular State can have an exclusive interest in the management of affairs with any of the tribes, except in uncommon cases." The Senate perceive the estimate that was formed of these State pretensions. The Committee argue, with conclusive energy, that, to yield such powers to particular States, would not only be absurd in theory, but would in fact destroy the whole system of Indian relations—that this divided, alternate, cognizance of the matter, by the States and by the Congress, could never be enforced, and would result in discordant and fruitless regulations. The grounds assumed in this able report are unanswerable. The Committee regarded the subject as national; concerning the whole United States, of whom the Indians were the common friends or foes.

That such a concern was too general and public in all its bearings, to be subjected to the legislation and management of any particular State. The Congress therefore, assume the entire jurisdiction and control of it. And after this report, we hear no more of State protests. They yielded their claims to a much safer depository of this interesting trust. Sir, I take leave to say, that the sound, sensible principles of this report have lost nothing of their authority by time, and that every year of our history has confirmed their wisdom, and illustrated the justice and humanity of the Congress of '87.

The Convention that formed and adopted the Constitution, in their deliberations upon the security of Indian rights, wisely determined to place our relations with the tribes under the absolute superintendence of the General Government, which they were about to establish. The proviso under the old compact, that had, in ambiguous terms, reserved to particular States an undefined management of Indian affairs, was altogether discarded, and the simple, unequalled control of this important branch of public policy, was delegated to Congress in the following clause of the Constitution: "Congress shall have power to regulate commerce with foreign nations, among the several States, and with the Indian tribes." An incidental argument, in favor of my views, cannot fail to strike the

mind on the face of this clause. The plea that is now, for the first time, urged against the Indians, rests upon the allegation, that the tribes are not distinct nations—that they compose a portion of the people of the States; and yet, in the great national charter, this work of as much collected wisdom, virtue, and patriotism, as ever adorned the annals, or shed light upon the government of any age or country, the Indian tribes are associated with foreign nations and the several States, as one of the three distinct departments of the human family, with which the General Government was to regulate commerce. Strange company, truly, in which to find those it now seems convenient to denominate a few poor miserable savages, that were always the peculiar subjects of State sovereignty, mere tenants at will of the soil, and with whom it is "idle" to speak of negotiating treaties.

There was another subject, closely connected with this, that engaged the anxious deliberations of the great statesmen who composed the memorable convention—and this was the treaty power. To found this well, was a concern worthy of their first and best thoughts. The good faith of a nation was not to be pledged but on grave and great occasions; for, when plighted, it brought the nation itself into obligations, too sacred to be argued away by the suggestions of policy or convenience, profit or loss. They, therefore, subjected the exercise of this high function to two great departments of the Government—the President and Senate of the United States. They required formalities to attend the exercise of the power that were intended and calculated to guard the trust from rash and inconsiderate administration. But these requisites complied with, and a treaty made and concluded, no retreat from its claims was provided or desired by the convention. No, sir. To shut up every avenue of escape—to compel us to be faithful—"treaties" are declared, by the charter of our Government, "to be the supreme law of the land, any thing in the constitution or laws of any State to the contrary notwithstanding." How could the inviolate character of a treaty be more effectually preserved? Let convulsions agitate the commonwealth—let the strifes of party shake the pillars of the political edifice—around the nation's faith barriers are raised, that may smile at the storm. And, sir, if these guards fail, if these defences can be assailed and broken down, then may we indeed despair. Truth and honor have no citadel on earth—their sanctions are despised and forgotten, and the law of the strongest prevails.

I fear that I shall oppress the patience of the Senate by these tedious details; but the subject is deeply interesting, and each successive year of our political history brings me fresh and strong proofs of the sacred estimation always accorded to Indian rights. Sir, in the very next year that followed the formation of the constitution, on the 1st day of September, 1788, the encroachment of the whites upon the Indian territory, as guaranteed to them by the treaty of Hopewell, made with the Cherokees, as we have already stated, in 1785, caused a proclamation to be issued by Congress, of the date first mentioned, affirming in all things the treaty of Hopewell, and distinctly announcing (I give the literal clause) "the firm determination of Congress to protect the said Cherokees in their rights, according to the true intent and meaning of the said treaty." And they further resolve, "that the Secretary of War be directed to have a sufficient number of the troops in the service of the United States in readiness, to march from the Ohio to the protection of the Cherokees, whenever Congress shall direct the same."

The next important event, in connexion with the Cherokees, is the treaty of Holston, made with them on the 2d July, 1791. This was the first treaty negotiated with the Cherokees after the constitution. And it is only necessary to consider the import of its preamble, to become satisfied of the constancy of our policy, in adhering to

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the first principles of our Indian negotiations. Sir, let it be remembered that this was a crisis when the true spirit of the constitution would be best understood; most of those who framed it came into the councils of the country in 1788. Let it be well pondered, that this treaty of Holston was the public compact in which General Washington, as a preparative solemnity, asked the advice of the Senate, and concerning which, he inquired of that venerable body whether, in the treaty to be made, the United States should solemnly guaranty the new boundary, to be ascertained and fixed between them and the Cherokees.

The preamble to this treaty I will now recite:

"The parties being desirous of establishing permanent peace and friendship between the United States and the said Cherokee nation, and the citizens and members thereof, and to remove the causes of war, by ascertaining their limits, and making other necessary, just, and friendly arrangements: the President of the United States, by William Blount, Governor of the territory of the United States of America, South of the river Ohio, and superintendent of Indian affairs for the Southern District, who is vested with full powers for these purposes, by and with the advice and consent of the Senate of the United States; and the Cherokee nation, by the undersigned chiefs and warriors, representing the said nation, have agreed to the following articles," &c.

The first article stipulates that there shall be "perpetual peace and friendship" between the parties; a subsequent article provides, that the boundary between the United States and Cherokees "shall be ascertained and marked plainly, by three persons appointed by the United States, and three Cherokees on the part of their nation."

In pursuance of the advice of the Senate, by the seventh article of this treaty, "The United States solemnly guaranty to the Cherokee nation all their lands not hereby ceded."

And after several material clauses, the concluding article suspends the effect and obligation of the treaty upon its ratification "by the President of the United States, with the advice and consent of the Senate of the United States."

Now, sir, it is a most striking part of this history, that every possible incident, of form, deliberation, advisement, and power, attended this compact. The Senate was consulted when our plenipotentiary was commissioned; full powers were then given to our commissioner; the articles were agreed upon; the treaty referred to the Executive and Senate for their ratification, and, with all its provisions, by them solemnly confirmed.

It requires a fullness of self-respect and self-confidence, the lot of a rare few, after time has added its sanctions to this high pledge of national honor, to attempt to convict the illustrious men of that Senate of gross ignorance of constitutional power; to charge against them that they strangely mistook the charter under which they acted; and violated almost the proprieties of language, as some gentlemen contend, by dignifying with the name and formalities of a treaty "mere bargains to get Indian lands." Sir, who so well understood the nature and extent of the powers granted in the constitution, as the statesmen who aided by their personal counsels to establish it?

Every administration of this Government, from President Washington's, have, with like solemnities and stipulations, held treaties with the Cherokees; treaties, too, by almost all of which we obtained further acquisitions of their territory. Yes, sir, whenever we approached them in the language of friendship and kindness, we touched the chord that won their confidence; and now, when they have nothing left with which to satisfy our cravings, we propose to annul every treaty—to gain say our word—and, by violence and perfidy, drive the Indian from his home. In a subsequent treaty between the United States and the

Cherokee nation, concluded on the 8th July, 1817, express reference is made to past negotiations between the parties, on the subject of removal to the west of the Mississippi; the same question that now agitates the country, and engages our deliberations. And this convention is deserving of particular notice, inasmuch as we shall learn from it, not only what sentiments were then entertained by our Government towards the Cherokees, but, also, in what light the different dispositions of the Indians to emigrate to the West, and to remain on their adjacent patri-mony, were considered. This treaty recites that application had been made to the United States, at a previous period, by a deputation of the Cherokees, (on the 9th January, 1809) by which they apprized the Government of the wish of a part of their nation to remove west of the Mississippi, and of the residue to abide in their old habitations. That the President of the United States, after maturely considering the subject, answered the petitions as follows: "The United States, my children, are the friends of both parties, and, as far as can be reasonably asked, they are willing to satisfy the wishes of both. Those who remain may be assured of our patronage, our aid, and our good neighborhood." "To those who remove, every aid shall be administered, and when established at their new settlements, we shall consider them as our children, and always hold them firmly by the hand." The convention then establishes new boundaries and pledges our faith to respect and defend the Indian territories. Some matters, by universal consent, are taken as granted, without any explicit recognition. Under the influence of this rule of common fairness, how can we ever dispute the sovereign right of the Cherokees to remain east of the Mississippi, when it was in relation to that very location that we promised our patronage, aid, and good neighborhood? Sir, is this high-handed encroachment of Georgia to be the commentary upon the national pledge here given, and the obvious import of these terms? How were these people to remain, if not as they then existed, and as we then acknowledged them to be, a distinct and separate community, governed by their own peculiar laws and customs? We can never deny these principles, while fair dealing retains any hold of our conduct. Further, sir, it appears from this treaty, that the Indians who preferred to remain east of the river, expressed "to the President an anxious desire to engage in the pursuits of agriculture and civilized life in the country they then occupied," and we engaged to encourage those laudable purposes. Indeed, such pursuits had been recommended to the tribes, and patronized by the United States, for many years before this convention. Mr. Jefferson, in his message to Congress as early as 1805, and when on the subject of our Indian relations, with his usual enlarged views of public policy, observes: "The aboriginal inhabitants of these countries, I have regarded with the commiseration their history inspires. Endowed with the faculties and the rights of men, breathing an ardent love of liberty and independence, and occupying a country which left them no desire but to be undisturbed, the stream of overflowing population from other regions directed itself on these shores. Without power to divert, or habits to contend against it, they have been overwhelmed by the current, or driven before it. Now, reduced within limits too narrow for the hunter state, humanity enjoins us to teach them agriculture and the domestic arts; to encourage them to that industry which alone can enable them to maintain their place in existence; and to prepare them in time for that society which, to bodily comforts, adds the improvement of the mind and morals. We have, therefore, liberally furnished them with the implements of husbandry and household use; we have placed among them instructors in the arts of first necessity; and they are covered with theegis of the law against aggressors from among ourselves." These, sir, are sentiments worthy of an illustrious states-

man. None can fail to perceive the spirit of justice and humanity which Mr. Jefferson cherished towards our Indian allies. He was, through his whole life, the firm unshrinking advocate of their rights, a patron of all their plans for moral improvement and elevation.

It will not be necessary [said Mr. F.] to pursue the details of our treaty negotiations further. I beg leave to state, before I leave them, however, that with all the southwestern tribes of Indians we have similar treaties, not only the Cherokees, but the Creeks, Choctaws, and Chickasaws, in the neighborhood of Georgia, Tennessee, Alabama, and Mississippi, hold our faith, repeatedly pledged to them, that we would respect their boundaries, repel aggressions, and protect and nourish them as our neighbors and friends; and to all these public and sacred compacts Georgia was a constant party. They were required, by an article never omitted, to be submitted to the Senate of the United States for their advice and consent. They were so submitted; and Georgia, by her able Representatives in the Senate, united in the ratification of these same treaties, without, in any single instance, raising an exception, or interposing a constitutional difficulty or scruple.

Other branches of our political history shed abundant light upon this momentous question. When the Congress of the United States directed their care to the future settlement and government of the vast and noble domains to the northwest of the river Ohio, ceded by the State of Virginia, among other matters which they deemed to be vitally connected with the welfare of that region, was the condition and preservation of the Indian nations. The third article of their celebrated ordinance, for the government of the Northwestern Territory, is in the following words: "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and, in their property, rights, and liberty, they never shall be invaded or disturbed, unless in just and lawful wars, authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them." Sir, the more minutely we look into the proceedings of the Congress of 1787, the more deeply shall we venerate the wisdom and virtue, the largeness of views, and the political forecast, that blessed and illustrated the councils of our country. This solitary article would forever stand out, and alone sustain their reputation. We shall presently learn what concern was manifested by the State of Georgia, to spread the whole influence and control of this article over the cession which she made to the Union, of the territory now composing the States of Alabama and Mississippi.

How can Georgia, after all this, desire or attempt, and how can we quietly permit her, "to invade and disturb the property, rights, and liberty of the Indians?" And this, not only not "in just and lawful wars authorized by Congress," but in the time of profound peace, while the Cherokee lives in tranquil prosperity by her side. I press on the inquiry—How can we tamely suffer these States to make laws, not only not "founded in justice and humanity," "for preventing wrongs being done to the Indians," but for the avowed purpose of inflicting the gross and wanton injustice of breaking up their Government—of abrogating their long cherished customs, and of annihilating their existence as a distinct people?

The Congress of the United States, in 1799, in an act to regulate trade and intercourse with the Indian tribes; and again, by a similar act in 1802, still in force, distinctly recognized every material stipulation contained in the numerous treaties with the Indians. In fact, sir, these acts

of legislation were passed expressly to effectuate our treaty stipulations.

These statutes refer to "the boundaries, as established by treaties, between the United States and the various Indian tribes;" they next direct such "lines to be clearly ascertained, and distinctly marked," prohibit any citizen of the United States from crossing these lines, to hunt or settle, and authorize the employment of the public and military force of the Government, to prevent intrusion, and to expel trespassers upon Indian lands. The twelfth section of this important law most wisely guards the great object of Indian title from all public and private imposition, by enacting "that no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian or nation, or tribe of Indians, within the bounds of the United States, shall be of any validity in law or equity, unless the same be made by treaty or convention, entered into pursuant to the constitution."

I trust, sir, that this brief exposition of our policy, in relation to Indian affairs, establishes, beyond all controversy, the obligation of the United States to protect these tribes in the exercise and enjoyment of their civil and political rights. Sir, the question has ceased to be—What are our duties? An inquiry much more embarrassing is forced upon us: How shall we most plausibly, and with the least possible violence, break our faith? Sir, we repel the inquiry—we reject such an issue—and point the guardians of public honor to the broad, plain faith of faithful performance, and to which they are equally urged by duty and by interest.

Here I might properly rest, as the United States are the only party that the Indians are bound to regard. But, if farther proofs be wanting to convince us of the unwar-rantable pretensions of Georgia, in her late violent legislation, they are at hand, cogent, clear, and overwhelming. This State, sir, was not only a party to all these conventions with the General Government; she made as solemn treaties with the Creeks and Cherokees for herself, when a colony, and after she became a State. These form a part of her title, and are bound up with her public laws. On the 1st of June, 1773, she negotiated a treaty with these Indian nations, by the joint agency of the Governor of the colony and the superintendent of Indian affairs; in which boundaries are established and cessions of land agreed upon. Again, on the 31st May, 1783, after her independence as a State, another treaty was concluded between the Governor of Georgia and five of her most distinguished citizens duly appointed by the Legislature of the State of the one part, and the Chiefs, Headmen, and Warriors of the hordes or tribes of the Cherokee Indians, "in behalf of the said nation, on the other part." And in the first article of this convention, the distinct, independent existence of the Cherokees is acknowledged: for it provides, "that all differences between the said parties, heretofore subsisting, shall cease and be forgotten." Is it not utterly fallacious to contend, in the face of this treaty that the Cherokees are under the jurisdiction of a State, that finds it necessary to negotiate for peace with them by all the forms of a regular treaty? But more than this; by the last article of this treaty, the Cherokees agree to cede, grant, release, and quit claim to Georgia, all the lands up to a certain boundary line defined in the said document: and until since the extraordinary usurpation of this State, in extending her laws over this nation, these treaty lines were respected, and never disputed.

In the year 1777, the States of Georgia and South Carolina met the Creek and Cherokee nations at Dewitt's corner, for the avowed purpose of making a treaty of peace with them. Sir, if the greatest potentate of Europe had been a party, the preliminaries could not have been more formal or solemn. First, are produced what are denominated "the Georgia full powers" delegated to her commissioners, to meet "the Indian Congress" to be

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held at Dewitt's corner—next appear “the South Carolina full powers,” for the like purpose—and lastly, the Creek and Cherokee “full powers.” These powers are opened and exchanged at this Congress, and a treaty is agreed upon by the plenipotentiaries, establishing peace, and the future boundaries between their respective territories.

In many of the treaties made by the United States with the Cherokees and Creeks, large sections of land were relinquished to us, which, by our compact with the State of Georgia, we received for her use. She never questioned, at those times, our right to treat for those lands, nor the Indian's right of granting them; but gladly availed herself of such rich accessions to her domains, and proceeded very promptly to distribute them amongst her citizens. Now, it is a fundamental maxim in all codes of law which acknowledge the obligations of equity and good conscience, that if a party is silent when these old fashioned rules of upright dealing require him to speak, he shall forever thereafter hold his peace. The application of this sound and wholesome rule will instantly strike the moral apprehensions of every member of the Senate.

I am indebted to the State of Georgia for a clear and very satisfactory exposition of the nature of Indian treaties, and the obligations that arise from them. It is an authority for positions, which I have had the honor to maintain, of the greater weight, as it proceeds from the highest functionary of her Government. In February, 1825, the Creeks, by a treaty made with the United States, ceded all their lands to us within the geographical limits of Georgia, for the use of that State. By an article in the treaty, it was provided that the United States should protect the Indians against the encroachments, hostilities, and impositions of the whites, &c. &c. until the removal of the Indians should have been accomplished according to the terms of the treaty. The Governor of Georgia, on the 22d day of March, of the same year, issued his proclamations as “Governor and Commander-in-Chief of the army and navy of the said State, and of the militia thereof,” in which, after stating the conclusion of the treaty already mentioned, and the article in it for the protection of the Creeks, the Governor proceeds: “I have, therefore, thought proper to issue this, my proclamation, warning all persons, citizens of Georgia, or others, against trespassing or intruding upon lands occupied by the Indians within the limits of this State, either for the purpose of settlement or otherwise, as every such act will be in direct violation of the provisions of the treaty aforesaid, and will expose the aggressors to the most certain and summary punishment by the authorities of the State, and of the United States. All good citizens, therefore, pursuing the dictates of good faith, will unite in enforcing the obligations of the treaty as the supreme law,” &c.

The Senate will perceive that this Executive injunction sounds its requirements, explicitly, upon the faith and authority of the treaty, as the supreme law; and this a treaty made with Indians. Yes, sir, a treaty with a part of the very Indians now assailed by Georgia to be below the reach of treaties—poor objects! with whom it is declared to be ridiculous and idle to speak of treating!

Sir, she cannot recall her proclamation. Give these sacred doctrines their full operation here; let their influence prevail in the eventful issue now opened for our decision; and the Indians, who are involved in it, will be satisfied. They have approached us with no other plea; they urge no other or higher considerations. They point us to the faith of treaties, and implore us by the constitutional obligation of these national compacts, to raise around our ancient allies the effective defences which we have so often promised to maintain. Carry out these rules of public duty, and the Cherokee delegation, who have been waiting at your doors with anxious interest, will return to their home relieved from the burthen that now sinks their

spirits, and with the grateful conviction that the successors of Washington are still true to his memory.

What could have wrought [said Mr. F.] this entire revolution in opinions, and in three short years? Our relations with the Indians have not changed. Condition and circumstance, claim and obligation, remain precisely the same. And yet, now we hear that these Indians have been for all the time, since Georgia had existence, a component part of her population; within the full scope of her jurisdiction and sovereignty, and subject to the control of her law!

The people of this country will never acquiesce in such violent constructions. They will read for themselves; and when they shall learn the history of all our intercourse with these nations; when they shall perceive the guarantees so often renewed to them, and under what solemn sanctions, the American community will not seek the aids of artificial speculations on the requisite formalities to a technical treaty. No, sir. I repeat it: They will judge for themselves, and proclaim, in language that the remotest limit of this republic will understand—“call these sacred pledges of a nation's faith by what name you please, our word has been given, and we should live and die by our word.”

If the State of Georgia is concluded, and morally bound to stay her hand from invading the lands or the government of the Indians, the States of Mississippi and Alabama are equally and more strongly obliged. They came into the Union after most of the treaties had been made. The former in 1816, and the latter in 1819. These obligations were liens upon the confederacy, and they must take the benefits with the burthens of the Union. They cannot complain of concealment or surprise. These conventions were all public and notorious; and the Indians under their daily view, in actual separate possession, exercising the rights of sovereignty and property.

Moreover, we have heard much of constitutional powers and disabilities in this debate. Sir, I proceed to demonstrate that both Mississippi and Alabama are, by a fundamental inhibition in the constitution of their Government, prevented from extending their laws over the Indians. When Georgia, in 1802, granted to the United States the territory that composes the greater part of these two States, she made it an express condition of the cession, that the States to be formed of it should conform to all the articles of “the ordinance for the government of the territory northwest of the Ohio,” excepting one single article prohibiting involuntary servitude. When these States applied to the General Government to be formed into territories, this eventful condition of the Georgia cession was remembered by all parties. Mississippi and Alabama, in the most deliberate manner, agreed to the condition, and assumed the articles of the ordinance as an integral part of their political condition. When they afterwards proposed to us to be received into the Federal Union, acts of Congress were duly passed, authorizing them respectively to form a constitution and State Government for the people within their territories, with this proviso—“That the same, when formed, shall be republican, and not repugnant to the principles of the ordinance of the 13th July, A. D. 1787,” for the territory northwest of the Ohio, and they were afterwards, upon duly certifying to Congress that they had conformed to those principles and engrafted them into their constitution, admitted into the republic. The third article of this ordinance I have already read and considered, and will only add, that human wisdom and skill could not have devised a more effectual safeguard to the Indian tribes, than are now incorporated into the laws and constitutions of the States of Mississippi and Alabama. It would have been well in these States to have reviewed their own origin, to have examined the sources of their power, before they, rashly and in disregard of principles that are essential to their political

existence, usurped dominion over a community of men as perfectly independent of them as they are of Mexico. And shall we, sir, quietly submit to the breach of conditions that we tendered as the indispensable terms of their admission, that were fairly propounded, and freely and fully accepted? Why, sir, it appears to me that the fulfilment of solemn contracts, the good faith of the public treaties, the fundamental provisions of State constitutions, are to be regarded as matters of very trifling obligation, when they are all to be broken through to reach a feeble and unoffending ally. With a man of truth and honesty, such high considerations as address us would supersede the occasion for argument; and how can we evade them without deep dishonor!

I have complained of the legislation of Georgia. I will now refer the Senate to the law of that State, passed on the 19th December, 1829, that the complaint may be justified. The title of the law would suffice for such purpose without looking further into its sections. After stating its object of adding the territory in the occupancy of the Cherokee nation of Indians to the adjacent counties of Georgia, another distinct office of this oppressive edict of arbitrary power is avowed to be, "to annul all laws and ordinances made by the Cherokee nation of Indians." And, sir, the act does annul them effectually. For the seventh section enacts, "that after the first day of June next, all laws, ordinances, orders, and regulations of any kind whatever, made, passed, or enacted by the Cherokee Indians, either in general council, or in any other way whatever, or by any authority whatever, of said tribe, be, and the same are hereby declared to be, null and void and of no effect, as if the same had never existed." Sir, here we find a whole people outlawed—laws, customs, rules, government, all, by one short clause, abrogated and declared to be void as if they never had been. History furnishes no example of such high handed usurpation—the dismemberment and partition of Poland was a deed of humane legislation compared with this. The succeeding clauses are no less offensive; they provide that "if any person shall prevent by threats, menaces, or other means, or endeavor to prevent any Indian of said nation from emigrating, or enrolling as an emigrant, he shall be liable to indictment and confinement in the common gaol, or at hard labor in the penitentiary, not exceeding four years, at the discretion of the Court; and if any person shall deter, or offer to deter, any Indian, head man, chief, or warrior of said nation, from selling or ceding to the United States, for the use of Georgia, the whole or any part of said territory, or prevent, or offer to prevent, any such persons from meeting in council or treaty any commissioner or commissioners on the part of the United States, for any purpose whatever, he shall be guilty of a high misdemeanor, and liable, on conviction, to confinement at hard labor in the penitentiary, for not less than four, nor longer than six years, at the discretion of the Court." It is a crime in Georgia for a man to prevent the sale of his country, a crime to warn a chief or head man that the agents of the United States are instructed "to move upon him in the line of his prejudices," that they are coming to bribe him to meet in treaty with the commissioner. By the way, sir, it seems these treaties are very lawful, when made for the use of Georgia.

It is not surprising that our agents advertised the War Department, that if the General Government refused to interfere, and the Indians were left to the law of the States, they would soon exchange their lands and remove. To compel, by harsh and cruel penalties, such exchange, is the broad purpose of this act of Georgia, and nothing is wanting to fill up the picture of this disgraceful system, but to permit the bill before us to pass without amendment or proviso. Then it will all seem fair on our statute books. It legislates for none but those who may choose to remove, while we know that grinding, heart-breaking

exactions are set in operation elsewhere, to drive them to such a choice. By the modification I have submitted, I beg for the Indian the poor privilege of the exercise of his own will. But the law of Georgia is not yet satisfied. The last section declares, "that no Indian, or descendant of any Indian, residing within the Creek or Cherokee nations of Indians, shall be deemed a competent witness in any Court of this State, to which a white person may be a party, except such white person resides within the said nation." It did not suffice to rob these people of the last vestige of their own political rights and liberties; the work was not complete until they were shut out of the protection of Georgia laws. For, sir, after the first day of June next, a gang of lawless white men may break into the Cherokee country, plunder their habitations, murder the mother with the children, and all in the sight of the wretched husband and father, and no law of Georgia will reach the atrocity. It is vain to tell us, sir, that murder may be traced by circumstantial probabilities. The charge against this State is, you have, by force and violence, stripped these people of the protection of their government, and now refuse to cast over them the shield of your own. The outrage of the deed is, that you leave the poor Indian helpless and defenceless, and in this cruel way hope to banish him from his home. Sir, if this law be enforced, I do religiously believe that it will awaken tones of feeling that will go up to God, and call down the thunders of his wrath.

The end, however, is to justify the means. "The removal of the Indian tribes to the west of the Mississippi is demanded by the dictates of humanity." This is a word of conciliating import. But it often makes its way to the heart under very doubtful titles, and its present claims deserve to be rigidly questioned. Who urges this plea? They who covet the Indian lands—who wish to rid themselves of a neighbor that they despise, and whose State pride is enlisted in rounding off their territories. But another matter is worthy of a serious thought. Is there such a clause in our covenants with the Indian, that when we shall deem it best for him, on the whole, we may break our engagements and leave him to his persecutors? Notwithstanding our adversaries are not entitled to the use of such humane suggestions, yet we do not shrink from an investigation of this pretence. It will be found as void of support in fact as the other assumptions are of principle.

It is alleged that the Indians cannot flourish in the neighborhood of a white population, that whole tribes have disappeared under the influence of this propinquity. As an abstract proposition, it implies reproach somewhere. Our virtues certainly have not such deadly and depopulating power. It must, then, be our vices that possess these destructive energies—and shall we commit injustice, and put in, as our plea for it, that our intercourse with the Indians has been so demoralizing that we must drive them from it to save them? True, sir, many tribes have melted away; they have sunk lower and lower; and what people could rise from a condition to which policy, selfishness, and cupidity conspired to depress them.

Sir, had we devoted the same care to elevate their moral condition that we have to degrade them, the removal of the Indian would not now seek for an apology in the suggestions of humanity. But I waive this, and, as to the matter of fact, how stands the account? Wherever a fair experiment has been made, the Indians have readily yielded to the influence of moral cultivation. Yes, sir, they flourish under this culture, and rise in the scale of being. They have shown themselves to be highly susceptible of improvement, and the ferocious feelings and habits of the savage are soothed and reformed by the mild charities of religion. They can very soon be taught to understand and appreciate the blessings of civilization and regular government. And I have the opinions of some of our

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most enlightened statesmen to sustain me. Mr. Jefferson, nearly thirty years ago, congratulates his fellow citizens upon the hopeful indications furnished by the laudable efforts of the Government to meliorate the condition of those he was pleased to denominate "our Indian neighbors." In his message to Congress, on the 8th of December, 1801, he states, "among our Indian neighbors, also, a spirit of peace and friendship generally prevails; and I am happy to inform you that the continued efforts to introduce among them the implements and practice of husbandry, and of the household arts, have not been without success. That they are becoming more and more sensible of the superiority of this dependence for clothing and subsistence over the precarious resources of hunting and fishing. And already are we able to announce that, instead of that constant diminution of numbers produced by their wars and their wants, some of them begin to experience an increase of population." Upon the authority of this great statesman, I can direct our Government to a much more effective, as well as more just and honorable remedy for the evils that afflict these tribes, than their proposed removal into the wild uncultivated regions of the Western forests. In a message to Congress, on the 17th October, 1803, Mr. Jefferson remarks, "with many of the other Indian tribes, improvements in agriculture and household manufactures are advancing, and with all our peace and friendship are established on grounds much firmer than heretofore." In his message of the 2d December, 1806, there is a paragraph devoted to this subject deserving of our most respectful consideration. The friends of Indian rights could not desire the aid of better sentiments than Mr. Jefferson inculcated in that part of the message where he says, "We continue to receive proofs of the growing attachment of our Indian neighbors, and of their disposition to place all their interests under the patronage of the United States. These dispositions are inspired by their confidence in our justice; and in the sincere concern we feel for their welfare. And as long as we discharge these high and honorable functions with the integrity and good faith which alone can entitle us to their continuance, we may expect to reap the just reward in their peace and friendship." Again, in November, in 1808, he informs the Congress that "with our Indian neighbors the public peace has been steadily maintained; and generally from a conviction that we consider them as a part of ourselves, and cherish with sincerity their rights and interests, the attachment of the Indian tribes is gaining strength daily, is extending from the nearer to the more remote, and will amply requite us for the justice and friendship practised towards them. Husbandry and household manufactures are advancing among them, more rapidly with the Southern than Northern tribes, from circumstances of soil and climate."

Mr. Madison, in his message of November, 1809, likewise bears his public testimony to the gradual improvement of the Indians. "With our Indian neighbors," he remarks, "the just and benevolent system continued towards them, has also preserved peace, and is more and more advancing habits favorable to their civilization and happiness." I will detain the Senate with but one more testimonial, from another venerable Chief Magistrate. Mr. Monroe, as lately as 1824, in his message, with great satisfaction, informs the Congress that the Indians were "making steady advances in civilization and the improvement of their condition." "Many of the tribes," he continues, "have already made great progress in the arts of civilized life. This desirable result has been brought about by the humane and persevering policy of the Government, and particularly by means of the appropriation for the civilization of the Indians. There have been established, under the provisions of this act, thirty-two schools, containing nine hundred and sixteen scholars, who are well instructed in several branches of literature,

and likewise in agriculture and the ordinary arts of life." Now, sir, when we consider the large space which these illustrious men have filled in our councils, and the perfect confidence that is due to their official statements, is it not astonishing to hear it gravely maintained, that the Indians are retrograding in their condition and character; that all our public anxieties and cares bestowed upon them have been utterly fruitless, and that for very pity's sake we must get rid of them, or they will perish on our hands? Sir, I believe that the confidence of the Senate has been abused by some of the letter writers, who give us such sad accounts of Indian wretchedness. I rejoice that we may safely repose upon the statements contained in the letter of Messrs. J. L. Allen, R. M. Livingston, Rev. Cyrus Kingsbury, and the Rev. Samuel A. Worcester. The character of these witnesses is without reproach, and their satisfactory certificates of the improvement of the tribes, continue and confirm the history furnished to us in the several messages from which I have just read extracts.

It is further maintained, "that one of the greatest evils to which the Indians are exposed is, that incessant pressure of population, that forces them from seat to seat, without allowing time for moral and intellectual improvement." Sir, this is the very reason—the deep, cogent, reason, which I present to the Senate, now to raise the barrier against the pressure of population, and with all the authority of this nation, command the urging tide "thus far and no farther." Let us save them now, or we never shall. For, is it not clear as the sunbeam, sir, that a removal will aggravate their woes? If the tide is nearly irresistible at this time, when a few more years shall fill the regions beyond the Arkansas with many more millions of enterprising white men, will not an increased impulse be given, that shall sweep the red men away into the barren prairies, or the Pacific of the West? Such, I fear, will be their doom.

If these constant removals are so afflictive, and allow no time for moral improvement; if this be the cause why the attempts at Indian reformation are alleged to have been so unavailing; do not the dictates of experience, then, plead most powerfully with us, to drive them no further; to grant them an abiding place, where these moral causes may have a fair and uninterrupted operation in moulding and refining the Indian character? And, sir, weigh a moment the considerations that address us on behalf of the Cherokees especially. Prompted and encouraged by our counsels, they have in good earnest resolved to become men, rational, educated, Christian men; and they have succeeded beyond our most sanguine hopes. They have established a regular constitution of civil government, republican in its principles. Wise and beneficent laws are enacted; the people acknowledge their authority, and feel their obligation. A printing press, conducted by one of the nation, circulates a weekly newspaper, printed partly in English and partly in the Cherokee language—schools flourish in many of their settlements—Christian temples, to the God of the Bible, are frequented by respectful, devout, and many sincere worshippers. God, as we believe, has many people among them, whom he regards as the "apple of his eye." They have become better neighbors to Georgia. She made no complaints during the lapse of fifty years, when the tribes were a horde of ruthless, licentious, and drunken savages; when no law controlled them; when the only judge was their will, and their avenger the tomahawk.

Then, Georgia could make treaties with them, and acknowledge them as nations; and in conventions trace boundary lines, and respect the land-marks of her neighbor: and now, when they begin to reap the fruits of all the paternal instructions, so repeatedly and earnestly delivered to them by the Presidents—when the Chero-

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Confirmation of certain Land Claims.

[APRIL 10, 1830.]

keek has learned to respect the rights of the white man, and secretly to regard the obligations of truth and conscience—is this the time, sir, to break up this peaceful community, to put out their council fires, to annul their laws and customs, to crush the rising hopes of their youth, and to drive the desponding and discouraged Indian to despair? Let it be called a sickly humanity—every freeman in the land, that has one spark of the spirit of his fathers, will feel and denounce it to be an unparalleled stretch of cruel injustice. And, if the deed be done, sir, how it is regarded in Heaven will, sooner or later, be known on earth; for this is the judgment-place of public sins. And all these ties are to be broken asunder, for a State that was silent and acquiescent in the relations of the Indians to our present Government—that pretended to no right of direct interference whilst these tribes were really dangerous; when their ferocious incursions justly disturbed the tranquility of the fire-side, and waked the “sleep of the eradle,” for a State that seeks it now against an unoffending neighbor, which implores her by all that is dear in the graves of her fathers; in the traditions of by-gone ages; that beseeches her by the ties of nature, of home, and country, to let her live unmolested, and die near the dust of her kindred!

Sir, our fears have been addressed in behalf of those States whose legislation we resist: and it is inquired with solicitude, would you urge us to arms with Georgia? No, sir. This tremendous alternative will not be necessary. Let the General Government come out, as it should, with decided and temperate firmness, and officially announce to Georgia, and the other States, that if the Indian tribes choose to remain, they will be protected against all interference and encroachment; and such is my confidence in the sense of justice in the respect for law, prevailing in the great body of this portion of our fellow-citizens, that I believe they would submit to the authority of the nation. I can expect no other issue. But if the General Government be urged to the crisis, never to be anticipated, of appealing to the last resort of her powers; and when reason, argument, and persuasion fail, to raise her strong arm to repress the violations of the supreme law of the land, I ask, is it not in her hand, sir? Is her guaranty a rope of sand? This effective weapon has often been employed to chastise the poor Indians, sometimes with dreadful vengeance, I fear; and shall not their protection avail to draw it from the scabbard? Permit me to refer the Senate to the views of Mr. Jefferson, directly connected with this delicate, yet sacred duty of protection. In 1791, when he was Secretary of State, there were some symptoms of collision on the Indian subject. This induced the letter from him to Gen. Knox, then our Secretary of War, a part of which I will read: “I am of opinion, that Government should firmly maintain this ground: that the Indians have a right to the occupation of their lands, independent of the States within whose chartered limits they happen to be; that, until they cede them by treaty, or other transaction equivalent to a treaty, no act of a State can give a right to such lands; that neither under the present constitution, nor the ancient confederation, had any State or person a right to treat with the Indians, without the consent of the General Government; that that consent has never been given by any treaty for the cession of the lands in question: that the Government is determined to exert all its energy for the patronage and protection of the rights of the Indians, and the preservation of peace between the United States and them; and that, if any settlements are made on land not ceded by them, without the previous consent of the United States, the Government will think itself bound, not only to declare to the Indians that such settlements are without the authority or protection of the United States, but to remove them also by public force.”

Mr. Jefferson seems to have been disturbed by no mor-

bid sensibilities. He speaks out as became a determined statesman. We can trace in this document the same spirit which shed its influence on a more eventful paper—the declaration of our rights, and of our purpose to maintain and defend them. He looked right onward, into the broad path of public duty; and if, in his way, he met the terrors of State collision and conflict, he was in no degree intimidated. The faith of treaties was his guide; and he would not flinch in his purposes, nor surrender the Indians to State encroachments. Let such decided policy go forth in the majesty of our laws now, and, sir, Georgia will yield. She will never encounter the responsibilities or the horrors of a civil war. But if she should, no stains of blood will be on our skirts; on herself the guilt will abide forever.

Sir, [said Mr. F.] if we abandon these aboriginal proprietors of our soil, these early allies and adopted children of our forefathers, how shall we justify it to our country? to all the glory of the past, and the promise of the future? Her good name is worth all else besides that contributes to her greatness. And, as I regard this crisis in her history; the time has come when this unbought treasure shall be plucked from dishonor, or abandoned to reproach.

How shall we justify this trespass to ourselves? Sir, we may deride it, and laugh it to scorn now; but the occasion will meet every man, when he must look inward, and make honest inquiry there. Let us beware how, by oppressive encroachments upon the sacred privileges of our Indian neighbors, we minister to the agonies of future remorse.

I have, in my humble measure, attempted to discharge a public and most solemn duty towards an interesting portion of my fellow men. Should it prove to have been as fruitless as I know it to be below the weight of their claims, yet even then, sir, it will have its consolations. Defeat in such a cause is far above the triumphs of unrighteous power; and in the language of an eloquent writer—“I had rather receive the blessing of one poor Cherokee, as he casts his last look back upon his country, for having, though in vain, attempted to prevent his banishment, than to sleep beneath the marble of all the Cæsars.”

SATURDAY, APRIL 10, 1830.

## CONFIRMATION OF CERTAIN LAND CLAIMS.

On motion of Mr. ELLIS, the Senate proceeded to the consideration of the bill for confirming certain claims to lands in the district of Jackson Court House, in the State of Mississippi; and, after a brief explanation, Mr. ELLIS moved to amend the bill, by striking out “the minimum price,” and inserting “fifty cents per acre.”

Mr. FOOTE said, he thought it would hardly consist with the plighted faith of the Government to adopt the amendment. The United States had given their pledge that no land should be sold at a price less than that fixed by law; and as the minimum price was now fixed at one dollar and twenty-five cents per acre, these lands ought not to be given for a lower sum, unless the law was changed so as to operate equally on all purchasers.

Mr. ELLIS replied, that it was not his intention to embarrass the bill at this late period of the session, and he would therefore withdraw his amendment.

Mr. FORSYTH said, if he understood the subject rightly, the bill provided for confirming the claim of one individual to twelve hundred and fifty acres only, when that individual claimed one hundred thousand acres under a Spanish grant. If this person had a just title to the whole one hundred thousand acres, he ought to have it. He believed that the passage of the law would be either an injury to the individual, or to the United States, for if his title was not good for the whole amount claimed by him, it was

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*Surgeon General of the Navy.*

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defective as to the number of acres proposed to be confirmed to him.

Mr. ELLIS said the title of Lewis Baudray to one hundred thousand acres of land was unquestionable; and was derived from a Spanish grant made as far back as the year 1790. It was well known to the Senate, that Congress had invariably refused to sanction confirmations to large grants. There were the grants to Maison Rouge, Baron Bastrop, &c. which Congress refused to sanction, solely on the ground that they were for such large tracts. He had no doubt that, under the treaty, all the claimants were entitled to the lands they held under Spanish grants, because the treaty expressly stipulates that their rights shall be guaranteed to them. With respect to the proviso objected to by the gentleman from Georgia, he was in favor of it, inasmuch as it gave to Lewis Baudray a complete title to twelve hundred and fifty acres; and if he chose to accept that in lieu of the large grant he claimed under it, was his own consideration.

Mr. FORSYTH said there was something in the matter he did not distinctly understand, and the difficulty was increased by the report. In the list of claims was that of Lewis Baudray, confirmed to his wife Margaret Morales, in 1808, with testimony of inhabitation and cultivation, but there was no order for the survey to take place.

Mr. BARTON said that the usual course pursued to obtain grants of land under the Spanish authorities, had been first to obtain a warrant of survey, so that there might be no dispute of title; this was not always done, nor was it absolutely necessary. The settlement of a tract of land, and proof of inhabitation and cultivation for three years, was sufficient to perfect the title. This individual, if he had not complied with the letter of the law, had, at all events, made the settlement for the fact of inhabitation from 1808 to 1828, was distinctly proved. Thousands of such cases had occurred in Missouri, and indeed in all the country which was obtained under the Louisiana purchase, and Congress had passed laws to confirm such grants: for it frequently happened that no survey had been made; but the occupation and cultivation was deemed sufficient, and the United States Surveyor laid off the tracts. He was satisfied that, in this case there had been an original concession, as it was called, or warrant of survey which may have been lost; and it was also highly probable that the Spanish officers had exceeded their powers; but by limiting the confirmation to the number of acres provided for in the bill, justice would be done both to the United States and to the individual.

Mr. BIBB offered the following proviso, as an amendment: "But shall be in satisfaction and extinguishment of the claim or demands of said claimants, respectively, to any other or greater quantity of land, as against the United States; and all persons or person claiming, or to claim, under the United States."

Mr. ELLIS regretted that the Senator from Kentucky had offered this amendment. If he would reflect, he would see that it was in contravention of the treaty of France, by which Louisiana was acquired. The treaty provided that every person inhabiting the ceded territory, should be protected in the enjoyment of his life, religion, and property. These rights were considered as property, and consequently, the adoption of the amendment would be a violation of the rights secured by the treaty.

Mr. BIBB said it was important to enforce the principle, that those who did not present their claims, and support them by proper testimony, should forfeit them. Congress had appointed commissioners to examine into the validity of all Spanish grants, and those who did not present before them their testimony to establish their titles, could not now have very strong claims on the United States. It was not safe to the Government to leave such important subjects still undecided.

After a few remarks from Messrs. HARTON, ADAMS,

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and KANE, in opposition, and Mr. BIBB, in support of the amendment, the question was taken, and it was rejected.

Mr. FOOT said, if he was not very much mistaken, this bill would introduce an entirely new principle in our land legislation. He hoped that the faith of treaties might be rigidly adhered to, and their provisions strictly enforced, in every instance. If he rightly understood the provisions of the bill, it not only secures the Spanish claimants in all their rights, but it even goes further, it secures to them rights which they had never yet satisfactorily established. He was desirous of obtaining further information, before he could vote for the bill. He said that there was no case, within his recollection, in which the United States Government had passed laws to make up the deficiency of Spanish titles. It was, therefore, he believed, an entirely new principle in legislation; and he was not, with the present lights, prepared to support it.

The question was then taken, and the bill ordered to be engrossed and read a third time—ayes 21.

#### SURGEON GENERAL OF THE NAVY.

On motion of Mr. HAYNE, the bill creating the office of Surgeon General of the Navy was taken up.

Mr. HAYNE said that, previous to taking the question on the passage of this bill, he wished to avail himself of the advantages suggested by his friend from Virginia, [Mr. TAZEWELL] when this bill was under discussion on a former day; and, in accordance to the views of that gentleman, introduced a clause for the regulation of the navy ration. He knew of no better mode of increasing the comforts, adding to the enjoyments, and promoting the health, of our seamen, than by the amendment he was about to introduce. It was, he said, very desirable that the crews of our public vessels should be supplied with as many of those articles of comfort, to which they have been accustomed, as the interests of the navy and the country would permit. The experience of England and France, to which he had alluded on a former day, afforded some light on this subject, and their naval regulations, with respect to the ration, were now before him. He did not design to follow either; but he wished to introduce an amendment which would enable the President to try, at such times and places as he might deem most suitable to the comforts of the sailor and the interests of the country, how far sugar, coffee, tea, cocoa, wine, and raisins, might be substituted for the beef, pork, and whiskey, with which our crews are at present supplied. In no instance, however, would the ration exceed twenty-five cents, as provided for by the present law. The British ration amounted to about twenty-two cents.

In introducing this amendment, his object was to make an experiment, and to see how far our efforts may tend to introduce a system of temperance in the navy—temperance, such as entire abstinence from spirituous liquors, being among the schemes of the day. He was not disposed to think that such a scheme would suit the navy at present. Indeed, he thought, if it were enforced, that it would be impossible to get crews. But a gradual change might be effected, both in the appetite, the manners, and morals, of our sailors, by judicious regulations; and, if part of their grog was exchanged for tea and coffee, &c. he was of the opinion that it would have a happy effect on the health, the morals, and the constitution, of our tars.

Mr. HOLMES wished to know if it was intended that the sailor should receive money in part for his grog. If so, the evil complained of by Mr. HAYNE would not be prevented; because, so soon as the sailor got his money, he would go off and purchase grog. This was the evil Mr. H. would like to see prevented.

Mr. HAYNE replied, that the object and effect of the amendment would be to enable the Executive to allow, as circumstances require it, the sailor to draw only part of



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the grog at present allotted to him, and to supply him with sugar, wine, coffee, &c. for the remainder.

Mr. SPRAGUE wished to have the amendment so modified as to embrace the midshipmen; because it is well known that the use of spirituous liquors among this class of our naval officers has already produced alarming and painful consequences. A boy goes on board one of our public vessels, and, in a few years, he, by a most improper use of ardent spirits, becomes a most incorrigible drinker; and is soon incapable of serving either himself or his country.

Mr. HAYNE said he had no objection to the modification proposed by Mr. SPRAGUE, and would accept it; though he thought the gentleman was misinformed as to the facts or evils which he alluded to. Mr. H. did not think that intemperance prevailed among our midshipmen. They, for the most part, drank wine, which was not furnished them by the Government, as the gentleman from Maine [Mr. SPRAGUE] appeared to think, but was laid in by one of their own mess, previous to embarkation for a cruise. They, the midshipmen, drew pay for the ration; and supplied themselves with whatever luxuries or necessities they might think proper; so that, if the modification proposed by Mr. S. was adopted, it would not have the effect intended.

Mr. HAYNE's amendment was then agreed to.

Mr. DICKERSON said he thought the passage of the law would be establishing an unnecessary office. He thought it would be better to leave the purchase of medicines to the surgeons who go out in our ships of war, who would thus, as it was important they should, always supply themselves with fresh drugs. If, as argued by the gentleman from South Carolina, it was important for the surgeons at sea to make reports, though he did not see the importance of it, it might be done as heretofore; there was no necessity for creating an office merely to receive reports. He had heard retrenchment and economy much talked of, and he should like to see it put into practice. He was opposed to the creation of unnecessary offices; he had recorded his vote in opposition to retaining a major general in the army, and, as he wished to be understood, he should ask for the yeas and nays, that he might record his vote against this bill.

Mr. SMITH, of Maryland, said he had not much respect for that word "retrenchment." Reform was desirable and necessary; that reform which lops off useless expenditures, corrects abuses, gives a judicious direction to the public money, and secures a faithful and effectual performance of the public business; and it was evident to his mind, from the effects of a similar arrangement in the medical department of the army, that such would be the consequence of this bill, if carried into a law. Mr. S. went on to show that, from the losses sustained from medicine, after the termination of a cruise, that the actual saving to the Government, which the provisions of this bill would ensure, would amount to twenty thousand dollars per annum, at the very lowest calculation.

Mr. HAYNE, in continuation, argued that, by the passage of the bill, great expense in the medical department of the navy would be saved, and the health and comfort of the seamen would be promoted. He showed, from a report from the War Department, part of which he read, that, by the adoption of the system in the army, order and regularity had taken place of confusion, and an annual saving was made of near forty thousand dollars. The bill did not proceed entirely from the Naval Committee, but was the result of a thorough examination of the subject, and of a fair and perfect understanding with the Navy Department.

Mr. HOLMES observed, that he did not object to the bill in consequence of the additional expense that might be incurred (if, indeed, there should be any additional expense) on so important a subject as the health and com-

fort of our seamen, if he thought the proposed plan would effect the object it contemplated. He had long thought that the method of putting up medicines, both for our navy and merchant service, was extremely defective, and that some improved system ought to be adopted. He recollected having introduced a bill, at one period, to correct this evil in the merchant service, by requiring a strict examination of the medicine chests of all vessels sailing from our ports; but the bill, he believed, never was acted on. But he thought it extremely doubtful whether one officer (a Surgeon General) could perform the duties contemplated in the bill, or rather, he doubted whether he could correct the evils complained of, and provided against in the latter clause of the bill. He thought the general proposition a good one; but he would inquire if the Surgeon General could carry it into operation? He asked if this officer could be present at Key West and Boston, Pensacola and New York, Portsmouth and Norfolk, Baltimore and New Orleans, or any other port from which our public vessels were about to sail, in order to purchase, superintend, and inspect, the medicines for the cruise? and also be present at the different ports at which these vessels may arrive on their return, in order to examine and decide what medicines are, and what are not, fit for future use? It was evident [Mr. H. said] that there must be some one, on whose judgment they could rely, present at the different ports, to carry the object of the bill into effect. It seemed, therefore, that, though the design was good, there would be insuperable difficulties in the execution.

After a few observations from Mr. DICKERSON,

Mr. HAYNE said he would offer a few words in explanation, as to the difficulties and objections urged by the gentlemen from Maine and New Jersey. The medicines, like all other naval stores, will be furnished on requisitions from the proper department, in the same manner as he supposed the samples would be sent on to the Surgeon General for examination, and by his orders were furnished in the army. They would be put up and secured under the immediate inspection of the proper inspecting officer. The gentleman from New Jersey has said, that those medicines which remain, after the return of a vessel from a cruise, are entirely "worthless; and, consequently, it was unnecessary to provide for their preservation afterwards." Such might be the case; but if it were, it was to be attributed to the evils complained of, and for which the bill provided a remedy. It was well ascertained, by men of science, that, if medicines were properly put up, if they were secured from the action of light and air, that they would be as good at the end of one, two, or three years, as they are on the first day.

The question was then taken, and the bill was ordered to be engrossed by the following vote: yeas 36, nays 6.

MONDAY, APRIL 12, 1830.

The Senate was engaged this day for more than six hours on Executive business.

TUESDAY, APRIL 13, 1830.

#### ATTORNEY GENERAL'S DEPARTMENT.

On motion of Mr. ROWAN, the Senate took up the bill to organize the Attorney General's department, and to erect it into an Executive office.

Mr. BARTON deemed the bill a very inadequate remedy for any existing evils in the law department of the Government, or in the manner of collecting the revenue. He thought the measure proposed inexpedient. He thought that, where an evil did exist, a proper remedy ought to be applied; and believing that the Government of the United States was old enough, a Home Department, to take charge of the internal concerns of the country, ought to be established. His opinion was, that the period was

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not very remote, if it had not now arrived, when it would be necessary to confine the Secretary of State to the appropriate duties of his office, and transfer the internal concerns of the country to another department. As to the Attorney General, he ought to conduct a subordinate branch of the Home Department, and not be the head of it, as proposed by the bill, which made him half a law officer, and half a head of a Department, with a large increase of salary for various duties which he cannot perform. If this bill passed, and the Attorney General was metamorphosed into the head of a bureau, an assistant must be appointed, who, like all other deputies, would have to perform most of the duties.

Mr. ROWAN moved to fill the blanks in the bill so as to give to the clerk to be appointed a salary of fourteen hundred dollars per annum, and to the messenger and assistant messenger, the salaries of seven hundred dollars and three hundred and fifty dollars; which motions were carried.

Mr. FORSYTH moved, as an amendment, a proviso, that "the Attorney General shall not, during his continuance in office, engage in any private practice in the courts of the United States, or of the States." It appeared to Mr. F. that the duties prescribed to the Attorney General by the bill would require his undivided attention, and render it impossible for him to attend the courts, unless to conduct cases in which the United States were concerned.

Mr. ROWAN said that, the objections urged, and the remedy proposed, by the gentleman from Georgia, (Mr. Forsyth) had occurred to the Committee who reported the bill, but the evils did not appear to them in the same light that they had appeared to strike the mind of the gentleman from Georgia. Indeed, he thought the amendment rather a matter of supererogation. If it should be found that, after the performance of all the duties prescribed in the bill, together with the duties already imposed on him, the Attorney General had still leisure, he was of the opinion that, by employing such leisure in the practice of the higher courts of law, his intellect would be strengthened, his mind improved, and his legal acquirements increased, so as to enable him to render more efficient and distinguished service to the Government. If the duties of the office should engross the whole time of the Attorney General, then the amendment would be entirely unnecessary. It appeared, therefore, that the amendment was either unnecessary or injudicious. As he had said before, it would be unnecessary, if the duties prescribed in the bill should engross his whole time, because it would then be impossible for him to attend to private practice; and, if he should have leisure, after performing his public duties, it would be injudicious, nay, injurious to the United States, to prevent him from that intellectual exercise which would prepare him for the more effectual performance of his public duties.

Mr. FORSYTH observed that he admitted the correctness of the observation of the gentleman from Kentucky (Mr. Rowan) that the exercise of the faculties not only sharpens, but invigorates the human faculties; and the only difference between the gentleman from Kentucky (Mr. R.) and himself, was this: Mr. R. appears to apprehend that, after a faithful and thorough performance of all the duties imposed by the bill, in addition to those already assigned him, the Attorney General will have sufficient leisure to attend to private practice. Mr. F. thought differently. The duties of the office would be great and various. Independent of the present duties of the office, he would have others from the Land, the Treasury, and the Patent Office—he would be subject to the orders of the President of the United States, and would be liable to be called on to go to any part of the United States, to represent the nation in the courts of justice. If such were to be the outline of his duties, (and it appeared to him that the bill pointed to that course)

there would not be much much time left to devote to private practice, if the public business received proper attention. But even if it should not engross all his time, and he should engage in the service of private individuals, he cannot foresee what time the public service will demand his attention; and if he should endeavor to secure the emoluments of private practice, it will often be at the expense of his official duties, and consequently, injurious to the interests of the United States. He thought that nothing ought to be left to the discretion of the Attorney General. The salary was sufficient to secure the highest grade of professional talent, and he presumed it was thought so by the committee who reported the bill. It was as great as the compensation allowed to any of the heads of Department, or any of the high officers of Government, and these were all prohibited from the practice of law in all the inferior courts of the United States; and he thought they ought also to be prohibited from practice in all courts. He said he had no particular anxiety about either the bill or the amendment; but if the one was carried into operation, he thought the other should succeed.

Mr. HOLMES thought that his motion to recommit was sufficiently distinct, and understood by every gentleman. He thought that some of the duties, if not all, proposed by the bill to be imposed on the Attorney General, should be done by another Department. It did not become him to direct the committee; he did not think it proper for him to do so; they ought on all such matters to have a proper latitude given them. To say that if his resolution prevailed the bill could not be perfected this session was no argument with him; neither of the Executive Departments were perfected at once: all of them were gradually established as experience and expedience showed and prescribed. He was opposed to this bill, because he was opposed to the creation of an unnecessary office. Where an office was really necessary, he never would be found to vote against its establishment.

Mr. McKINLEY said he was not very solicitous about the bill; nevertheless, he considered that a change was necessary in the organization of the Law Department of the Government; and if gentlemen would devise a better one than the present, he would yield it his support. He believed that in no country was the Law Department in so wretched a condition as in the United States. Some of our most important legal affairs are entrusted to an officer who, he believed, was no lawyer; and whose compensation was not sufficient to command a high grade of intellectual endowment. Mr. McK. said he knew a circumstance which illustrated this position. It related to the celebrated Yazoo claim. The amount was large, and the District Attorney of the United States was directed by the Comptroller to make the best defence he could for the Government; but not one title of testimony was furnished him for that purpose. This, and such evils as this, would be corrected by the provisions of the bill. It will then become the duty of the Attorney General to direct the District Attorneys, and to furnish them with the best testimony that can be procured to substantiate the claims of the Government, or to defend it from the imposition of creditors. If this course were pursued, and a rigid responsibility introduced, those abuses that have crept in would be corrected; and he believed that a saving from half to a million of dollars annually, to the Government, would be the result. He thought it would not be so difficult to induce gentlemen of the first legal and intellectual powers to accept the office, as the gentleman from Massachusetts, (Mr. WENDELL) seemed to think. If, however, a better remedy for the evil were devised, he would have no objections to give it his support.

Mr. FRELINGHUYSEN felt friendly to the bill, but he was opposed to those sections which imposed on the Attorney General the task of superintending the concerns

of the Patent Office, and the publication of the laws. It was highly important, however, that some officer should be appointed to attend to the collection of the revenue, and to direct the various suits which it might become necessary for the United States to bring. The Senator from Missouri admitted there were evils in the present system, and he hoped he would agree to apply the remedy to a part of them, if the whole could not be reached. It had been stated some days ago, by a Senator on this floor, [Mr. WEBSTER] that a bill had been in progress, and considerably matured, in the other House, to appoint an officer, to manage the important business of the collection of the revenue; but that the friends of the bill had abandoned it in despair, because of the numberless applications from incompetent persons for the office to be created. Now, [said Mr. F.] that will always be the case, unless you establish an office with a high salary, and requiring the talents of an eminent jurist. It was not necessary that the law officer to be appointed should personally attend to petty collections; but let him be the head of the system—let it go abroad that such an officer has the charge of the business, and all those inferior agents who have been complained of will feel his power, and properly attend to the duties.

Being in favor of the system, though with some slight objections to the present bill, he should vote for the motion of the Senator from Maine, [Mr. HOLMES] to re-commit it, that it might be again presented in a more favorable shape.

Mr. SANFORD observed the bill.

Mr. HOLMES advocated that the salary of the Attorney General was now fixed at three thousand five hundred dollars per annum; and the reason why it was not so large as the salaries of other heads of Departments was, that, by being permitted to pursue his other avocations, which were acknowledged to be profitable, he more than made up to himself the amount of compensation received by the others who were confined to their offices. If this bill intended to establish a Home Department, let it be called so, and made so, instead of legislating for the benefit of a particular individual, and giving him the high salary of a head of a department, and permitting him to devote his time to the practice of his lucrative profession. This was legislating for the people—economy and retrenchment with a vengeance. Mr. H. had intended to offer a resolution to re-commit the bill, with instructions to report one to establish a Home Department; but for us in the minority [said he] there is little chance of our successfully maintaining any proposition we make.

Mr. JOHNSTON thought the time had arrived when an attempt at least should be made to organize a department such as that contemplated by the bill. There were duties, [he said] appertaining to the Treasury, State, and War Departments, which did not properly belong to them; and which ought to be transferred to a separate and distinct department. He approved of the bill as far as it goes. There ought, he thought, to be a head through the agency of which the claims, &c. of our Government against individuals, should be prosecuted, and debts due the Government collected. He said that at the present time, the debts due the United States, amounted to near four millions of dollars; and that the greater part of this sum was in suit, and the agency of which was reposed in the hands of an officer, who, though a good and meritorious one, was no lawyer, and had consequently to depend, in the prosecution of his duty, on the legal advice of the Attorney General. He thought, therefore, that there was not that strict responsibility in the present system, which the magnitude of the office demanded; and which he believed the provisions of the bill would meet. But there were others, and anomalous duties, imposed on the Attorney General by the bill, to which Mr. J. objected. Our Indians, our Patent Office, and public lands, required an-

other department. The navy had its appropriate duties; but he could not see what relation Indian affairs had to the War Department, the Patent Office to the State Department, or the public lands with the treasury, to which they are at present attached. The duties of these offices were of sufficient importance to demand a separate department independent of the law office, provided for in the bill. He did not know whether the term Home Department, would be an appropriate name for the office to which these duties should be arranged; but the subject had been so long before the public, and had been so ably and so minutely discussed, that he presumed all were acquainted with the meaning it conveyed, and the duties to be assigned it.

Mr. WEBSTER doubted the existence of the evils the bill was proposed to remedy. He should like much to see in detail, the losses and crosses that had been so much complained of. It was easy to say, that the Government had sustained losses under the present system; it might be true, or there might be an error as to facts. Every great creditor, like the Government of the United States, necessarily had bad debts; but this usual consequence of large dealings, was no evidence of the badness of the system. His opinion was, the system wanted enlargement, not change. He did not believe any good would result from the metamorphosis of the Attorney General into the head of a bureau; nor did he believe it possible for any one individual to attend to the duties of both departments. One word as to the amendment proposed by the gentleman from Georgia. His [Mr. F.'s] opinion was, that, if the bill created an executive officer—a head of a department, with a salary equivalent to that of the heads of the present Executive Departments—he should confine himself strictly to the duties of his office, and be debarred from engaging in any law practice in which the United States was not concerned. Now, [said Mr. W.] that is as reasonable as for a gentleman to tell his physician, that he should not feel the pulse of any other human being. He, [Mr. W.] if the bill passed, would go farther than the gentleman from Georgia; he would say to such an officer, you shall not only not engage in any private practice, but you shall not be trusted with the management of any law business of the Government. Make this proviso, [said Mr. W.] and the bill would be a sensible one; the officer would be, what he ought to be, an agent of the treasury; leaving the Attorney General to manage the law concerns of the Government, and, by continual practice, to keep himself bright in his profession.

Mr. W. then argued on the inconsistency of combining the Law Department with a branch of the Treasury Department; of confining the highest law officer of the Government to the desk of a bureau, examining accounts, and superintending clerks, instead of sending him into the courts; and contended that the bill imposed duties on the Attorney General impossible for him to perform consistently with the duties rightly belonging to him.

Mr. KING then moved to lay the bill on the table. A bill [he said] was under discussion, some days past, reported by the Committee on Indian Affairs, providing for the removal of the Indians west of the Mississippi; and as there was no probability that a final decision could be made at present on the bill before the Senate, he wished the one he had mentioned taken up and disposed of.

The motion was agreed to.

#### THE INDIANS.

The unfinished business was then resumed on the bill to provide for an exchange of lands with the Indians residing in any of the States or territories, and for their removal west of the river Mississippi.

Mr. MCKINLEY concluded, in answer to Mr. FICKLINGHUYSEN; when Mr. FORSYTH, also in reply to Mr. F. occupied the floor until the usual hour of adjournment.

APRIL 14, 15, 1830.]

The Indians.

[SENATE.]

WEDNESDAY, APRIL 14, 1830.

The Senate resumed the bill to provide for an exchange of lands with the Indians.

Mr. FORSYTH continued his remarks on the subject, until the usual hour of adjournment.

THURSDAY, APRIL 15, 1830.

The Senate resumed the bill to provide for an exchange of lands with the Indians, and at three o'clock Mr. FORSYTH concluded in reply to Mr. FRELINGHUYSEN.

[The following is the substance of the remarks of Mr. F.]

After an inquiry to the mover of the amendment, [Mr. FRELINGHUYSEN] and an explanation of his purpose, Mr. FORSYTH said—

I regret, sir, that the amendment to the bill, proposed by the Senator from New Jersey, is not more definite and precise. His explanation of its purpose is not more satisfactory than the amendment itself, and it is only by looking to his speech that we are relieved from embarrassment. His amendment and explanation leaves us to conjecture whether he intends that the United States shall interfere with the Indians in the old States north of the Roanoke or not. His speech was plain enough. The Indians in New York, New England, Virginia, &c. &c. are to be left to the tender mercies of those States, while the arm of the General Government is to be extended to protect the Choctaws, Chickasaws, Creeks, and especially the Cherokees, from the anticipated oppressions of Mississippi, Alabama, and Georgia. We thank the gentleman for his amiable discrimination in our favor. He, no doubt, hopes that his zeal and industry in the Indian cause will be crowned with success; that he will be able to persuade the Senate, and his friends in the House of Representatives, to interfere, and compel the President to take new views of the relative power of the State and General Governments, and that under these new views the physical force of the country will be used, if necessary, to arrest the progress of Georgia. The expectation the gentleman has expressed, that Georgia will yield, in the event of this desirable change in the Executive course, is entirely vain. The gentleman must not indulge it, with a full and fair examination of what is right and proper, Georgia has taken her course and will pursue it. The alternative to which the Senator looks, of coercion, must be the result. While I entertain no fears that the gentleman's hopes will be realized, I consider it a matter of conscience, before entering upon the discussion of the general subject of the bill, to relieve the Senator from any apprehension that it may become necessary to cut white throats in Georgia to preserve inviolate the national faith, and to perform our treaty engagements to the Indians. It is true, the gentleman displays no morbid sensibility at the idea of shedding the blood of white men in this crusade in favor of Indian rights.

[Mr. FRELINGHUYSEN explained: he did not say he felt no morbid sensibility at the idea of shedding blood in defence of the Indians.]

Mr. FORSYTH continued: I would not misapprehend the gentleman for the world, and no inducement could tempt me to misrepresent him; but I cannot be mistaken in the impression made by his remarks. The gentleman eulogized Mr. Jefferson for his letter to General Knox, of the 10th of August, 1791. He dwelt with peculiar emphasis on the spirit of that letter, and said Mr. Jefferson had no morbid sensibility at the idea of shedding blood in defence of the Indians against the whites. He wished ardently that the present Executive had spoken with the firmness and in the spirit of that letter to Georgia; he believed Georgia would have yielded, and would now yield to such language from the Executive; if she did not, the responsibility of the blood shed would be upon her head.

Now, sir, although we dread no responsibility, I have so much kindness for the Senator as to wish to satisfy him, that there is no occasion for an assault upon us, notwithstanding he displayed so little sympathy for the whites—a circumstance not wonderful, however—having exhausted all his sympathy upon the red men, none for the whites could be reasonably looked for from him. I propose then, sir, for his relief, to show that, considering this as a treaty question, arising under a fair exercise of the treaty-making power with a foreign Government, entirely unconnected with any disputes about the relative power of the State Government, and the Government of the United States, that Georgia stands perfectly justified, upon his own principles, in the steps she has chosen to take with regard to those Cherokees who reside within her territorial limits. The gentleman asserts that the Creeks and Cherokees are acknowledged to be independent nations, by treaties made, first with Georgia, and lastly with the United States; that the independence of those tribes is guaranteed by the United States; that treaties with the United States are the supreme laws of the land, and must be executed, although in collision with State constitutions and State laws. The independence of the tribes rests on this argument—that the formation of a treaty is, between the parties, an acknowledgment of mutual independence. I will not stop to show the numerous exceptions to this rule; insisting, however, that the gentleman shall admit, what I presume nobody will deny, that the two parties to a treaty, independent when it was made, may, by the terms of that instrument, change their characters, and assume those of sovereign and dependent. The gentleman has thought proper to refer to the Creeks; why, I cannot tell; they, at least, have now no business with Georgia. We are rid of them, and I hope the gentleman has no desire to bring them back upon us to aid the Cherokees. But, as he has referred to them, I will ask his attention to the first article of the treaty of Galphinton, concluded on the 12th November, 1785, parts of which he has himself quoted:

"Article 1. The said Indians, for themselves, and all the tribes or towns within their respective nations, within the limits of the State of Georgia, have been, and now are, members of the same, since the day and date of the constitution of the said State of Georgia."

Is not this article broad enough to sustain the claim of the State to the sovereignty over the Creeks? If they were members of the State, as they acknowledged themselves to have been, from the adoption of the constitution of Georgia, what became of their separate and independent character as a nation or tribe? So much for the Creeks. I will not, in tenderness to the lately defunct administration, say more on this chapter of our Indian history. How stands it with the Cherokees? Their situation differed from that of the Creeks in this: all the Creeks who were within the United States occupied land within the territorial limits of Georgia; the Cherokees occupied a territory in North Carolina, South Carolina, and Georgia, the greater number being in North Carolina. The treaty of De Witt's Corner, formed May 16, 1777, with South Carolina and Georgia, by the Cherokees, settles the question with the Cherokees. The first article of this treaty is in these words:

"Article 1. The Cherokee Nation acknowledged that the troops, during the last summer, repeatedly defeated their forces, victoriously penetrated through their lower towns, middle settlements, and valleys; and quietly and unopposed, built, held, and continue to occupy, the fort at Esenecna, thereby did effect and maintain the conquest of all the Cherokee lands eastward of the Uniceay mountain; and to and for their people, did acquire, possess, and yet continue to hold, in and over the said lands, all and singular, the rights incidental to conquest; and the Cherokee nation, in consequence thereof, do cede the said

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lands to the said people, the people of South Carolina."

You see, sir, the Cherokees admit that South Carolina had, by conquest, acquired a right to all the land in the valleys below the Unicaye mountains. These mountains lie in Tennessee, beyond the territorial claims of South Carolina and Georgia. South Carolina conquered the country from their red neighbors; the right of conquest is admitted: the benefit of that conquest was, according to the well known rights of Georgia and South Carolina, with both of whom the treaty was formed, to be enjoyed respectively by those States. But this is not all: no subsequent change in the political condition of the United States can be used as a pretext for denying to Georgia the claim to sovereignty over the Cherokees within her limits. We stand impregably fortified upon treaties to which the United States are parties. Every professional man who remembers his Blackstone, knows that legislation is the highest act of sovereignty. Now, sir, by the ninth article of the treaty of Hopewell, of the 28th November, 1783, a treaty which begins with these words: "the United States give peace to all the Cherokees, and receive them into their favor and protection;" strange words to be used to an unconquered and independent nation the Cherokees surrender to Congress the power of legislating for them at discretion. I pray the gentleman to hear it.

"For the benefit and comfort of the Indians, and for the prevention of injuries or oppressions on the part of the citizens or Indians, the United States in Congress assembled, shall have the sole and exclusive right of regulating trade with the Indians, and managing all their affairs in such manner as they think proper." This treaty, with all its burdens and benefits, fell to the new Government under the constitution, when it was established, and the power of legislating at discretion, to prevent injuries or oppressions on the part of the citizens or Indians, was one of the benefits secured by it. So much for the independence of the Cherokee nation. It may be asked, however, what has this treaty to do with the question between Georgia and the Cherokee Government? It does not follow that, because the United States have sovereignty over the Cherokees, that the State has it? The compact made by the United States with Georgia, in 1802, furnishes the satisfactory answer to this inquiry. The United States, having acquired, by the ninth article of the treaty of Hopewell, the power of legislation over the Cherokees, had the goodness to transfer it to the State. Let us see, sir, what this compact is. By the first article, Georgia ceded to the United States all her right, claim, title, &c. to the jurisdiction and soil of the lands lying west of the Chattahoochee, as far as Mississippi, &c. on specified conditions. By the second article, the United States accept the cession on the conditions expressed, and they "cede to the State of Georgia, whatever claim, right, or title, they may have to the jurisdiction and soil of any lands, lying within the United States, and out of the proper boundaries of any other State, and situated south of the Southern boundaries of the States of Tennessee, North Carolina, and South Carolina, and east of the boundary line herein above described, as the Eastern boundary of the territory ceded by Georgia to the United States." The Senator from New Jersey may be assured, that the Cherokees, over whom the Georgia laws are to operate, live upon the territory described in the second article of the compact of 1802, south of Tennessee, North Carolina, and South Carolina, and east of the Chattahoochee. Gentlemen may amuse themselves with finding fault with

this transfer by the United States of a power granted to them and intended to be used by the United States only. They may prove it, if they choose, an act of injustice to the Cherokees—a violation of faith. We will not take the trouble to interfere with such questions. The United States obtained, by treaty, the power to legislate over the Cherokees, and transferred it to Georgia. The justice and propriety of this transfer must be settled by the United States and the Cherokees. In this settlement Georgia has her burthen to bear, as one of the members of the Union; but no more than her fair proportion. If any pecuniary sacrifices are required to do justice to the injured, let them be made: if a sacrifice of blood is demanded as a propitiation for this sin, to avert the judgment of Heaven, let the victim be selected. Justice demands that it be furnished by the whole country, and not by Georgia, and if the honorable Senator from New Jersey will fix upon one between the Delaware and the Hudson, he will escape all imputations of being actuated by any motive but the love of justice—pure justice. For us it is enough to have shown, that what we claim is in our bond, and until the gentleman can rail off the seal, our claim must be allowed, though it should extend to the penalty of a pound of flesh. Yes, sir, we claim, and we will have the penalty of the bond—the pound of flesh, not in the Shylock spirit to destroy; we will take it upon the conditions prescribed by the learned doctor in the court of Venice, the gentle Portia—"Not one drop of blood shall be shed;" we will take our "just pound," neither "more nor less, by one poor scruple;" the balance in which our rights are weighed shall stand precisely even; neither scale shall descend below the other "the ninth part of a hair." Respect for the Senator from New Jersey will not permit me to charge him with any premeditated obliquity of vision; but certainly, when it is recollected that all the treaties I have presented to the Senate were examined and quoted by him, it is strange by what fatality it was, that his eye did not for a moment rest upon either of the pregnant provisions to which I have endeavored to direct his attention. There they stand, conclusive refutations of all his arguments founded upon other provisions of the same or subsequent instruments, unless he is able to prove that they have been formally altered by the parties to them.

Sir, [said Mr. F.] having shown, if not to the satisfaction of the Senator from New Jersey, I trust to that of the Senate, that upon the principles assumed by the adversaries of the bill, Georgia stands justified in her course; I shall proceed to submit a few observations on the subject of the disposition which ought to be made of the Indians within the United States. The preliminary inquiry was not merely with a view to relieve the mind of the Senator from New Jersey from painful apprehensions, but to show to the Senate that our opinions on the great subject of the aborigines were not formed to suit our interests, nor at all influenced by them; that there was no motive operating upon our minds to tempt us into erroneous judgments. The condition of the remnants of the once formidable tribes of Indians is known to be deplorable: all admit that there is something due to the remaining individuals of the race; all desire to grant more than is justly due for their preservation and civilization. Recently great efforts have been made to excite the public mind into a state of unreasonable and jealous apprehension in their behalf. The evidences of these efforts are before us in petitions that have been pouring in from different parts of the country. The clergy, the laity, the lawyers, and the ladies, have been dragged into the service and united to press upon us. But these efforts have been unavailing: the people are too well informed to be deluded; they have too much confidence in the justice and wisdom of the administration to be misled by persons who have united, at this eleventh hour, in opposi-

\* The 5th article of the treaty with the Chickasaws, of the 3d January, 1786, and the 5th article of the treaty with the Chickasaws, of the 10th January, 1786, both contained at Hopewell, are copies of this article. Congress have power, by this article, to legislate at discretion, for the Cherokees, Chickasaws, and Chickasaws. A bill to remove them against their consent, if Congress believed such removal necessary for their preservation and property, might be vindicated under them.

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tion to a project which has been steadily kept in view by three administrations. To show what has been attempted, I pray the Senate to attend to an extract of a letter received from a most respectable and intelligent gentleman in one of the New England States. [Here Mr. F. read the extract which follows:]

"An attempt is making in the Eastern States to create a great deal of sympathy for this people; and the attempt is making, so far as I can discover, by what is termed the 'Christian party in politics.' Petitions to Congress have been got up, printed and circulated through the New England States for signatures, without any post mark to indicate their starting point; they have been forwarded to every town; addressed to 'Congregational clergymen of ——— or either of his deacons,' with instructions to have them filled with as many signatures as can be obtained, and then forwarded to Congress with as little delay as possible. These petitions supplicate Congress to protect the Indians in the occupancy and enjoyment of the lands where they reside, and the civil regulations they may adopt for their own government. Many of these petitions probably have reached Congress before this time."

Considering the means employed, it is surprising, not that we have petitions before us, but that we have so few, and to the Southern section of the Union it is a consolation to know that these efforts to prejudice the question of their rights should have, in many instances, produced a fair investigation of them, and the expressions of popular opinion in their behalf, the more precious since they were spontaneous, the offspring of honest conviction and not of political arrangement. That many respectable persons have been deceived is not disputed. They have been the unresisting instruments of the artful and designing, and ministered to political malignity, while they believed themselves laboring in the cause of justice and humanity.

Two evidences of such delusions are before me. A circular printed for the signature of the ladies, and forwarded to me with a note, "read with a view to eternity," as if I were in danger of eternal punishment if I did not abandon the defence of the position taken by Georgia, on which I have already periled my reputation as a politician, and stand responsible as an accountable being. The other, sir, is to judge by its contents, the work of an amiable Revolutionary soldier, (Alpheus Camden, of Long Island, he signs himself) who expresses the deepest conviction of the propriety of his opinions, and urges me, as I dread the horrors of an Indian and a servile war, to retrace my own steps, and correct the opinions of the State. These delusions will pass away; this venerable man, like all others who have been misled, will soon know that they misunderstood both our principles and our purposes, and have formed on this subject crude judgments without the knowledge of the facts necessary to a correct decision; and without due reflection upon the past or the future.

In common with all who have addressed the Senate, I feel and have ever felt the strongest anxiety to do justice to the Indian tribes. I have reflected much on the subject since the project of congregating them beyond the Mississippi, and establishing a great Indian government, was first suggested during Mr. Monroe's administration. I looked on that project as wild, visionary, and impracticable. Anticipating its discussion in 1823, I contemplated proposing a scheme of my own; fixed the outline, and arranged some of its details. This scheme would have embraced these provisions:

That the land occupied by the Indians in all the States and Territories, should be taken possession of as the property of the Government in the new States, and of the States in the old; each tribe to be credited on the books of the treasury with ——— per acre, bearing an interest of five per cent. for the land occupied by them.

This debt to be called the Indian fund: the interest to be paid semi-annually to defray the expenses of governing and civilizing the Indians until they are incorporated as citizens of the United States; after that event the debt to be considered as extinguished.

A grant in fee simple to be made to each Indian family of ——— acres for each member of it; not alienable before the year 1900, and no leases beyond one year to be valid. This land to be surveyed in a body, and good soil carefully selected.

Twelve hundred and eighty acres to be set apart in the centre of the granted lands for public use as the seat of the Indian government.

Government to be organized for the Indians by Congress. A governor to be appointed by the President of the United States of white, or Indian, or mixed blood. Three counsellors to be chosen by the chiefs of the tribes. Representatives, (according to the number of Indians) but never less than ten, to be chosen by the Indians annually.

The governor and council to propose laws to the representatives, the governor having a veto on the proceedings of the representatives.

The counsellors and representatives to be of Indian or mixed blood; their compensation and that of all the officers to be fixed by Congress.

Judges to be nominated by the governor and council, and approved by representatives, removable every ten years. Judges, to be white men, for twenty years. Jury trials to prevail; the jurors to be of Indian or mixed blood.

Criminal and civil laws subject to the revision of Congress.

System of education to be devised by Congress; all the Indian children under ten, to be embraced in the provision to be made, and their education not to be considered complete until they are twenty-one.

All Indians to become citizens in 1900.

Indians not willing to submit to these regulations to be removed beyond the Mississippi; hunting lands to be provided for them there, and a just indemnity made for the expense and trouble of removal.

Full of the idea [said Mr. F.] of conferring important benefits on this hapless race, I was on the point of proposing a bill to be presented to the consideration of Congress. But I was led by the frequent occurrence of constitutional objections to this previous inquiry: Has the Government of the United States the constitutional power necessary to execute such a scheme? It involved the exercise of these two important powers, to appropriate to the exclusive use of the Indians, land, the jurisdiction over which, with the soil itself, was claimed by the States, and without the consent of the States, and the power to establish exclusive municipal regulations for the government of a class of persons within the State sovereignty. Convinced, on a short examination, that neither power was conferred by any grant of authority in the constitution, and neither fairly incidental to any specific grant in that instrument, I was reluctantly compelled to abandon my project.

Although not reconciled to the project of Mr. Monroe's administration, I was convinced that the basis of that project—the removal of the Indians beyond the States and Territories—was the only mode by which the power of the General Government could be properly and exclusively exercised for their benefit. I do not believe that this removal will accelerate the civilization of the tribes. You might as reasonably expect that wild animals, incapable of being tamed in a park, would be domesticated by turning them loose in the forest. This desirable end cannot be obtained without destroying the tribal character, and subjecting the Indians, as individuals, to the regular action of well digested laws. Wild nature never was yet tamed but by coercive discipline. The recent experiment made on

the Arkansas has somewhat shaken my faith. It is understood that the Cherokees, who removed to that country in 1817-18, with a view to continue the hunter's life, have advanced more rapidly than those who remained on this side of the Mississippi, in the arts of civilized life. Yet, doubting, as I do, the effect of this measure as a means of civilization, I shall vote for it, with a hope of relieving the States from a population useless and burthensome, and from a conviction that the physical condition of the Indians will be greatly improved by the change: a change not intended to be forced upon them, but to be the result of their own judgment, under the persuasions of those who are quite as anxious for their prosperity and tranquillity, as the self-constituted guardians of their rights, who have filled this Hall with essays and pamphlets in their favor. That all the Indians in the United States would be benefited by their removal beyond the States, to a country appropriated for their exclusive residence, cannot be doubted by any dispassionate man who knows their condition. With one or two remarkable exceptions, all the tribes are rapidly diminishing in number, from the operation of causes the State Governments either will not, or do not, choose to remove. The report made in 1820 to the War Department, by the agent, M'rae, appointed to collect information on this subject, shows that there were then in New England two thousand five hundred and twenty-six Indians; in New York, five thousand one hundred and eighty-four; in Virginia, North and South Carolina, four hundred and ninety-seven; in Georgia, five thousand Cherokees; making an aggregate of thirteen thousand one hundred and seven in the old States. All these Indians, with the exception of the Cherokees in Georgia, are in a state of involuntary minority. Their property in the hands of trustees or agents, not chosen by themselves, but appointed for them, with but a nominal responsibility for the faithful performance of their duty. As individuals, they are responsible for crimes, and punishable in the courts of justice of the States. But they can neither sue nor be sued, contract nor be contracted with, without the intervention of their trustee. Without industry, and without incentives to improvement, with the mark of degradation fixed upon them by State laws, without the control of their own resources, depending upon a precarious, because ill-directed, agriculture, they are little better than the wandering gypsies of the old world, living by beggary or plunder.

Of the new States, Ohio contains two thousand four hundred and seven; Indiana and Illinois, seventeen thousand; Alabama, twenty thousand Creeks; Alabama, Tennessee, and North Carolina, eight thousand Cherokees; Mississippi, twenty-eight thousand six hundred and twenty-five Choctaws and Chickasaws. In the Territory of Florida, there are five thousand; in Michigan, twenty-eight thousand three hundred and eighty; total, one hundred and nine thousand four hundred and eighteen.

In some of these States the laws have been, and in others they probably will soon be, extended to the Indians as individuals. These Indians are partially regulated by their own usages, yet subject to the operation of the criminal law in the courts of the United States. In no part of the country have the Indians an admitted right to the soil upon which they live. They are looked upon as temporary occupants, who have not, and are not, intended to have a fee simple title to the land. They are hunters, whose game is every day diminishing, and who must change their place of residence, or their mode of procuring subsistence.

In the removal of the Indians from the old States, for which provision should be made, from motives of humanity, the United States have no interest. Should those residing in New England, New York, Pennsylvania, North and South Carolina, be disposed to try their fortunes in the West, the States from which they remove, or the owners of the land upon which they now reside, (in many cases the land occupied by them has been granted to

white persons) should be required to pay all the expenses of their transportation to the country allotted for them. Georgia, of the old States, stands on distinct ground. The United States are bound by compact to pay all the cost of extinguishing the Indian claim to lands lying within her limits. In the new States, the only benefit to be derived by the United States from the removal of the Indians, is this: The lands occupied by them will be immediately subject to survey, sale, and settlement. For the old and for the new States, this important object will be gained: a race not admitted to be equal to the rest of the community; not governed as completely dependent; treated somewhat like human beings, but not admitted to be freemen; not yet entitled, and probably never to be entitled, to equal civil and political rights, will be humanely provided for.

I should be happy, if a sense of public duty permitted me to dismiss this subject with these brief remarks. The Senator from New Jersey has imposed upon me the necessity of occupying much of the time of the Senate, in the examination of the charges made against the State of Georgia. His amendment seems to have been manufactured for the purpose of assailing and vilifying the State—I mean not to excuse nor to defend the State; neither is it necessary. A fair exposition of facts is sufficient for her triumphant vindication. She stands at present on the vantage ground. All the public functionaries, to whom the constitution gives the power to decide upon our pretensions, have admitted them to be just. The gentleman, indeed, censures the President of the United States, for deciding an important question, which ought to have been submitted to Congress. With what justice is this censure bestowed? Is it not the duty of the President to execute the laws, and observe the obligations of the United States? The Cherokees demanded the intervention of the President, alleging an infraction of a compact made with them. Was the President to interfere because the Cherokees complained? Was the President to decide against the pretensions of a State, without examination into the merits of the question presented? It was his duty, under the high sanctions of his oath of office, to decide. He could not escape a decision, had he a mind to evade it. This decision has been made, and if error has been committed, it is in favor of the Cherokees. The President considers the obligation of the United States to guarantee to the Indians the enjoyment of their lands as paramount to the claims of the State—a decision which cannot be sustained. The land and the Indians are, according to the same principles, subject to the exclusive control of the State sovereignty, and such will be the decision, should the question ever be judicially determined. I trust and believe that the question will never be agitated; it will not be, unless the Senator from New Jersey should succeed in filing the minds of the Cherokees with vain hopes, and tempting them to acts fatal to their security. The President has, in conformity with his constitutional opinions, stated to the Indians what is their true position. They must remove, or remain and be subjected to the State laws, whenever the States choose to exercise their power. The gentleman assumes that this is a violation of a treaty stipulation with an independent tribe, and on this assumption he rests his condemnation of the Executive. Now, sir, the gentleman must perceive, that the President puts a different construction upon these compacts; that he construes them as made under the constitution of the United States, which gives to the General Government no power, by the instrumentality of an Indian compact, to limit the jurisdiction or narrow the sovereignty of one of the States. I will not now inquire who is right, the gentleman or the Executive. It is not my purpose to defend the President; he has done what he believed his duty required, and is not justly chargeable with any attempt to forestal opinion, or about the door to inquiry. What prevents the Senator, if he wishes a decision of Congress, from presenting fairly and openly

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the question, on this construction of these instruments? I should be glad to meet him on fair ground. I invite him to present distinct resolutions, affirming that the Indians are independent Governments, beyond the control of all the States; that the fee simple of the land occupied by them is theirs; that neither the General Government nor the States can regulate their affairs; that treaties can only be made with them by the United States. Why is not this done, sir? Is it not because the legislation of the United States, the legislation of the States, the judicial decisions of the Federal tribunals, and the judicial decisions of the State tribunals, all concur to prove that such positions are untenable? These opinions, sir, are the novelties of the present hour, got up for a special purpose, and to produce political effect; and can be productive of no injury, unless the Cherokees should be deluded by them.

But, sir, I am forgetting the main purpose of my addressing the Senate. Georgia is the theme of the evening chant, and the matins song of all the calumniators of the Union, who have taken the Cherokees into their holy keeping. No epithet is too strong, no reproach too foul, to cast upon her, for having followed the example of ten States, in the exercise of jurisdiction over the Indians within their territory. All the New England States, New York, Virginia, North Carolina, South Carolina, and Maryland, escape censure for similar acts with those which have brought down upon us torrents of invective. I may be permitted to point out some of the causes which have led to the great anxiety that is exhibited for the Cherokee Government.

The late Secretary of War points out some of the most prominent. There are a great many white men, missionaries, and others connected with the missions, who have comfortable settlements on the land occupied by the Cherokees, and a direct interest in preventing any change in their condition. These persons have been actively engaged in correspondence with their friends, and the patrons of their missionary establishment. The Cherokee Government is in the hands of a few half-breeds and white men, who, through its instrumentality, regulate the affairs and control all the funds of the tribe. There is a press established, supported by those funds: a press established in a community of thirteen thousand souls, not five hundred of whom can read or write! The money which ought to be used to feed and clothe the common Indians, who are represented as half starved and naked wretches, is applied to the support of a printing press, to the establishment of exchanges of newspapers with the printers of the United States. It is thus, sir, that the Cherokees have been made so prominent. There is another, not less powerful agent, at work. The Cherokee Government have a Delegation in Washington, sent here to defend the independence of the tribe; and as the leaders understand the value of money, the Council have passed a resolution authorizing the Delegation to pay out of the public treasury for any aid or advice that may be obtained in the execution of their trust. Of these printed circular letters, of these printed memorials to Congress, of these pamphlets and essays, which have been laid upon our tables, how many have been fabricated under the hope or promise of present reward? Let those who are confidential with the Cherokee Delegation answer the question.

Ungrateful as they are, [said Mr. F.] reproach and censure are not new to us. Our Western lands and Indian relations became fruitful sources of dispute between Georgia and the United States, soon after the declaration of independence, and have continued to be at intervals subjects of controversy since that eventful period. Always abused for making unfounded and unjust pretensions, it has been our great good fortune to show, in the progress of time, that our claims were just; to have them always finally admitted. While justice has been done to the claims of the State, her character has not ceased to be

the object of contumely; we were right; we have finally obtained the object in dispute; yet we are still reproached as if the charges of unjust pretension had been substantiated by evidence, and had received the sanctions of time. I ask the patient attention of the Senate to a brief sketch of the history of our disputes.

The States claimed as common property our Western lands, as obtained by the expenditure of common blood and common treasure. The State of New Jersey presented a remonstrance to the old Congress, claiming for the Confederation all the Western lands. Regardless of Indian rights, and the independence of the tribes, now so dear to her Senator, New Jersey claimed the soil of the wild land for the Confederation; leaving the jurisdiction to the State where the land lay. The States north of the Roanoke made a transfer of their Western lands. Georgia offered a transfer, but the conditions proposed were not satisfactory, and the transfer was not made. In order to press upon Georgia this surrender of her lands, questions were raised under the articles of Confederation about the power of the States over the Indians. A war was threatened on the Southern frontier, by the Creeks and Cherokees. Assistance was claimed under the articles of Confederation, and Congress, although bound by these articles to defend all the States, talked gravely of examining into the justice of actual war, in order to determine on the propriety of affording necessary aid to their white brethren; and claimed, in defiance of the article in the Confederation, exclusive control of Indian affairs. To tempt Georgia, a transfer of lands was suggested as the best practicable mode of settling all questions of relative power between the States and the Confederation. By a majority vote of Congress, treaties were required to be held, whenever a majority of the States ordered them to be held. These difficulties continued until the constitution was adopted. The first President of the United States found the country embarrassed by Indian hostilities, and his attention was early directed to give tranquillity to our frontier settlements. The State of Georgia had formed treaties at Shoulderbone, Augusta, and Galphinton, with the Creek Indians. Their validity was disputed. General Washington asked the advice of the Senate of the United States on these points: Should an inquiry be made into the circumstances under which these treaties were held? If fairly held, should they be enforced by the arms of the Union? If not valid, should they be made the bases of new arrangements with the Southern tribes? These inquiries were all answered in the affirmative. Investigation into the validity of these treaties was made by the commissioners of the United States, Griffin and others; and the result was, a report that these compacts were made with all the usual formalities and fairness of Indian treaties. They were not enforced by the arm of the United States; an arrangement was preferred; and territory previously surrendered to the State by the Indians was restored to them as hunting grounds; and the intercourse act, of 1790, was passed to enforce this violation of State sovereignty. What did Georgia do on this palpable violation of her admitted right? Animated by a love of the Union, by her respect for the peace and tranquillity of the country, to which her just claims had been unconstitutionally surrendered, she used no violence, she sought no redress by unhalloved means. She came here, sir, to protest against this new treaty, and against the law of 1790, as equally repugnant to her claims and to the constitution of the United States. She hoped for indemnity. It never was made. We have the satisfaction to see, upon the public records, the acknowledgment that our complaints were just. A committee of Congress reported that injustice had been done to the State, and that indemnity was due. In the compact of 1802, there is found the admission of the United States that lands, formerly ceded by the Creeks to the State, had been taken, without equi-



valent, from the State. Without authority under the constitution, it certainly was wrested from us. I ask the honorable Senators from the East what have been the conduct of one of the New England States, had a similar surrender of their territory been made, even under the pressure of dire necessity, to a foreign government? What is the feeling of the East on this point may be learned from the correspondence of the Governor of Maine, and the late Secretary of State, on the Northeastern boundary of the United States, now a question of arbitration with Great Britain. An inspection of that correspondence will show that some warmth is felt, even in the cold regions of the North. The blood can run amidst the snows of Maine, in a heady current, not less than under the influence of a southern sun. Fortunately for Governor Lincoln, he lived in a favored region; and his doctrines of State rights and sovereignty brought down no invectives upon his head, although, in theory, and in language too, he did not lag far behind the fiery Georgian. The Senate will perceive, sir, from the protest of the State, that the Senator from New Jersey mistakes, when he asserts that Georgia has always acquiesced in his favorite doctrines. The first encroachment upon her sovereignty was resisted in the only practicable and peaceable form. The claim to all the Western lands lying on the Mississippi, as the property of the United States, was revived under the Constitution, on the old ground, and a new claim set up, on a new ground, to that portion of the State of Georgia, which lay between latitude thirty-one degrees North, and latitude thirty-two degrees and thirty minutes North, on this singular pretext. The strip of territory formed a part of Georgia or South Carolina, until the Floridas belonged to Great Britain, and was annexed to West Florida, by Great Britain, prior to 1770. The treaty of peace with Great Britain having surrendered to the latitude thirty-one degrees, the surrender was made to the confederation, and not to Georgia or South Carolina. In the negotiation with Spain to fix the southern boundary of the United States, latitude thirty-one degrees was claimed as the boundary of Georgia. When that boundary was admitted by Spain, latitude thirty-one degrees became, in the language of the United States, not the boundary of Georgia, but the boundary of a territory surrendered to the confederation, by the treaty of 1783, with Great Britain. Pressed by these claims, and anxious to strengthen the State in her territorial pretensions, the Legislature of Georgia, in an evil hour, made sale to companies, in the year 1794, of large portions of her Western lands. Improper means having been used to secure the passage of the legislative enactments for these sales, they were declared void by a subsequent Legislature, and by a convention which met in the succeeding year to alter the State constitution. The Yazoo fraud, as it is usually called, is a constant theme of reproach to the State. No one remembers the stern integrity that prevented its success. Not satisfied with a barren claim to our Western lands, the United States deemed it expedient, in 1798, to make a direct attack upon the State sovereignty, by the erection of a government—the territorial government of Mississippi—within our boundaries. It is true, sir, as if in ridicule of our pretensions, there is a solemn reservation in the act of the right of the State to the soil and jurisdiction. The sovereignty is assumed. Exclusive legislation exercised by the United States, with a saving of the rights of soil and jurisdiction thus openly violated. Within the period embraced by these transactions, the State was harassed by Indian depredations and Indian wars. Irritating questions were perpetually arising between the State and the United States. The agitation produced by the sale of our lands to private companies, and the subsequent annulment of the act of sale; the usurpation by the hand of power of our sovereign and territorial rights, and the irritating questions produced by the savages within our limits, almost compelled the State to a surrender of the Western

lands, so long the object of desire to the other members of the Union. In January, 1798, a convention having been called to reform the constitution, the Legislature adopted the report and resolution which I will read to the Senate. [Mr. F. read the report and resolutions in the appendix No. 1.] The Legislature recommended the insertion of a clause in the new constitution, authorizing the Legislature to sell the Western lands on these conditions:

First, the payment, out of the public treasury, of one million five hundred thousand dollars in specie, bank or funded stock of the United States.

Second, that the United States should extinguish, (at their sole and proper expense,) the Indian claims to all the land not ceded by Georgia, within certain designated periods of time. All the lands between the temporary line separating the whites and Indians, and the river Ocmulgee, within two years from the date of cession. The land lying between the Ocmulgee and Flint rivers, within seven years; between the Flint and Cathahochie, within fifteen years.

Third, that the United States should guaranty the absolute right and title to the northward and eastward of the Cathahochie forever.

Fourth, That the territory ceded should be admitted into the Union whenever the number of inhabitants entitled to it to a Representative in Congress as a free and independent State.

This legislative recommendation was effectual: the convention incorporated a clause in the constitution of Georgia, authorizing a cession to the United States. Under acts of Congress and of the State Legislature, Commissioners were subsequently appointed, and the compact of 1802 was formed. It will be found, by reference to the compact, that the conditions proposed by the Legislature of Georgia were not obtained. For one million five hundred thousand dollars in specie, bank stock, or funded stock, was substituted one million two hundred and fifty thousand dollars, payable out of the proceeds of the land ceded. For the extinguishment of Indian claims within fifteen years, was substituted a promise to extinguish that claim as soon as it could be done peaceably and on reasonable terms. For the guaranty of the absolute right and title to the land east of the Cathahochie, was substituted a cession of the right of the United States to the jurisdiction and soil. The act was nevertheless ratified by Georgia, and it was fondly hoped that no future disputes about Indians and Indian lands could possibly arise. Relying upon the faith of the United States, Georgia, from the date of the compact until recently, refrained from all exercise or claim of authority over these subjects, looking confidently forward to a period not remote, when all her just claims would, without effort on her part, be satisfied by the General Government. To this compact the honorable Senator from New Jersey may look for an answer to his repeated inquiry, why did Georgia acquiesce in the exercise of the treaty-making power by the Federal Government? Georgia, having imposed upon the United States the obligation to extinguish the Indian title, did not consider herself authorized to interfere in the manner in which that obligation was performed. Why she has been compelled to interfere will be seen by a short history of the execution of the compact. The money stipulated has been, after some difficulties, paid. Of the land, after the expiration of twenty-eight years, a large territory still remains occupied by the Indians. When it is borne in mind, [said Mr. F.] that since the year 1802, countless millions of acres of land have been purchased by the United States from Indian tribes; independent States created, and territorial governments formed upon it, it is surprising that the Georgians should inquire, why it is, that this compact has not been fully and faithfully executed? To say nothing of Illinois, Indiana, Missouri, Alabama, Mississippi, and the

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Territories of Michigan and Arkansas, compare the purchases made by the United States in Ohio, from Indians, and the effect of these purchases on the political power of the South and West. On the 30th of April, 1802, the act passed authorizing the people of Ohio to form a constitution. How stands Ohio compared with Georgia—an independent State of the Revolution—in 1802 represented by three Representatives in Congress! At this moment Ohio is cursed by the presence of but a few Indians, occupying a small body of land, while in political power she stands, to adopt expressions vauntingly used in this House, by the side of the great States of New York, Pennsylvania, and Virginia. Ohio has been fostered, and the promise to Georgia has not been performed. Ohio has fifteen Representatives in Congress, Georgia but seven. Why is this, sir? Were there greater difficulties in making Indian purchases from the Southern tribes than from the Northern Indians? If such is the fact, a sufficient cause existed to repress our complaints. The United States, from 1805 to 1819, purchased for other States twenty-nine millions six hundred and seventy-eight thousand five hundred and forty acres, not one foot of which lies in Georgia, from the Southern tribes. Vast acquisitions have been made, without difficulty, for the United States; difficulties have always occurred when the Georgia compact was to be fulfilled. But, [said Mr. F.] confining this examination to the Cherokee tribe, look at the singular facts presented by the history of the purchases made from them since 1802. By the report of the Secretary of War, of 30th March, 1824, all the lands purchased for Georgia, from the Cherokees, since 1802, is nine hundred and ninety-five thousand three hundred and ten acres; two hundred and ninety-five thousand three hundred and ten by the treaty of 1817, and seven hundred thousand by the treaty of 27th of February, 1819. Of about five millions of acres occupied by the tribe in 1802, not one-fifth part has yet been obtained under the promise of the General Government. It may be imagined, sir, that this has arisen from the impracticability of making purchases from this tribe. They have been unwilling peaceably to sell on reasonable terms. What will the Senate think of the obligations of truth and justice in the performance of agreements, when I inform them that within that period, more land has been purchased from the tribes than was claimed by them in Georgia; for Alabama, Tennessee, North Carolina, and South Carolina, eight millions five hundred and forty-two thousand five hundred and forty acres have been obtained, by the successive arrangements of 1805, 1806, 1816, and 1819. We saw ourselves postponed, time after time, to suit the convenience of other States, without murmur. Complaint would have been justified; it was not made; we relied upon the good faith of the Government for a performance of its obligations in reasonable time. How vainly, we but too soon discovered. The facts just stated show to the Senate that the Cherokees, without difficulty, surrendered more land than was claimed by Georgia. Why the convenience of some of the States was consulted in preference to the performance of a solemn promise, has never been explained. But this is not all; in 1817, through the agency of General Jackson, a contract was made with the Cherokees, by which their removal from Georgia was secured; a contract made at their instance, and for the particular accommodation of that portion of the Cherokees who occupied the lower towns, lying in Georgia, who desired to remove to the West, to continue the hunter's life; the upper towns, lying out of Georgia, desiring to remain permanently where they were. This contract was but partially executed; in the partial execution of it, the interests of Georgia were sacrificed to the policy of the Federal Government. The Cherokees, who wished to remain, threw every obstacle in the way of the emigration proposed. The agent, Mr. Minn, states, in his official report to the Secretary of War, that

the poor creatures who were disposed to remove, terrified by their head men, were afraid publicly to approach to consult him, or to enrol their names as required by the contract: they crept to his tent in the silence and darkness of midnight, to whisper their wishes and their fears. Uniting prudence to firmness, he was able to overcome opposition, and his official statement of 1818, to the Secretary of War, authorizes me to say, that, by a strict adherence to the contract of 1817, justice would have been speedily done to Georgia.

Without apparent reasonable cause, the contract of 1817 was formally abandoned, and that of 1819 substituted. The Cherokees in Georgia remained in Georgia, and to the whole tribe was held out the idea of a permanent residence on the spot they then occupied, with a view to their civilization. This new arrangement led us to believe that Mr. Monroe's administration was not disposed to act fairly towards the State. I mean not to prove or to assert that this belief was well founded. I seek to produce no unpleasant feelings, but merely to show the simple fact that the belief prevailed. Under the impression that we were suffering by premeditated injustice, we quarrelled with Mr. Monroe, as we would have quarrelled with any other President. We expressed our opinion in strong terms, and met the usual fate of those who dispute with persons holding the patronage and power of Government. We were abused and calumniated by all those who hoped any thing from the administration, as the price of their indignant malice. The memorials of the State Legislature to the Executive were disregarded, and the memorials of the Cherokee chiefs, praying that no farther application should be made to buy lands from them, was sent to Congress; and, finally, a message from the President connected the compact with Georgia with his project of Indian Western Government. Against this disastrous conjunction, considered as an indefinite postponement of justice to the State, we raised our voices and our hands. The right of the State was defended by committees in the House of Representatives, and so far sustained, that successive appropriations were made for a further extinguishment of the Indian title in Georgia. Under the first appropriation, negotiation with the Cherokees was opened—it failed. Under the second, a contract was formed with the Creeks. The incident and result of that contract are well known. I will not dwell upon them unless compelled to it. I have no wish to revive the remembrance of disgraceful transactions, nor to indulge unmanly triumph over our defeated adversaries. It is well known, sir, that in those Creek disturbances, the Cherokees, with a view to find support for their own pretensions, were active intermeddlers.

I feel the indulgence of the Senate in the adjournment of yesterday, to enable me to finish my remarks—remarks that ought to have been, and would have been, then terminated, but for the unexpected delay produced by the transaction of Executive business. Apology, for any time I could occupy, would be misplaced. It cannot be expected from me. The State of Georgia has been made so prominent, so wantonly prominent in this discussion, that any thing and every thing that can be said by her Representatives in this body would be excused and justified. Peculiarly appropriate to our condition is the language of Cassius, who was

"Hated by those he loved,  
Braved by his brother; checked like a bondman:  
All his faults observed, set in a note book,  
Learned and coned by rote, to cast into his teeth."

If Socrates was right when he said that it is good to have calumniators, since, if they say the truth, we may correct our faults; if not, it does no harm; we ought to be very thankful to those who, by putting us under a course of moral instruction, are striving to make us perfect. In this Hall, in the Representative Chamber, in every corner of the country, where a partisan newspaper

is to be found, we are discussed without measure, and abused without mercy. This is not all, we are important enough to attract attention in transatlantic assemblies. The Chapel of St. Stephen's has lately resounded with the name of Georgia. On the discussion of the question of universal suffrage, we have been quoted and condemned by a minister of imperial Britain; the minister of a Government whose diplomatic records are disgraced by compacts to monopolize the horrible profits of the slave trade; the records of whose legislation are stained by acts to legitimate and regulate that hateful traffic; the minister of a Government which has but just emancipated a large portion of its subjects, distinguished for wealth, intelligence, and integrity, from odious political and civil disabilities, founded solely on the color of their religious creed; the minister of a Government, a company of whose merchants owns an empire of slaves; an empire gained by a succession of crimes, black enough to make the sun turn pale, were its blessed beams affected by human turpitude; the minister of a Government, in whose colonial dependencies a black man is delivered over to the discretion of his master, and torture and death inflicted upon him is estimated in pounds and shillings, has had the effrontery, in the face of the British nation, and of the world, to upbraid Georgia for enactments to prevent the danger of servile insurrection; a danger to which we are exposed by the peculiar character of a part of our population—a population fixed upon us by the avarice of Britain's self.

The reproach was worthy of its author. A minister of the House of Brunswick, with the principles of a Jacobite; the virulent opponent of Catholic emancipation, while opposition was consistent with the retention of his place in the ministry; the eloquent advocate of Catholic emancipation when place was in danger, was true to himself and his vocation, whilst censuring one of the States of this republic. We may live, sir, to see this opponent of universal suffrage its advocate. If the great captain should again give the word of command, "to the right about face," we may hear of a splendid argument, founded upon the safety and tranquillity of the empire; we may see recorded, opinions abandoned for place, in favor of universal suffrage. Should this second miracle be worked by the conqueror of Waterloo, I trust we shall be spared the praise of the convert. His censure we shall bear without resentment. His praise would be intolerable. But, sir, what does the wretch deserve, who, copying into the columns of his newspaper, in this country, the discussions of Parliament, adds to this speech of the Home Secretary, part only of the reply of the great leader of the opposition, to induce a belief that the opposing champions united to pour out the vials of their wrath upon our heads in one undivided stream; when, in fact, the great advocate (Brougham) although condemning the spirit of our law, pointed, in marked terms, to the necessity of our condition, and taunted his adversary with the inconsistency of his condemnation of the Georgia laws, while the atrocious code of Jamaica was suffered to remain in force? The truth, the whole truth, suits not the purposes of editorial malignity. They understand how to suggest falsehood, by the suppression of truth, when the object is to deceive, by making a false impression upon the public mind. If we should feel a strong indignation at these, and similar efforts here, to prejudice the public mind; to degrade the character of our State; if, under the influence of this indignation, we should pour out our souls in torrents of bitter invective against our artful opponents, we might hope to stand excused before the throne of the Giver of life. Erring man, the child, and, but too often, the victim of passion, could not condemn us.

But, sir, I must not be withdrawn from my purpose, by the dishonorable artifices of editors of American newspapers, by the arts of Senatorial ingenuity, or by the uncalled

for and grossly inconsistent censures of the British minister. I traced, yesterday, the history of the execution of the compact of 1802 to the period when the Creek tribe was removed from our territory. The Cherokees, having been failed in their efforts to control the Creek movements, sought to strengthen themselves in their position, by forming and publishing a constitution. A few white men and half-breeds were the authors of this scheme—a scheme hateful to many of the Indians, who desired to counteract it. The half-breeds and the whites, having the funds of the tribe, were able to retain the power in their hands, and they proceeded to convert citizens of the United States into Cherokees, by the short and simple process of marriage or adoption. This decisive evidence of the intention of the Cherokees, to perpetuate themselves as sovereigns within the sovereignty of Georgia, attracted the immediate attention of the Executive of the State. Transmitting a copy of the Cherokee constitution to the President of the United States, and calling to his recollection the provision in the constitution which forbade the erection of any new State within the jurisdiction of any other State, and the formation of any State by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress, inquiry was made what measure had been adopted, or was contemplated, to vindicate the outraged sovereignty of the States of North Carolina, Tennessee, Georgia, and Alabama. This inquiry was not deemed worthy of an answer. The respect due to the State not being strong enough to tempt the Executive of the Union to direct his mind to this subject, an inquiry was made in the House of Representatives by Mr. WILDE, of Georgia. The resolution of inquiry was offered on the 21st of February, 1828, modified on the 22d at the suggestion of Mr. STONAS, of New York, laid on the table on motion of Mr. WICKLIFFE, of Kentucky, taken up on the 29th, modified by Mr. WILKINSON, who introduced it, laid on the table on motion of Mr. STONAS, taken up and passed on the 3d of March. The answer to this resolution disclosed these facts: that the Cherokee constitution had been communicated to the War Department in November, 1828, by the commissioners Cocke and Davidson; by the Governor of Georgia, in January, 1829, with his letter of inquiry; but, that the honorable Secretary had not found leisure to give his attention to this subject, until the 23d of February, 1829, two days after the call for information was proposed in Congress. The letter of the Secretary to the Cherokee agent bears date on that day. Had not the resolution of inquiry been accidentally delayed in its progress through the House, the Secretary would have had no time to devote to the subject until after Congress had acted upon it. But what was the determination of the Government, as disclosed in this extorted letter from the Secretary to the Cherokee agent? The agent was directed to inform the Cherokees, that the formation of their constitution would produce no change in their relations with the United States. The effect of this Delphic answer on Georgia and the Cherokees might have been, and no doubt was, anticipated. The Cherokees understood the response of the oracle as favorable to their wishes. The State understood that the administration had resolved not to interfere; to leave the Cherokees to make the most of their case before the tribunal of public opinion; to aid them, if aid should be found popular; in no event to act with Georgia, unless controlled by circumstances.

Thus, after the lapse of twenty-eight years, after large pecuniary sacrifices, and the more important sacrifice of political consequence, to avoid irritating and perplexing questions between the State and Federal Government, we found ourselves compelled to submit to the intrusive sovereignty of a petty tribe of Indians, or to put it down by our own authority, without the aid, and probably

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against the wishes, of the Federal administration. Every hour's delay would have strengthened the claims of the new Government, and prescription and acquiescence would have been pleaded against us with zeal and effect. The subject of extending the laws of the State over the Indians was presented to the Legislature by the State Executive. To give time to the Federal Government to fulfil its compact, by the extinguishment of the Cherokee claim to the land, and thus cut up the controversy by the roots, and to apprise the Indians, who were about to become the subjects of the State laws, of the intention to act upon them, it was proposed to make the enactments prospective. The expediency of this measure could not be doubted, and the only difficulty felt was on the question of power. We did not suppose it possible that any statesman in this country would deny that the Indians within our limits were under the discretionary control of the Congress of the United States, or of the State Legislature; and had not the arguments used here been founded upon the original right of the Indians to the soil and sovereignty of the country, I should not trouble the Senate with any inquiry going farther back than the constitution of the United States. The honorable Senator from New Jersey claims that the Cherokee Indians were, ever have been, and ever shall be, the owners of the soil, and independent of the Government of the State and of the Union; and he denies that the European discoverers, particularly the English, ever claimed or exercised the right to legislate directly over the Indians, as their dependents or subjects. The European doctrine of the right conferred by the discovery of new countries, inhabited by barbarous tribes, was, I thought, well known. The discoverer claimed the sovereignty over the discovered country, and over every thing under, upon, and above it, from the centre to the zenith. The lands, the streams, the woods, the minerals, all living things, including the human inhabitants, were all the property of, or subject to, the Government of the fortunate navigator, who, by accident or design, first saw the before unknown country. Such were the doctrines of Spain, England, and France. Portugal claimed under a Papal bull, which conferred upon the crown empire and domain over every country newly discovered on the globe, not possessed by Christian people. This Papal title was in perfect union with the prevailing sentiments of an age, in which the decrees of the Roman Pontiff made and dethroned kings, established and overturned empires. All Christendom seems to have imagined that, by offering that immortal life, promised by the Prince of Peace to fallen man, to the aborigines of this country, the right was fairly acquired of disposing of their persons and their property at pleasure. A few examples from the history of the discoveries and settlements will show the prevalent opinion of the day. The great Columbus, equipped by Spain, came authorized by Ferdinand and Isabella to take all newly discovered lands for the crowns of Castile and Leon; if successful, as his reward, plenary powers were given to him over the country and people discovered, and a large share of the profits to be derived from them promised. This grant was not extraordinary, from sovereigns who considered war with infidels, and their forcible conversion to the true faith, or expulsion from their country, as part of their Christian duty. The great discovery was made; Guanahani was found. Our imaginations have been inflamed by eloquent descriptions of this event. The gazing crowd of enraptured savages watching, on their sunny island, those vast bodies on the ocean, that, with sails spreading to the breeze, like the white wings of an enormous bird, came careering to their shores; the gaudy Europeans, pressing around their illustrious leader, splendidly attired, and moving to the sound of martial music, in all the imposing pomp of civilization, to the promised land; the savage islanders looking upon the strangers, not as men to be watched and feared, but as

angels or gods to be welcomed and adored. The first act of the Castilian admiral was an act of devotion. The symbol of his faith was erected, and amidst these wondering children of nature, this first prayer to the true God was lifted up in the Western world:

"*Domine Deus, Eterne et Omnipotens, qui sacro tuo verbo, et cœlum, et terram, et mare creasti; benedicatur et glorificetur nomen tuum, laudetur tua majestas, quæ dignata est per humilem servum tuum, ut ejus sacrum nomen agnosceret et prædicaret in hac altera mundi parte.*"

After blessing and glorifying the name of God that he had designed to make him the humble instrument of causing his holy name to be known and preached in this new world, how did the great navigator, distinguished as he was by his superior intelligence and humanity, treat the untaught children of nature? Provisions necessary for his crew were at first voluntarily offered by the inhabitants. When no longer voluntarily offered, they were procured by artifice, by playing upon their ignorant fears. When artifice did not succeed, they were taken by force. Without their consent, forts were erected on the territory occupied by Indians; and power, as far as it was politic, exercised over them. When the Admiral returned to his country, it is asserted that he lost, for a season, the favor of his illustrious patroness, Isabella, the heroism of whose character was equalled by the loveliness of her person and the tenderness of her heart, by carrying as slaves some of the inhabitants of the new world to Spain. The wretched inhabitants of the newly discovered lands soon found severe teachers of the religion of peace. The name of the Saviour of mankind was belched forth in thunder from the mouths of those dreadful fiery engines that scattered dismay and death through their helpless ranks; it broke upon the devoted race in the deep tones of the furious bloodhounds, baying at their heels, as they fled through the fastnesses of the mountains, where they sought in vain a refuge from torture and death. The dreadful ravages committed upon this helpless people called for the interference of the Government of Spain, and oppression and cruelty were reduced to system by the "repatriamientos" and "encomiendas" by Spanish legislation.

The Indians were divided among the Europeans, and recommended for instruction in the doctrines of Christianity. Forced to unnatural labor, starved, and tortured, they died, but died not in the Christian faith. They rejected with scorn the priestly promises of eternal joy, turned their eyes from the holy cross, and expired, expressing an abhorrence of that place of happiness in the world to come, into which Spaniards could be permitted to enter. Passing by the Portuguese, the polished French, and many English, what did they? The Island of St. Christopher's was settled in conjunction by the subjects of these great rivals. No Spaniard had ever fixed himself upon it. The French and English were permitted to gain foothold as friends; were received as guests. In the dead of night, when the unsuspecting natives were in a state of profound repose, the ruffians broke in upon and destroyed all the grown males, as the allies of Spain, that the island might be enjoyed in peace by the victors.

But to bring our examples a little nearer home. The New England pilgrims, who came flying from persecution, how piously they returned thanks to God for the wonderful dispensation of his Providence, which had swept away whole tribes of Indians by pestilence, in order to furnish, without expense or force, a country for a few persecuted whites from the fast anchored isle. Abandoning farther recital of acts which may be considered unauthorized by governments, let us see what were the doctrines of the English Government, to whose power we succeeded, and upon whose opinions we act. What do the grants of the Kings of England to the various proprietors contain? Ample, conclusive, and exclusive transfers of sovereignty

and domain, subject only to the reserved rights of the Crown, over all the territory described in the grant, and all the persons upon it. The proprietors exercised, at discretion, eminent domain, and when they surrendered their governments, and colonial governments were established in their place, the colonial governments exercised, under the like restriction, the same power. The Indians were considered incumbrances upon the territory granted to the proprietor, or subjected to the colonial government, and the mode of treating them was altogether discretionary. Their good will was purchased by trifling presents, by poisonous potations; when these means were insufficient, as they usually soon ceased to be, disputes arose about trade, mutual depredations were committed, and the sword acquired what could no longer be obtained for a nominal price. The whole of Rhode Island was bought for fifty fathoms of beads. No proprietor or government ever dreamed of resting a claim to title upon a purchase from the natives. An appeal was always made, in case of dispute, to the patent from the Crown. Such was the course of William Penn, in his controversy with Lord Baltimore. A few facts in relation to Pennsylvania will instruct the Senator from New Jersey as to the true light in which the Indians were viewed by Penn, whose conduct to the Indians is considered as the beau idéal of justice and humanity. Colden's History of the Five Nations contains a speech of Canasatego, a chief of the Six Nations, to the Governor of Maryland, in 1744; he complains that the Indians, deceived by the Governor of New York, conveyed their land to him, in trust, to keep it safe from the Dutch, and that the Governor sold it, afterwards, in England, to their beloved Onas. Penn had long desired to free this land from the incumbrance upon it, but the Indians would not sell. What did Onas in the matter of this flagrant fraud? No doubt he gave them back the land, and held the Governor of New York answerable for the purchase money. He kept the land, and gave the Indians some trifling presents as peace offerings for the deceptions practised upon them, and thought he acted justly and generously. A law of Pennsylvania, of 1771, exhibits, in a still stronger light, how sacredly respectful the successors of the Founders of the City of Brotherly Love were of Indian titles and Indian rights. In common with other lovers of sobriety, the Legislators of Pennsylvania forbade the sale of ardent spirits to Indians, in any larger quantity than one gallon, under a penalty of twenty pounds, half to the Government, the residue to the informer. They did not, like the good people of Connecticut, authorize the offending liquid to be taken from the poor Indians and given to the poor whites, but the sale of it was forbidden, "to prevent the Indians from being debauched by rum, and cheated of their peltrey." This praiseworthy act contains this humane and wise exception: "Provided always, That the Governor and Council, or persons by them authorized to hold treaties with any nation of Indians, may, at such treaties, give any reasonable quantity of rum, as by them shall be thought necessary," &c. To debauch the Indians with rum and cheat them of their land was quite a Government affair, and not at all criminal; but to use rum to cheat them of their peltrey, was an abomination in the sight of the law. Clear and definite ideas may be formed of the opinions entertained throughout this Anglo-American part of this continent, by an examination of the powers proposed to be given to the union of the colonies contemplated in 1754, over Indians and Indian lands, and the reasons assigned for vesting some of them in the Union. It was proposed to vest in the President General, with the advice of the Grand council of the Union, power to hold or direct all Indian treaties in which the general interest of the colonies might be concerned, and make peace or declare war with Indian nations; that they should make such laws as they judged necessary for regulating all Indian trade; that they should make all pur-

chase from Indians for the Crown, not then within the boundaries of particular colonies, or that should not be within their boundaries when some of them might be reduced to more convenient dimensions. These were the powers proposed at Albany to be given to the Union, by the unanimous approbation of the Commissioners from New Hampshire, Massachusetts Bay, Rhode Island, New Jersey, Maryland, and Pennsylvania. It is to the reasons assigned for granting these powers to which I invite attention. As to the power of peace and war with Indian nations, it is alleged in the report of this plan of the Union, (Carey's American Museum, vol. 5, pp. 287 and '8) that was supposed to be in every colony, and was expressly granted to some by charter, so that no new power was intended to be granted to the colonies. As to purchases of Indian lands, it is said, private purchases are inconvenient, and lead to wars. Public fair purchases would prevent wars. "It is much cheaper to purchase of them (the Indians) than to take and maintain the possession by force; for they are generally very reasonable in their demands for land; and the expense of guarding a large frontier against their incursions is vastly great; because all must be guarded, and always guarded, as we know not where and when to expect them." The discretionary power in the States to take Indian lands, and maintain possession by force, is here distinctly asserted; but purchase is recommended as the cheaper mode of quietly enjoying the lands granted by the Crown. Peace and war with Indian nations were made by the colonies at pleasure. The plan of the Union not being approved in Great Britain, was abandoned by the colonies. To remedy some of the evils arising in the management of colonial affairs, the royal proclamation of 1763 was issued. It was with unfeigned surprise I heard this proclamation quoted by the Senator from New Jersey as a proof that Great Britain never asserted its right to legislate for the savages, or to appropriate, without a previous purchase, their lands. I ask the Senator to examine it. It asserts:

First, the sovereignty and dominion of Great Britain over Indians and Indian territory.

Secondly, that the Indians were, as subjects, under the protection of the Crown.

Thirdly, that the right to appropriate the land occupied by the Indians resided in the Crown. It contains grants to the whites, and reservations to the Indians as hunting grounds.

Fourthly, that it was expedient to reserve the ground West of the sources of the rivers named in it, for the present, to the use of the Indians.

Fifthly, that the lands East of the sources of those rivers, part of which was then actually occupied by the Indians, should be granted at the discretion of the proprietary or colonial authorities.

The laws and usages of the different colonies throw additional light on this point, if any were required, after the assertions of authority contained in the proclamation of 1763. In war, the Indian never was treated as a civilized enemy; the males were put to death on the principle of retaliation, and the women and children sold into slavery, for the benefit of the captors. In Massachusetts, rewards were offered for captives, and pecuniary inducements held out to encourage the breed of dogs found useful to go out with the hunt-serjeant, in pursuit of Indian rebels. In Virginia, Massachusetts, Connecticut, Maryland, Pennsylvania, North Carolina, and South Carolina, laws were passed, yet on their statute books, [some of them have just been re-published by the House of Representatives,] to regulate, to protect, and to punish Indians.

So stood the question of power over the Indians when the Revolution began. On the Declaration of Independence, the States, respectively, took upon themselves all the authority Great Britain ever exercised, or claimed to

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exercise, within their limits. The Indians were at their discretion; and whether they were managed by direct enforced legislation, or by voluntary contract, no other Government could interfere between the State and the Indians residing within its territory. The acknowledgment of independence, and the definitive treaty of peace, gave to us all that we desired, in the surrender of the claims of the nation, previously the acknowledged owner of the country and the people. In that war, these savages became the allies of Britain, and were, with her, conquered in the struggle. We claimed them as our dependents, not only by the title surrendered by Great Britain, but of that obtained by victory in frequent and bloody battles. The Senator from New Jersey does not think we conquered Britain, as we are not entitled to claim Canada and the other dependencies of the British Crown. Certainly we were not conquered by Britain. What we fought for, we maintained, and it was finally surrendered to us—all the rights of sovereignty and domain in the territory formerly held as colonial possessions by Great Britain, then forming the confederacy of the United States. We never claimed Canada, nor any other British dependency.

The right of sovereignty and domain covered the claim of legislation over the Indians, and of title to the land occupied by them.

The acknowledgment was made to the United States, and the treaty of peace formed with the confederation. Is there any thing in the articles of confederation which deprives the individual States of any portion of their sovereignty over Indians or Indian lands? The confederation, nine States consenting, could make treaties. Although frequent contracts were made with Indians, and were called treaties, it never was considered that the power to interfere in any manner with the Indians in a State was comprehended within the treaty-making authority granted to the Confederacy. The conclusive evidence of this assertion is the resolution of the old Congress, directing treaties to be held with Indian tribes, whenever a majority of the States ordered them to be held—a gross and manifest usurpation, if founded on the treaty power. That it was not so intended is obvious by referring to the special grant of authority, in these words: "The Congress shall have the sole and exclusive right and power of regulating the trade and managing all affairs with the Indians, not members of any of the States; provided, that the legislative right of any State within its own limits be not infringed or violated." It would be the height of absurdity to suppose, that this clause ever would have been incorporated with the articles of confederation, if, under the power to make treaties, treaties were intended to be made with Indians. It would have been granting all power over a subject to the Confederacy, and then granting a special power over the same subject, clogged with limitations and restrictions. Under this clause, the power of the confederation was claimed and exercised. The report of the committee of Congress, in 1787, quoted by the Senator from New Jersey, is founded on this clause, not on that authorizing treaties. That report is not entitled to respect as an authority, however it may be used as argument, as the opinion of the members of the committee, Messrs. Kearny, Carrington, Bingham, Smith, and Dane, of Beverly, Massachusetts. It was never adopted, nor even discussed, in the old Congress. As matter of opinion, it sustains State claims to jurisdiction over all things and persons upon Indian territory, save only the Indians—a distinction neither supported by reason, nor founded on any principle of national law; it admits the power of the State to make the Indian tribes members of the State. The clause in the articles of confederation is sufficiently explicit, without looking to the glosses upon it. The old Congress had, under this clause, no authority to regulate trade or affairs "with Indians, members of any State." The right of a State, then exercised, or

to be exercised, of incorporating the Indians as a part of their political system, by legislation, is distinctly recognized; when exercised, the power of the Confederacy ceased. Over those not incorporated, the power granted was to be exercised without infringing or violating the legislative right of any State within its own limits. There was a practical construction of this clause in November, 1782. The Catawbas, residing in South Carolina, applied to Congress for redress of alleged grievances. A recommendation to South Carolina to take such measures for their satisfaction as the legislature of South Carolina should think fit, was the only redress obtained from Congress. No doubt justice was done by the State, as it would have been, had the application been made, in the first instance, to the State Legislature.

If I am not deceived, there is nothing in the articles of confederation that touches the power of a State to legislate for the Indians within its limits. All the acts of State legislation, to which I have already alluded, operated while the confederation existed. With one, only, of these, will I trouble the Senate—the act of Pennsylvania, of 1744, for the speedy trial of capital offences committed by any Indian or Indians in the remote parts of the province. [Mr. F. read the act.] It is not to be denied, that the power of controlling the Indians by legislation was possessed and exercised by the States subsequent to the Revolution, as it had been by the colonies prior to that event. The constitution of the United States produced very important changes in the condition of the State sovereignties. One thing is guarded by special provision—the powers not delegated to the United States, nor prohibited to the States, are reserved to the States respectively, or to the people. Has the power over Indians within the States been delegated by the constitution? It distinctly appears, by the first article of the constitution, that Indians, when taxed, are a part of the State population, and increase its political representation; excluded only when not made subject to the burthens of the State. The name of Indian is found no where else in the constitution but in that article and in this clause: "Congress shall have power to regulate commerce with foreign nations, between the States, and with the Indian tribes." To the Confederation was given power over all Indian affairs that could be exercised, without encroaching upon State sovereignty. To the Federal Government is given the power, without limitation, to regulate commerce only—an unlimited power over one object, in place of a limited power over all the objects of our Indian relations. The proceedings of the convention, on this clause of the constitution, show the intentions of the authors of it.

The Federal Convention met on the 14th of May. Up to the 18th of August no proposition was made to grant any authority to the Government about to be created over Indian affairs. On that day, powers, in addition to those previously agreed on, were proposed to be given to the Congress of the United States. Among these was "to regulate affairs with Indians, as well within as without the limits of the United States." [Journal of the Convention, p. 260.] With other propositions, this was submitted to a committee, who reported on the 22d August, that the clause in the constitution "to regulate commerce with foreign nations, and among the several States," should be amended by adding the words "and with Indians within the limits of any State not subject to the laws thereof." [Idem p. 277.] On the 31st August, this amendment, with others, was referred to a committee formed of a member from each State present. [Idem p. 318.] On the 4th of September, that committee reported that, in their opinion, the second clause of the first section of the seventh article of the constitution ought to be amended, by adding at the end, "and with the Indian tribes." This amendment was adopted on the same day. [Idem pp. 320, 324, 325.] The convention then refused to give the new Go-

verment the power to regulate all affairs with the Indians, either within or without the limits of a State. The convention refused to give the power to regulate commerce with Indians within the limits of any State not subject to the laws thereof, but gave it power to regulate commerce with the Indian tribes. The fair conclusion is, that the Congress were not intended to have any special authority over Indians within a State, subjected to State laws. If their separate existence as a tribe is destroyed by State legislative enactments, the control of the Government of the United States, even over the commerce with them, is at an end. When members of a State, paying taxes, they are enumerated as a part of the representative population; they are, as such, answerable to the United States only, as other members of the community. The acts passed in execution of this power, although founded upon the mistaken assumption that the authority of Congress was not limited to the single object of regulating commerce with the tribes, but extended to any intercourse with them, have, nevertheless, all contained the acknowledgment of the State power. All Indians within the ordinary jurisdiction of the States, and surrounded by white inhabitants, are expressly excepted from the operation of the intercourse laws, and the State Executives are vested by them, equally with the Executive of the United States, with authority to permit white persons to pass into and throughout the Indian territories. Under this construction of the constitution, the States of New England, the States of New York, of Maryland, of Virginia, of South Carolina, in relation to the Catawbas, have continued to exercise the same legislative authority over their Indians as prior to the establishment of the new Government. No difficulty has occurred, no question has been raised. What is remarkable is, that in not one of those States, until within the last ten years, have any of the Indians been fairly within the meaning of the first article of the constitution, or been embraced by the provisions of the intercourse laws. In none of these States have the Indians paid taxes; in none have they been, until lately, within the ordinary jurisdiction of the State. One act of the Legislature of New York, passed April 12, 1822, is worthy of notice, as an evidence of the undisputed power of State legislation, and of the necessity for its exercise. An unhappy creature, an old woman, was executed by the Senecas for witchcraft. The executioner was tried, convicted, and condemned, in the courts of criminal jurisdiction in New York, although the act was committed on the Seneca lands, and in obedience to the usages and customs of the tribe. The Legislature pardoned the offender, the instrument of the tribe; at the same time, to prevent a farther disgrace to the State by the commission, within its sovereignty, of similar atrocities, the Legislature enacted that the sole and exclusive jurisdiction of trying and punishing all persons, of whatsoever nation or tribe, for crimes and offences committed in any part of the State, except offences cognizable under the constitution in the courts of the United States, of right belonged to, and was exclusively vested in, the courts of justice of the State, organized under the constitution and laws thereof. It is not in the old States only that legislative power is exercised over Indians. Maine, our young sister, the birth of yesterday, has been, and is constantly permitted to legislate, not for Indians, but for Indian tribes. In 1821, Maine passed an act, in 1826 an additional act, "for the regulation of the Penobscot and Passamaquoddy tribes of Indians."

The exclusive control of the Indians is claimed as a branch of the treaty-making power, and on this rests all the arguments used here, against the right of the States to legislate for, and make contracts with, the Indians. Now, sir, I assert explicitly, that the power to make a treaty with Indians within a State is not delegated to the United States; and I assert farther, that the power of making contracts with Indians is not prohibited to the

States. The right of the United States to contract with, or legislate for, the Indians, beyond the States, is not denied; it is a necessary consequence of the controlling power of the Government over the territories of the Union. That the President has made, with the advice and consent of the Senate, various contracts with Indians, and called them treaties, is not to be denied. That various contracts have been made with Indians, by States and individuals, under the superintendence of the United States, is certain; they have been submitted, too, to the Senate, voted upon as, and have been called, treaties. What I assert is, that these instruments are not technically treaties, supreme laws of the land, superior in obligation to State constitutions and State laws. Can it be believed that the stern jealousy of the State Governments gave to the United States the power to use a miserable fragment of the population of a State, to extend, indefinitely, their authority, and narrow that of the State Government? The words of the constitution must be, indeed, clear, to reconcile us to this absurd belief. The tenth section of the first article of the constitution proves that the Indian contracts were not in the contemplation of the convention, when the treaty-making power was discussed. By the seventh article, already quoted, it is shown that a distinction is made between foreign nations, States, and Indian tribes. Indian tribes are not, in the terms of the constitution, foreign nations or States. The constitution gives to the President and Senate the power to make treaties—the prohibition to the States of the exercise of this power, covers, necessarily, the whole power granted. Let us see what this prohibition is. It is divided into two classes: "No State shall enter into any treaty, alliance, or confederation." This prohibition is absolute: treaties, alliances, and confederations, if made, must be made by the United States. The other prohibition is conditional: "No State shall, without the consent of Congress, enter into any agreement or compact with another State, or with a foreign Power." A contract made between the United States and individuals or corporations, is not a treaty; a compact by State with State, or by the United States with a State, is not a treaty. How, then, can a contract made with a petty dependent tribe of half starved Indians be properly dignified with the name, and claim the imposing character of, a treaty? Now, sir, if a contract with an Indian tribe is not a treaty, alliance, or confederation, but is a compact or agreement, the State Governments can make them at their pleasure, without the consent of Congress; that consent is required only for agreements or compacts made with another State, or with a foreign Government. This is no trifling verbal criticism; important consequences are deduced from this abuse of the word treaty.

Indian contracts made with Creeks and Cherokees by the United States, to fulfil their obligations to Georgia, under the compact of 1802, under the false title of treaties, have been pleaded in bar of the rights of the State under that compact, and asserted to be of superior obligation, not to the compact only, but to the State constitution and the State laws. As usual, when error is to be imposed upon us for truth, the magic name of Washington has been used. The venerable weight of that great name is of powerful influence. He made treaties with Indians—he consulted the Senate—he ratified treaties solemnly negotiated—he performed the obligations of national faith. Such are the general assertions made by the honorable Senator. Will he show us any treaty, made by Washington with Indians living altogether within the limits of a State? Can he show us an instance of an interference by General Washington, in the management of the Indians in any of the old States, either to prevent the formation of contracts by State authority, or the punishment of Indians by State tribunals? I will not suffer the cause of the State to rest upon the failure to produce these necessary proofs of the right to use this great name to our prejudice.

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*The Indians.*

[SENATE.]

I have before me satisfactory proof that General Washington thought, as we think, that the management of Indian affairs was a matter of discretion. Contracts or legislation, purchase or coercion, were equally at the pleasure of the United States, and one or the other to be adopted, as policy and justice should require. In laying before the Senate of the United States, on the 25th of May, 1789, the Indian contracts made by order of the old Congress, Gen. Washington sent with them a report from the Secretary of War, General Knox, of course approved by him. This report contains these sentences: "That it may be proper to observe, that the Indians are tenacious of their lands, and generally do not relinquish them, excepting on the principle of a specific consideration expressly given for the purchase of the same. That the practice of the late English Colonies and Government, in purchasing the Indian claims, has finally established the habit in this respect, so that it cannot be violated but with difficulty, and at an expense greatly exceeding the value of the object." [Executive Journal, pp. 1, 2.] This is not the language of a Chief Magistrate who felt that treaties only could be made with Indians. It is the language of a person who recommends contracts as the best of several modes of effecting an object—best, because the cheapest, and conformable to the habits of the people of whom he speaks—habits not to be violated without difficulty, and at an expense greatly exceeding the value of the object. The Senate will perceive that the doctrines expressed at Albany, in 1754, which I have quoted, are advanced by General Knox. The opinions of the two periods of time are the same. Purchase from the Indians, not because it is the only or the just mode of managing them, but as the cheapest and most convenient.

It is not in this body that it is necessary to pursue this inquiry. The Senate have decided that contracts made with Indians (on the treaty sent last year from New York) within a State, for their lands, were not such instruments as required the sanction of the Senate. The contract sent for ratification as a treaty, was returned to the President, neither ratified nor rejected. Within a few months the Governor of New York has, under a law of the State, called together the Onondas, and made a treaty with them, as it is called, in open day, and utterly disregarding the pretensions of the United States, under the treaty-making power, and the provisions of the laws regulating intercourse with Indians. The Indians not in the States are reached by the legislation of the United States; various provisions are applicable to them. The Supreme Court of the United States has pronounced upon the condition of the Indians and the Indian lands—the Indians are subject to the United States or the States—the Indian lands owned in fee simple by the Government of the United States, or by State Governments. The dependence of the Indians was asserted and maintained in our diplomatic correspondence at Ghent. By the judgment of all the authorities of the country, according to all law and all usage, the Indians are in the condition of the perpetual inhabitants described by Vattel as sometimes united to a social system without enjoying all its advantages, partaking only of those given by law or custom; the sovereign having always the power to improve that condition, as time and circumstances may permit.

The State of Georgia, after a fair investigation of her position, was confident that, never having surrendered to the United States her power over the Indians within her eminent domain, that the exercise of that power not being in any manner prohibited to her by the constitution of the United States, proceeded to follow the example of the other States; and the act of 1828 was passed, subjecting, after the 30th June, 1830, all the Indians in the State to the regular operation of the State laws. We were not permitted, unmolested, to follow in the footsteps of New York or Maine. What was not con-

sured in either, was in us a crime. The judgments of Heaven were threatened for our crying sins. We are told here, that, should we persist, a tone of moral feeling will be roused that will make Georgia tremble. Little does the Senator know the character of the State. It is not made of such frail materials. We tremble not at the approach of danger. Empty sounds do not affect our nerves. Why should we tremble, sir? What can be anticipated that we have not already endured? Falsehood? Ossa and Pelion have been piled upon us. Calumny? It has been rolled over us in volumes black as the smoke that rises from the pit of Acheron. Threats of the force of the United States? The bayonets of the regular army have been flashed in our faces, and pointed at our throats. We have endured all, without shrinking, and with no other emotion than contempt for our calumniators, and pity for the weakness of those who menaced, without the courage or the power to execute their idle threats.

Responsible to no earthly tribunal for the exercise of her sovereign authority, Georgia is not to be questioned in this body, composed of the Representatives of the States, for the wisdom, the justice, or equity of her laws. I have heretofore challenged a comparison of our Indian legislation with that of any other State. This challenge has not been accepted. I am under no obligation to join issue with the Senator from New Jersey, who chooses to complain of our act as oppressive to his favorite Cherokees. As a mark of my respect, I will, however, endeavor to correct his errors of misapprehension and of fact. The act of 1828 having been intended merely to give fair warning to the Cherokees and to the United States of the determination of the State, its provisions were not carefully considered, as a session of the Legislature was to intervene before it could take effect. In 1829, it being apparent that some, if not all, the Cherokees in the State would remain, at least for a time; after June, 1830, it was necessary to make matured and permanent provision for governing and protecting them. The law of 1829 was adopted: it puts them, in every respect, save one, on the footing of white persons, entitled to all the benefits and subject to all the penalties of civil and criminal laws. The laws and ordinances of the Cherokee tribe are necessarily annulled. This annulment, the learned Senator calls, by a strange perversion of the word, an outlawry of the Cherokees. The substitution of bad for good laws is certainly censurable; but I do not understand the Senator as pronouncing judgment of condemnation upon our code. We enjoy a comfortable state of society under it. Our friends from the North and East—from Jersey, too—find protection under it for their persons and their property, grow rich, and enjoy themselves, although outlawed, like the Cherokees. The gentleman complains that it is, in Georgia, an offence punishable by an imprisonment in the penitentiary, for any person to prevent, by threats, menaces, or other means, or endeavor to prevent, any Cherokee Indian from emigrating or enrolling as an emigrant; and an offence, punishable in like manner, if any person shall deter, or offer to deter, any Indian, head man, chief, or warrior of said nation, from selling or ceding to the United States, for the use of Georgia, the whole or any part of their land; or prevent, or offer to prevent, any such persons from meeting in council, &c. any commissioner of the United States, for any purpose whatsoever. Now, sir, this is not so: no such crime is known to the law of Georgia. To fulfil their compact of 1802, the United States, by act of Congress, offered to the Cherokees in Georgia inducements to emigrate. Among others, payment for improvements on the land occupied by them was promised to all who enrolled their names, and commissioners were appointed to fix a value upon those improvements. The Cherokee government having forbidden, under the penalty of death, any Indian from selling land to the United States, and ordered a confiscation of



the property of those who should enrol themselves for emigration, the act of Georgia was intended to counteract these provisions; to secure to the head men the right to meet the commissioners of the United States whenever they think proper, and to secure to the individual Indians the right to consult their own will, the right inherent to every freeman, of choosing the place of his residence, and changing it at his pleasure. The sections of the act of which the Senator complained as offensive are in these words:

"**Sec. 8. And be it further enacted,** That it shall not be lawful for any person, or body of persons, by arbitrary power, or by virtue of any pretended rule, ordinance, law, or custom, of said Cherokee nation, to prevent, by threats, menaces, or other means, to endeavor to prevent any Indian of said nation, residing within the chartered limits of this State, from enrolling as an emigrant, or actually emigrating, or removing from said nation; nor shall it be lawful for any person or body of persons, by arbitrary power, or by virtue of any pretended rule, ordinance, law, or custom, of said nation, to punish in any manner, or to molest either the person or property, or to abridge the rights or privileges of any Indian for enrolling his or her name as an emigrant, or for emigrating, or intending to emigrate from said nation.

"**Sec. 9. And be it further enacted,** That any person, or body of persons, offending against the provisions of the foregoing section, shall be guilty of a high misdemeanor, subject to indictment, and, on conviction, shall be punished by confinement in the common gaol of any county of this State, or by confinement at hard labor in the penitentiary, for a term not exceeding four years, at the discretion of the court.

"**Sec. 10. And be it further enacted,** That it shall not be lawful for any person or body of persons, by arbitrary power, or under color of any pretended rule, ordinance, law, or custom, of said nation, to prevent, or offer to prevent, or deter any Indian, head man, chief, or warrior, of said nation, residing within the chartered limits of this State, from selling or ceding to the United States, for the use of Georgia, the whole or any part of said territory, or to prevent, or offer to prevent, any Indian, head man, chief, or warrior, of said nation, residing as aforesaid, from meeting in council or treaty, any commissioner or commissioners on the part of the United States, for any purpose whatever.

"**Sec. 11. And be it further enacted,** That any person or body of persons offending against the provisions of the foregoing section, shall be guilty of high misdemeanor, subject to indictment, and, on conviction, shall be confined at hard labor in the penitentiary, for not less than four, nor longer than six years, at the discretion of the court."

With due deference to the gentleman, I must be permitted to say, that he gives color to his complaint of this part of our act, by omitting in his quotation, all the words necessary to a true description of the offences denounced. The threats, or other means, used to prevent emigration, the prevention, or offer to prevent, or deter, any chief, &c. from selling land to the United States, for the use of Georgia, or meeting commissioners to hold a treaty, or for any other purpose, must be by arbitrary power, or by virtue of some pretended rule, ordinance, law, or custom, of the Cherokee nation. Indictments must contain these words as descriptive of the offences charged, and if the proof does not correspond with the allegations, the acquittal of persons accused necessarily follows. A profligate attorney, anxious to extend the sphere of profitable prosecutions, might attempt to put the gentleman's construction on the act: no judicial tribunal could sustain it—every statesman must condemn it.

One of the complaints of the Senator is founded in fact. The law of Georgia does not admit the testimony of Indians against white persons, except those white persons who reside amongst them. This is the head and front of our offending. The exclusion of Indian testimony against whites

is a rule of the Virginia law—a rule adopted by North Carolina and Tennessee. The principle upon which it rests, is found in the laws of Massachusetts and Connecticut; they permit a white man to purge himself, by his own oath, from a charge made against him by Indians. But, sir, this act of Georgia was not necessary to exclude Indians as witnesses from our courts of justice. By the common law of the States they are not witnesses. Prior to 1770, the testimony of an Indian was not admitted against a slave. By a statute of that date they were. As witnesses against even free persons of color, they could not be heard, from the settlement of Georgia to the present hour. Nor is this the prejudice of Georgia only. Indians not converted to Christianity are not witnesses in any court of justice in either of the States, unless specially admitted as such by statute.

I hazard this assertion on the presumption that the rule of the English common law prevails in all the States. The rule of the common law is, any person who believes in a future state of rewards and punishments, understands the nature of an oath, knows the temporal, and believes in the future punishment of perjury, and to whom an oath can be administered, is a competent witness in a court of justice in causes civil and criminal. I will suppose a case to illustrate the application of this rule to Indians, and will, with the permission of the Senator, lay the scene in New Jersey. Imagine, sir, a crime of the deepest dye committed in sight of Trenton or Princeton. The perpetrator is unseen by mortal eye—is about to escape suspicion, when Providence brings upon him one hundred Cherokees, who seize and deliver him up to justice. His criminality can be established by the Cherokees, and by them only. He is indicted—arraigned—pleads—and a jury is charged with his cause. The Cherokees, in succession, are presented to testify. The counsel for the accused demands the previous inquiry into their religious opinions. The judge interrogates each: "Do you believe that you will be punished or rewarded after you die, for the acts done in this life?" "I don't know—I hope so." "Do you understand the obligations of an oath?" "I don't know any thing about an oath—what is it?" "Do you know that you will be punished by us if you do not tell the truth about that man?" "I do not understand your customs." Admitting the examination to be sufficient, the creed of the party, his belief in a Great Spirit, and his hope of future life strong enough to permit him to testify, by what sign will you require him to call down upon him the vengeance of Heaven, if he swears from the truth? He must be sworn. The manner of pledging himself to Heaven is indifferent, but it must be done in some form. Desire the Cherokee to raise his hand before God and affirm—he is unconscious of your meaning, and feels no solemnity in the act. Present him the sacred volume; he does not believe in it. Offer him the cross: he has no veneration for it. Lay before him the Koran: he sees it for the first time. Even the oath of the Highlander, upon the naked dirk, has no power over the savage mind. With some diligence I have sought to learn how the sanction of the wild belief of the Indians could be obtained to the statements made by them. The late Colonel Hawkins gave all the information he possessed—it was imperfect and unsatisfactory to his own mind. When Indian councils are to be held, the chiefs who are called to it prepare themselves by fasting, and the use of the black drink, for the solemn meeting. After due preparation, the council fire is lit up, and the business of the meeting is transacted. What is said in council is supposed to be in the immediate presence of the Great Spirit, who will punish those who forget their obligations to truth and to the tribe. No Indian council fire can be lit up in our courts of justice: no purification be ordered to prepare Indians to testify under the sanctions of their wild belief. Their testimony must be rejected, because it is impossible to present to them any symbol by which they feel themselves devoted to eternal punishment,

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The Indians.

[SENATE.]

if their evidence should be falsely given. The one hundred Cherokees, in the case supposed, present when the crime was committed in New Jersey, would, in succession, be rejected, and the criminal acquitted for want of evidence of his guilt. Yet, sir, the Senator from New Jersey considers the Georgia law as the *ne plus ultra* of injustice—as oppressive and grinding, and intended to drive the Cherokees from the State. That we desire the Indians to remove, is certain. We believe their removal will be beneficial to us and to themselves. That we design to compel them by unjust legislation is not true—there is not a shadow of evidence of such intention. This provision of our law, as it now stands, proves the contrary. Excluded by the existing law of the State from being witnesses, when the act of 1829 was passed, abrogating the Cherokee government and usages, it was thought just to protect the Indians by changing that law. As little apprehension was entertained of the necessity of Indian testimony against any white persons, but those residing amongst them, the excluding law was altered only as it related to the white residents in the nation. The law, as it is, is a relaxation of the former rule. As such, it demonstrates the folly of the charge, that it was intended to oppress the Indians. Horrible sufferings by the Indians from the atrocities of the whites, without the possibility of punishing the offenders, are anticipated from this law. These gloomy anticipations need not torture the Senator's mind. Such atrocities have not been committed by the whites upon their red neighbors under the old, there is not the most remote danger to the Indians under the new rule.

The honorable Senator professes to believe, and no doubt is sincere, that the preservation of the Cherokee government is important to the improvement of the tribe, and that the advancement of the Indians in the arts of civilized life will be more rapid under their own usages than under the laws of a State. The present condition of the tribe is not well understood. All agree that, by the combined effect of intermarriages with the whites and of slavery, the Cherokees in the South and those in the West are in advance of all the other tribes in their progress towards refinement. The Arkansas Cherokees claim to be first. That claim is contested by their brethren. The great man of the tribe, the inventor of their alphabet, Goes—the Cat-mo of his day—and people, have emigrated to the West. So strong is the desire of other Cherokees to follow, that expatriation is forbidden under severe penalties, by the new government of Echota. These circumstances must create some doubts in the mind of the Senator of the prudence of his efforts to keep the Cherokees on this side of the Mississippi. By what process of reasoning he persuades himself that the Cherokee laws are more civilizing than the laws of a State he has not explained.

His zeal cannot be exerted in favor of the Indian government: it is for the benefit of the race. Their government is of no consequence, except as it operates to improve their condition—moral, physical, and intellectual. But, sir, the gentleman is deceived by the too favorable representations of the missionaries, and other interested persons, as to the true condition of the Indians, and as to the effects of their new government. He believes every thing stated by the persons favorable to the Cherokees, and distrusts all statements, by whom or whenever made, unfavorable to them. In addition to the printed evidence that the flattering accounts of the civilization of the tribe are exaggerated, and too highly colored, I hold in my hand a letter from a most respectable citizen of Alabama, to the chairman of the Committee on Indian Affairs. I will not read it; it is too strong to be read aloud before this assembly. I will send it to the Senator, with this warning: if he is determined, in defiance of reason, to hold fast to his faith in Cherokee civilization and Christianity, he must cover his eyes with an Indian flap. Independent of this evidence, the Cherokee

usages, laws, and ordinances, with which the Senator seems to be so desperately enamoured, for the preservation of which he is ready to hazard the safety of the Union, by a trial of strength between the United States and all the Southern and some of the Western States, where there are Indians, might serve to give him clear views of the civilization of the Indians, and the wisdom of the Cherokee government. Some of these usages, laws, and ordinances, merit a brief notice.

Polygamy is allowed by usage—by ordinance, white men are forbidden to have but one wife, and it is recommended that all others should also have but one. A prohibition to an Indian of more than one wife would have shocked their prejudices too much; a recommendation was, therefore, substituted. Does the usage, corrected as it is, meet the Senator's approbation?

"If a man overtakes a horse thief, and his anger is very great, he may put the thief to death—the death is to remain on the conscience of the murderer—no satisfaction is to be claimed for the offence." Is this provision suited to the gentleman's ideas of the regular administration of public justice?

"An assault, with intent to commit murder, rape, or robbery, is punished by such fine as shall be assessed by a jury, not exceeding fifty dollars, and by such corporeal punishment as the jury may inflict, not exceeding fifty stripes, on the bare back." Are the penalties awarded adequate to the atrocity of these offences?

The moral discriminations in the Cherokee laws will be fully understood, by comparing these with ordinances of a recent date.

All persons who shall leave their houses, farms, or other improvements, and bind themselves to emigrate, by enrolment or otherwise, with intent to remove out of the nation, as emigrants to another country, forfeit all right to the houses, farms, or other improvements, so left.

All persons who enrol for emigration, under the authority of the United States, forfeit their citizenship. The sale of improvements to any person so enrolled, is punished by fine, not less than one, or more than two thousand dollars, and by one hundred lashes; the convicted person being thereafter ineligible to any office of honor, profit, or trust, in the nation. Indians enrolled for emigration, were declared to be intruders, and liable to punishment, at the discretion of the principal Chief, if they did not remove within fifteen days after the 31st of October, 1829.

For the preservation of ordinances, thus marked, the honorable gentleman invokes the agency of the Senate; condemns the State of Georgia, and, without having clearly comprehended, censures her laws. It is for a Government interfering, by severe penalties, with the personal rights of its people, to remain or to remove at their pleasure; to sell or to retain their improvements at discretion; that his unabated zeal has been exerted. It is for this Government, he desires to compel the President to make war upon a State. For disputing its authority and annulling its laws, he calls down upon Georgia the thunders of Divine wrath. Verily, sir, it requires the exercise of some forbearance, to dismiss this subject without farther remarks upon the opinions and sentiments which the gentleman has expressed. For his misapprehension, and, if successful, mischievous efforts, I trust he will receive the appropriate reward; that not the poor Cherokees who remove to the West, only, may look back to bless him, but that he may receive the blessings of all the Cherokees, of those who remain and those who remove. For his prejudiced examination, and unjust condemnation of our cause, our curses will not follow him. Charitably believing in the purity of his motives, giving him credit for honest but mistaken zeal, if unable to correct, we can at least pardon his errors.

[Here the debate closed for this day.]

FRIDAY, APRIL 16, 1830.

## INTERNAL IMPROVEMENT.

On motion of Mr. KING, the Senate proceeded to the consideration of the bill making appropriations for examinations and surveys, and also for certain works of internal improvement, with the amendments.

Mr. McKINLEY then moved to amend the amendment in the first section, in the following words: "For completing the surveys for a canal, to connect the waters of the Atlantic with the Gulf of Mexico, ten thousand dollars," by adding the following words: "And it shall be the duty of the Secretary of War, to cause a detailed report to be made, showing the practicability or impracticability of making a ship or other canal, and the reasons for either, with an estimate showing the probable expense and advantage of such canal as may be considered practicable."

Mr. McKINLEY said his object in moving this amendment, was to obtain some practical results from the making of these surveys; and that the Secretary of War and the Engineer officers might be given to understand, that, when surveys were made, something was to be done in consequence. He wished to know whether any practical good was to result from all the expense of making examinations and surveys.

Mr. McKINLEY'S amendment to the amendment having been agreed to:

After some remarks from Mr. JOHNSTON, the bill was reported to the Senate as amended; when, the first and second amendments having been concurred in,

Mr. McLEAN moved to amend the third amendment by adding an appropriation of thirty-two thousand dollars for the purpose of opening, grading, and bridging the continuation of the Cumberland road from St. Louis to Jefferson city, in the State of Missouri; and an appropriation of forty thousand dollars, instead of twenty thousand dollars for the purpose of opening, grading, and bridging the same road in the State of Illinois.

On the question to concur in the third amendment, as amended, as follows:

At the end of the bill insert—

"Sec. 2. And be it further enacted, That the sum of one hundred thousand dollars be, and the same is hereby, appropriated for the purpose of opening, grading, and making the Cumberland road, westwardly of Zanesville, in the State of Ohio; and that the sum of sixty thousand dollars be, and the same is hereby, appropriated for the purpose of opening, grading, and bridging the Cumberland road, in the State of Indiana, commencing at Indianapolis, and progressing with the work to the eastern and western boundaries of said State; and that the sum of forty thousand dollars be, and the same is hereby, appropriated for the purpose of opening, grading, and bridging the Cumberland road, in the State of Illinois; that the sum of thirty-two thousand four hundred dollars be, and the same is hereby, appropriated for the purpose of opening, grading, and bridging the continuation of the same road from St. Louis to Jefferson city, in the State of Missouri; which said sums shall be paid out of any money not otherwise appropriated, and replaced out of the fund reserved for laying out and making roads, under the direction of Congress, for the several acts passed for the admission of the States of Ohio, Indiana, Illinois, and Missouri, into the Union, on an equal footing with the original States.

"Sec. 3. And be it further enacted, That, for the immediate accomplishment of these objects, the superintendents heretofore appointed, or hereafter to be appointed, in the States of Ohio, Indiana, Illinois, and Missouri, shall, under the direction of the President of the United States, faithfully execute the work, and disburse the money, giving bond and security as he shall direct, and receiving such compensation as, in his opinion, shall be equitable and

just, not exceeding to each that heretofore allowed by law to the superintendent of the Cumberland road, in the State of Ohio."

It was determined in the affirmative, by the following vote:

YEAS—Messrs. Barnard, Barton, Benton, Bibb, Burnett, Chambers, Chase, Clayton, Dudley, Frelinghuysen, Grundy, Hendricks, Holmes, Johnston, Kane, Knight, McKinley, McLean, Marks, Naudin, Robbins, Rowan, Ruggles, Seymour, Silsbee, and Willey.—26.

NAYS—Messrs. Adams, Bell, Brown, Dickerson, Ellis, Foot, Hayne, Iredell, King, Smith, of South Carolina, Sprague, Tazewell, Troup, Tyler, White, and Woodbury.—16.

Mr. DICKERSON moved further to amend the bill, by striking out in the first section, the words, "for completing the survey and estimate of a canal to connect the waters of the Atlantic with the Gulf of Mexico, ten thousand four hundred dollars. And it shall be the duty of the Secretary of War to cause a detailed report to be made out, showing the practicability of making a ship or other canal, and the reasons for either, with an estimate of the probable expense and advantages of such canal as may be considered practicable." He thought it would be entirely useless; that it would be an unnecessary expense; because it would be recollected that, on this very subject a report had already been presented through the Secretary of War, from the board of engineers, on the subject of this survey; and it appeared to him, from this report, that the work would prove utterly impracticable. His objection then was, that though this survey had already been made, at a very great expense and with very great care he had no doubt, still we had not yet obtained the opinion of the engineers that the experiment would prove successful. Until such opinion was obtained; until the board of engineers should say whether the work was practicable or not practicable, he must vote for the amendment to strike out this section.

Mr. JOHNSTON said that the appropriation now asked was for the express purpose of ascertaining the fact of the practicability or impracticability of the contemplated canal. The object of the bill [said Mr. J.] was to get information; and how then could information be obtained, unless the bill passed making an appropriation to ascertain the practicability of opening a ship channel or a canal? Some progress had already been made. The engineers had gone on the route; had ascertained the impracticability of making a channel through the St. Mary's, and had then proceeded to the St. John's, where he was satisfied that the project would be successful. The information we now have [said Mr. J.] is, that a channel is practicable, though we have no information of the cost or of the character of the soil to be excavated. The character of the soil itself might be such as to render the attempt impracticable. It was on these last points that information was desirable. When the reports were made, the subject would arise before Congress, whether the work would or would not be worthy of cost.

Mr. HOLMES considered the part of the bill proposed to be stricken out the best part of it. "All the rest of the bill was framed for the benefit of the West, while this part was intended to benefit the South and the East as well as the West. He looked upon the measure contemplated to be one of the utmost importance to the Eastern States, and indeed to the commerce of the whole Union: he would do almost any thing to avoid that dangerous passage round Cape Florida; and he hoped this part of the bill, promising so desirable a result, would be permitted to remain.

Mr. CLAYTON said he was anxious to retain the clause of the bill which this amendment proposed to strike out. He was satisfied that the work was one of great national importance. The Senator from New Jersey [Mr. DICKERSON] wishes information as to its practicability. Mr. C.

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Internal Improvement.

[SENATE.]

said, for his own part, he was perfectly satisfied of its practicability; and the only question presented to his mind then was, is it expedient to carry the work into effect? On this point he agreed perfectly with the honorable gentleman from Maine, [Mr. HOLMES] it would connect us with our Western brethren; it would afford important facilities for the transportation of our troops and munitions in time of war; it would prove a source of wealth in times of peace. The question now was, is it valuable? Is it practicable? He was entirely willing to appropriate ten thousand dollars to ascertain its practicability; of its value he had no doubt.

Mr. FORSYTH had always been in favor of the project of a canal through the Territory of Florida, and, did he believe that the passage of this bill would accomplish so desirable a result, he would give it his cordial support. He had had the honor to present a petition on the subject to the National Legislature, from the town of St. Mary's in Georgia, in which the importance and utility of a canal through the Territory of Florida to the Gulf of Mexico were fully developed. In this bill the appropriation was not for ascertaining the practicability of making a canal, but for its location; for a former appropriation had been expended in ascertaining its practicability. The reports already received sustained one or the other of two facts; whether it were practicable or impracticable to make a canal. Of the two routes examined by the engineers, one had been pronounced suitable for a canal, the other not so. Now, notwithstanding the reports of the officers of the engineer corps, he [Mr. F.] was satisfied, from the information he had received, that there was no possibility of making a canal through either of the routes that had been examined. The first route, by the St. Mary's river, had been abandoned by the engineers; and the practicability of the second route, the one recommended by them, to say nothing as to distance, depended upon the solving of the problem whether water for a canal could be supplied by filtration. He, for his part, did not think this could be depended on; he would prefer cutting the canal a little higher up, where a more plentiful supply of water could be obtained, though the route would be somewhat longer. Respecting the cost, the board of engineers was not now prepared to make an estimate; the appropriation heretofore made by Congress had been exhausted in examinations as to the practicability of cutting a canal through a country as yet but partially known; and, in their own opinions, the practicability of the question had been settled. If the Senate agreed with them, they ought to go on: for after an expenditure of so much money, the Senate ought not to stop, because Congress was in a manner pledged to perform the work. As he, however, seriously doubted whether a canal, of twenty-five miles in length, could be supplied with water by filtration, he should vote against that part of the bill; though he trusted that the Senate would make the appropriation, if it coincided in opinion with the corps of engineers.

Mr. DICKERSON said he would be as glad to vote for any appropriation that would prove advantageous to the country at large, as any other gentleman in that Senate; but, even if the canal should be found practicable, he doubted the expediency of cutting it, because [said Mr. D.] we all know that, when piracy raged on our southern coast to the greatest extent, insurances could be effected at New York, at one and a half per cent. But, sir, [said Mr. D.] the engineers who had already surveyed the route of this canal, in their report to the Secretary at War, say, that twenty-five miles in one route, and forty-five miles in another, must depend entirely, for that all-important element, water, on filtration. Why, sir, [said Mr. D.] from the information already obtained, I am fully and thoroughly convinced of the impracticability, or rather the uselessness, of the contemplated canal; but if gentlemen are disposed to make another appropriation for another experiment, let them select another route.

Mr. HENDRICKS thought it would be admitted by every Senator that the practicability of constructing this canal was not doubted by the corps of engineers. They stated the data on which they had made their calculations, and gave the character of the substrata of earth it would be necessary to operate on. One route, the one proposed by them, required, for twenty-five miles, a supply of water by the process of filtration, but this was for the canal, and not for lockage; the ponds at the summit level being amply sufficient for that purpose. The engineers say, in a page of the report not read by the gentleman from Georgia, that there were two ponds sufficient to furnish a supply of water for the locks, and that filtration must be depended on for water for the bed of the canal; and that the foundation being of a rocky and sandy nature, the process of filtration will be greatly facilitated. They moreover state that, by the sinking of shafts, it can easily be ascertained whether filtration will be successful. Now, in his [Mr. HENDRICKS'] opinion, the sinking of shafts was absolutely necessary for ascertaining the practicability of procuring the requisite supply of water. The engineers say they may be mistaken; but, if they are mistaken, we cannot know that they are so, without making the appropriation; for the shafts must be sunk for the purpose of determining the substrata, and otherwise testing the practicability of the scheme. He should vote for a farther experiment, as he was satisfied of the vast importance and utility of the measure.

Mr. JOHNSTON said, if this were an appropriation for commencing a canal, then the inquiry alluded to by the gentleman from New Jersey would be highly proper and necessary; but, sir, said he, we have such information as is necessary to justify the appropriation, which this amendment proposes to strike out. A farther reconnaissance of the ground, through which this canal is to pass, is absolutely necessary, in order to ascertain the permanent utility of the work, after it shall have been carried into effect. We are not [said Mr. J.] asking an appropriation for the purpose of finding out the practicability of the canal: nor yet for commencing the work; the one has already been ascertained, and the other is not, at this time, desired; but we want to ascertain a fact, involved in a contingency set forth in the report of the Board of Engineers, and this fact was necessary before Congress would incur the great expense of engaging in the work. He was not particular about the location of the canal, whether higher up or lower down; but, for his own part, he was satisfied of the great importance of the work, and the money already expended in making surveys would be thrown away, unless another summer was devoted to a more general reconnaissance, and a more minute examination of the soil. He thought that the information to be derived from these examinations extremely desirable, before any steps were taken to commence the work. He was of opinion, from the facts stated in the report of the survey that has already been made, that the work was not only practicable, but would be found of the highest utility. The great difficulty arose from the character of the soil; upon this, entirely, the permanent utility of the canal depended. We have seen, in the Delaware and Chesapeake, and some other canals, the injurious consequences of a want of information as to the character of the soil through which they pass. It was therefore necessary to ascertain the nature of the soil of the different substrata through which this canal is to run.

Mr. LIVINGSTON said that when the Senate came to consider the question of striking out this part of the bill, they were to determine whether they will or will not carry on a system of canals most important to our national defence in time of war. When the system was first proposed, it was argued that, for the important points of defence and internal commerce, in time of war, canals ought to commence at New York, and end at the Mississippi, se-

curing the transportation of troops and stores, with a safe commercial intercourse, without the possibility of interruption from an enemy. Part of the system was now already in operation. We have a commerce from the Delaware to Norfolk, which no enemy can molest. He thought that, having already spent ten thousand dollars in ascertaining the practicability of the measure proposed in the bill, Congress ought not now to hesitate, but to go on, regardless of the paltry expense to be farther incurred. In reply to some remarks of Mr. DICKINSON, that, although filtration might be depended on for a supply of water during some seasons of the year, yet, in the dry seasons, the supply would fail from evaporation, Mr. L. would make one or two remarks. He lived in a country similar to the one through which the canal is to run, and in that country, (Louisiana) water was always to be obtained by filtration. The water was found never lower than two feet from the surface. But Mr. L. did not rely on his own information, solely; he had formed his opinion from the report of the head of the engineer corps, [General Barnard] whom Mr. L. eulogised as one of the most able and scientific men in this or any country. Mr. L. deprecated the idea of abandoning an object that promised to be of such vast utility, on account of the trifling expense to be incurred. Talk of a breakwater [said he] at the mouth of the Delaware, and no objection is made to the appropriation of millions; but for the South comparatively nothing was done. When this, the greatest of all national works, calculated to be of the greatest benefit to the commerce of the North and East, as well as of the South, and unequalled for the purposes of commercial safety and cheapness of defence in time of war, the cost of a few thousand dollars is to be counted.

Mr. FOOT thought it a little remarkable that the gentleman from Louisiana [Mr. LIVINGSTON] should say that the East were opposed to the appropriation of money for the improvement of the South.

[Here Mr. LIVINGSTON explained: he did not charge the East particularly with opposition to improvements in the South.]

Mr. FOOT continued. The Senator from Louisiana did say that we freely gave two millions for the erection of a breakwater at the mouth of the Delaware, but objected to expend ten thousand in the Southern States; and that such a work was as advantageous to the people of the East as to those of the South. If [said Mr. F.] it be as advantageous to the East as to the South, he could see no reason why the East should oppose it. For his own part, he would vote against striking out the section. He was willing to make the experiment, though he did not believe that the work would turn out practicable; it depended entirely on an isolated contingency—alluvial soil.

Mr. LIVINGSTON asked for the ayes and noes on the question, which were ordered.

Mr. CLAYTON said the question now to be decided was, whether we will appropriate ten thousand dollars for the purpose of ascertaining the practicability of the contemplated canal. The gentleman from Louisiana says that nothing will be done for the Southern States. Mr. C. repelled this assertion, and observed that, as he understood the gentleman from New-Jersey, [Mr. DICKINSON] his objection to the appropriation was founded upon the soil, or rather the supposed impracticability of the undertaking, and not from sectional motives. Mr. C. made no such objections. He thought it a work of great national importance to the East, South, and West, and exceeded by none in the Union.

Mr. FORSYTH said, the gentleman from Delaware seemed to think that the practicability of making the canal depended upon the cost. Now, the practicability of making a canal depended upon the nature of the country, the propriety of making the appropriation was a question of amount. No one doubted that the canal could be made, if an adequate supply of water could be obtained. He

regretted that he did not agree in opinion with the Board of Engineers, as he was decidedly friendly to the work; but he was convinced that the hope of obtaining water by filtration was futile in the extreme. In the beginning of the year, water could be obtained by that process in abundance: but when the dry season commenced, the evaporation was such that water could only be found at a distance of sixteen feet; even the wells were left dry. Mr. F. was not going to place his opinion in opposition to that of the gentleman at the head of the engineer corps: he had the highest respect for his talents and scientific attainments; and, so far as that gentleman's professional knowledge extended, he would yield to him; but, in matters where his own observation was sufficient to form an opinion, he would yield to no one. Besides, the chief engineer did not go on the grounds: he was obliged, in making up his reports, to get the principal part of his information, as to the face of the country, from an ignorant and sparse population. In answer to the remarks as to the money expended on Internal Improvements in the South, he would say that the South had been hardly dealt with. It was well known that the gentlemen who represented that section of the country had constitutional scruples, which prevented them from voting for appropriations for works of Internal Improvement. The gentlemen in the majority, who advocate such measures, had no such scruples. Why, then, did they not sometimes extend their bounty to the South? Of all the various works of Internal Improvement, on which millions had been expended, where were any for the benefit of the South? The money of the Government had been poured in one continued stream on more favored sections of the Union, while the South had been entirely neglected. All the gentlemen who were in favor of such measures professed their willingness to vote for appropriations for Internal Improvements in the South, but they waited to be solicited to do so by the Southern members, and they will consider solicitation as an abandonment of principle. How many appropriations, he would ask, had been made for the South? For the State of Georgia, not a dollar. An application was made to the General Government for the expenditure of a small sum in Georgia, for an object deemed of importance to her, and the President refused, on the ground that no officer of the engineer corps could be spared, and that the money had already been expended on objects of greater importance. Mr. F. trusted that the time would come when the Southern States would see their true interests, and demand of Congress, if the principle must be carried on, their full share of the money expended.

Mr. JOHNSTON said, it was true, little was done for the South, by way of appropriations for Internal Improvements; but that did not arise from any hostility on the part of the East to the South, but from the fact that the South would not only not ask, but even not receive, appropriations for Internal Improvements. He observed that appropriations had been made for every object in the South, for which they had been asked; and the East expressed pleasure in making such appropriations; but it was well known that Congress never made appropriations, unless on the application of a State, a Committee, or a Representative. When an appropriation is asked by the South, it will be cheerfully granted. There is, at present, [said Mr. J.] a proposition before Congress for a subscription to stock in a rail-road company in the South; but, when it comes up for consideration, we may perhaps be told that it is unconstitutional and unjust to grant it.

Mr. KING observed, that no one could have a greater inclination than himself to favor the plan of a canal from the Atlantic to the Gulf of Mexico, by which a most dangerous navigation would be avoided. He had voted for the survey, under the hope that a channel might be made for vessels which navigate the ocean; but, from examination of the report, his mind had been brought to the conclusion that this was wholly impracticable. The country

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proposed to be canalised was not like that bordering on the Mississippi, where, if a hole is sunk two feet deep, it is immediately filled with water; but the canal is to be one hundred and thirty feet above the level of the sea, the water to be supplied by filtration, and that in such small quantities as to make a navigation but for boats of small burthen. Was any gentleman willing to make an appropriation to ascertain the practicability of cutting a canal through which sea vessels cannot pass? For his part, he was most favorably disposed towards the measure; the section of country he immediately represented was deeply interested in the subject; and, could he believe that any practical good would result from making the appropriation, he should unhesitatingly vote for it.

Mr. LIVINGSTON deprecated the opposition which arose from the dimensions of the canal. He thought that, in times of war, vessels drawing seven feet water would be as useful as those drawing fifteen. Some wanted a canal ten feet deep, some seven, and some five; and, unless they obtained such as they wanted, they would vote against it. This [said Mr. L.] is not my plan. One gentleman says he will vote against this question, though he would not vote for it in a different shape. But how is it to be known whether that other will be presented us? And, if another question were presented us, those who voted for this would, perhaps, object to vote for the other. If the friends of Internal Improvement wished that system to prosper; if they wished it to become the permanent policy of the country, they must make the benefits resulting from it reciprocal; otherwise, it must fail; he predicted that it would be utterly abandoned.

After some further observations from Mr. FORSYTH, Mr. CHAMBERS said he had paid some attention to this subject, and it appeared to him that the objections urged to the section under debate were groundless. He would beg leave to call the attention of the Senator from Georgia, and others who objected to the appropriation, to the report of the Secretary at War on this subject, from which it appeared, that, in order to complete the survey, it was necessary to sink shafts in part of the route of the canal, and some other measures adopted, in order to ascertain if twenty-five miles could be supplied with water by percolation. On this point the scientific gentlemen who had made the survey, appeared to doubt, and he thought that means ought to be afforded for solving these doubts. He was willing to make the experiment, and to suffer the bill to pass in its present shape.

The question was then taken on striking out the amendment, and it was decided in the negative—Yeas 15, nays 31, as follows:

YEAS—Messrs. Adams, Bibb, Brown, Dickerson, Ellis, Forsyth, Grundy, Hayne, Iredell, King, Smith, of S. C., Tazewell, Troup, Tyler, White—15.

NAYS—Messrs. Barnard, Barton, Bell, Benton, Burnett, Chambers, Chase, Clayton, Dudley, Foot, Frelinghuysen, Hendricks, Holmes, Johnston, Kane, Knight, Livingston, McKinley, McLean, Marks, Naudain, Noble, Robbins, Rowan, Ruggles, Sanford, Seymour, Silsbee, Sprague, Webster, Willey—31.

Mr. TYLER then said that he did not rise to make a speech against the bill. The time for that had, he feared, gone by. He rose to state a fact, to show how this Government acted. Commencing with a principle narrow and restricted, it served as an apology for unlimited and unrestrained action; let it put out once to sea, and whatever port it held in view at the time, it very soon found itself at large upon the ocean, and visited in its course every coast and harbor. So in reference to this road. The Government started upon the principle of devoting to the construction of this road three per cent. arising out of the sales of the public lands lying in Ohio, Indiana and Illinois, and in what had it terminated? He desired to call the attention of the Senate to the facts. The whole

amount of sales of the public lands lying in the State of Indiana, amounted the last year to four hundred and ninety-two thousand dollars. Now this bill appropriated two hundred and thirty-two thousand four hundred dollars, and that of last year amounted to two hundred and twenty thousand dollars; adding these two sums together, with the commissions chargeable on the sales, and there is left the paltry sum of fifteen thousand dollars to flow into the treasury. Thus then it appeared that, for this single road, two years of appropriations have nearly consumed the amount arising from the last year's sales of land in one of the most flourishing of the new States. He had made this statement, and submitted it to the Senate without comment.

Mr. HENDRICKS replied, that the gentleman from Virginia had made an estimate showing that the sales of lands in Indiana had amounted in the last year to four hundred and ninety-two thousand dollars, the appropriation of this year to two hundred and thirty-two thousand four hundred dollars, and the appropriations of the last year to two hundred and twenty thousand dollars. Now, he would only remark, how obviously unfair this statement was. The gentleman contrasted the receipts from the sales of public lands for one year in one State, with the amount expended on works of internal improvement in four States in two years.

The question was then taken, and the amendments were ordered to be engrossed, and the bill read a third time.

#### THE INDIANS.

The Senate resumed, as the unfinished business, the bill providing for an exchange of lands with the Indians residing in the United States, and their removal beyond the Mississippi, when

Mr. SPRAGUE addressed the Senate at length against the bill, and in reply to Mr. FORSYTH; and occupied the floor to a late hour.

SATURDAY, APRIL 17, 1830.

The Senate having resumed the bill to provide for an exchange of lands with the Indians;

Mr. SPRAGUE concluded his remarks in reply to Mr. FORSYTH and Mr. WHITE, as follows:

The gentleman who has just resumed his seat (Mr. FORSYTH) has indulged in a wide range of remark in defence of his State, against imputations which he supposed to have been elsewhere cast upon her. This course may have been very proper in him—I fully appreciate the motive which induced it. But I have no occasion to follow him; I have no wish to derogate in the least from the character of Georgia, but rather that it should be as elevated as her most devoted sons can desire. I shall speak of her so far only as may seem necessary to the free discussion of the subject before us.

This bill and amendment, and the discussion which they have produced, [said Mr. S.] involve the question of the rights and duties of the United States, with respect to the Indian tribes generally, but more especially the Cherokees. With that people we have not less than fifteen treaties; the first made in the year 1785, and the last in 1819.

By several of these treaties, we have unequivocally guaranteed to them that they shall forever enjoy—

1st. Their separate existence, as a political community.

2d. Undisturbed possession and full enjoyment of their lands, within certain boundaries, which are duly defined and fully described.

3d. The protection of the United States against all interference with, or encroachments upon, their rights, by any people, State, or nation.

For these promises, on our part, we received ample consideration—

By the restoration and establishing of peace.

By large cessions of territory.

By the promise on their part to treat with no other State or nation, and other important stipulations.

These treaties were made with all the forms and solemnities which could give them force and efficacy; by commissioners, duly appointed with full power; ratified by the Senate; confirmed by the President; and announced to the world, by his proclamation, as the binding compact of the nation, and the supreme law of the land.

The Cherokees now come to us, and say that their rights are in danger of invasion from the States of Georgia and Alabama; and they ask if we will extend to them the protection we have promised, and perform the engagements we have made. This is the question which they distinctly propound, and which we must unequivocally answer; and we are now discussing what our response shall be. There is a broad line of distinction between the claims of Georgia, and those of Alabama and Mississippi, which seems heretofore to have been unobserved, but which I shall endeavor to keep in view. Let us first inquire what our duties are with respect to Georgia; for if her pretensions are unfounded, those of Alabama and Mississippi fall of course. It is not necessary to determine whether the Indians have just grounds for their apprehensions or not, because the question is whether, if the rights secured to them by our treaties should, at some future day, be invaded, we will perform our engagements? But have they not some cause for their present alarm? In December, 1827, a committee of the Legislature of Georgia made a report, accompanied by sundry resolutions, which were accepted by both branches, and the resolutions also received the approval of the Governor. In the report we find the following language, respecting the territory of the Cherokees: "The lands in question belong to Georgia—she must and she will have them." And in the resolutions, the following:

*"Resolved, That all the lands appropriated and unappropriated, which lie within the conventional limits of Georgia, belong to her absolutely; that the title is in her; that the Indians are tenants at her will; that she may at any time she pleases, determine that tenancy by taking possession of the premises, and Georgia has the right to extend her own authority and laws over the whole territory."*

*"Resolved, That Georgia entertains for the General Government so high a regard, and is so solicitous to do no act that can disturb or tend to disturb the public tranquillity, that she will not attempt to enforce her rights by violence, until all other means of redress fail."*

*"Resolved, That, to avoid a catastrophe which none would more sincerely deplore than ourselves, we make this solemn appeal to the United States, &c."*

It is thus asserted as the right, and avowed as the determination, of Georgia, to exercise absolute power over the Cherokees, and to take their land at all hazards—even by violence, if other means should fail. The gentleman from that State [Mr. FORSYTH] observed, in the commencement of his speech, that he felt himself bound in conscience to relieve his friend from New Jersey from all apprehensions of a violation of the faith of the nation, by demonstrating that the claims of Georgia were supported by treaties. And he proceeded to do so in language so strong, and in tones so triumphant, as to make an evident impression upon members of the Senate. Let us deliberately examine his argument.

The first treaty referred to was that of Galphinton, in 1785, by which certain concessions were made to Georgia. But that was by the Creeks, and by them only, and had no relation to the Cherokees.

Mr. FORSYTH explained, he had remarked upon that treaty in answer to the gentleman from New Jersey, [Mr. FRELINGHUYSEN] and not as bearing upon the rights of the Cherokees.

Mr. SPRAGUE resumed, he was glad to receive the gentleman's explanation; it precluded the necessity of any further remark upon that topic.

The treaty next cited was that of Dewitt's corner, A. D. 1777, between South Carolina, Georgia, and the Cherokees, by which the latter acknowledged that a portion of their country, extending as far as the Unacaye mountain had been conquered, and they made a cession of the same by defined boundaries, to South Carolina, and to her only. The conquered and ceded territory lies wholly within that State; and it is not now, and has not been for at least one generation, either claimed or occupied by the Indians. What right can that confer on Georgia, to lands now owned and possessed by the Cherokees?

The next position was, that the right of this State was derived under the ninth article of the treaty of Hopewell, made between the United States and the Cherokees, in November, 1785; by which they gave to the United States the right of managing all their affairs. To this Georgia was no party. But the gentleman contends that the United States transferred all their power and claims, under the treaty, to that State, by virtue of the compact of 1802; and that we now cannot interfere with her pretensions. The clause in the compact, which is relied upon, is this: the United States "cede whatever claim, right, or title, they may have to the jurisdiction or soil of any lands lying" within the limits of Georgia.

Does this relinquishment of the right of the United States to the soil and jurisdiction of the lands purport to transfer a pre-existing treaty with the Indians? Was it so intended? And if it had been, is the power which the treaty confers to legislate for their benefit, in its nature transferable? The article is in these words: "For the benefit and comfort of the Indians, and for the prevention of injuries and oppressions on the part of the citizens or Indians, the United States in Congress assembled shall have the sole and exclusive right of regulating the trade with the Indians and managing all their affairs, in such manner as they think proper." The power given is strictly personal and fiduciary; to be exercised according to our judgment upon future events, and for their benefit. Can even a guardian transfer his rights and duties at pleasure? By the constitution, the fundamental compact, Georgia has given to the United States the right to legislate, in certain cases, over her citizens, for their benefit; for example, to organize, arm, discipline, and call forth her militia. Can the United States transfer this right to South Carolina, or any other sovereign?

The express words of the article require this right to be exercised by the United States "in Congress assembled." Can we, without the consent of the other party, strike out these words, and insert the Legislature of Georgia?

Again, in order to see that this power is properly exercised, the thirteenth article secures to the Cherokees "the right to send a deputy of their choice, whenever they think fit, to Congress." Shall he come here to watch over the legislation at Milledgeville?

But, if this power was in its nature transferable, it must be so subject to the restrictions and limitations in the treaty contained; among which are the following:

1st. The Cherokees shall continue to exist as a distinct political community, under the protection of the United States.

2d. That they shall enjoy the undisturbed possession of their lands.

3d. That the power to manage "their affairs" shall be exercised "for the benefit and comfort of the Indians, and for the prevention of injuries and oppressions."

Did this give to the United States the right to drive them from all their lands? or to destroy the Cherokee nation, to strike it out of existence; and, instead of managing for their "benefit," to annihilate "their affairs" as a body politic? Or could we convey a greater right than we ourselves possessed?

But this is not all. The gentleman passed over, in ut-

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ter silence, a most important event which intervened between the treaty of Hopewell and the compact of 1802. It is the treaty of Holsten, made in 1791; by which the United States again promised the Cherokees to protect them in their rights as a nation; and the seventh article holds the following language: "The United States solemnly guarantee to the Cherokee nation all their lands not heretofore ceded." If any right was transferred to Georgia, it would be such only as existed at the time, and subject, of course, to the stipulations of that pre-existing treaty.

There is still another view of this subject. Are we not bound to see that our treaties are fulfilled? The Indians say that their very existence was threatened, and inquire of us, whether we will perform our solemn promise of protection. What shall we answer? That we have conveyed that promise to another! That we have transferred our obligation to Georgia! have given her a license to violate our treaties! May they not reply, that the very purpose for which they purchased our guarantee, and the protection of the strong arm of our Government, was to secure them against the encroachments of their white neighbors in that State?

The compact of 1802, which has been so much insisted upon, was made between the United States and Georgia. The Cherokees were not parties, nor even assented to it. Of course it could not impair their rights, or confer upon others any claim against them. If I [said Mr. S.] should promise the gentleman that I would obtain your farm and convey it to him, would that divest your title, or authorize either of us to wrest it from you by force? The compact itself expressly recognized "the Indian title," and the United States were to extinguish it only when it could be done "peaceably" and on "reasonable terms."

The gentleman having, as he supposed, fully sustained the treaty claims of Georgia, by the arguments upon which I have remarked, triumphantly exclaimed, "I will have my bond; I will have my pound of flesh." A most unfortunate allusion, sir, and one which I should not have been unkind enough to make. He will have his pound of quivering flesh, taken from nearest the heart of the living man! But he will take it without one drop of blood;

—"Ay—there's the rub,"  
For, in the cutting of that pound of flesh,  
What human blood shall flow—"must give us pause."

The fend-like Shylock himself could not take the penalty of his bond, because "no jot of blood" was given. And none is given here, but the express contrary—"peaceably"—"peaceably"—and "upon reasonable terms," too, is the emphatic language. But against whom does the gentleman make his claim—the Indians? Does he hold their bond? No, they hold ours: they now present it to us, and demand its performance; and, "till he can rail the seal from off that bond," he cannot absolve us from its obligations. He declares that he will have the terms of his compact fulfilled to "the twentieth part of one poor acre," and to the division of a hair. So be it; and let the Indians too have their guaranteed rights maintained with equal scrupulosity.

The honorable Chairman of the Committee on Indian Affairs, [Mr. WARR] conceded that the United States had repeatedly pledged their faith to the Cherokees to interfere for their protection, but contended that we ought not to perform these stipulations of our treaties because of the conflicting claims of Georgia. He laid down this proposition, that if the United States had come into engagements inconsistent with each other, so that it was impossible to keep both, that that which was prior in point of time should be specifically performed, and ample compensation be made for the breach of the other. To this position I freely assent; and upon this basis will rest the argument. It is incumbent, then, upon the honorable chairman to show, in the first place, that our obligations to Georgia are incompatible with our treaties; and in the

next place, that they are of prior date. This he, and two gentlemen who followed him in the debate, (Messrs. McKIMMER and FOSTER) have attempted to do. Their argument is, that, before the Revolution, Great Britain had jurisdiction over the aborigines, and the sole right of treating with them, and that this power was wrested from her by conquest during the war, and forever abandoned by the treaty of peace, in 1783.

I would first observe that, if it was obtained by conquest, it belonged to the conquerors. And who were the conquerors? The United States; who were also a party to the treaty of peace. Upon this ground it was, that New Jersey, Delaware, Maryland, and other States, so strongly insisted that the Crown lands, which had been acquired by the common arm and at the common expense, belonged of right to the common fund. Their demand, to a great extent, succeeded. The several States yielded to their pretensions by successive cessions; Virginia magnanimously taking the lead. But I shall not dwell upon this; for I mean, as far as possible, to avoid all debateable ground. Concede, then, for the present, that when Georgia became independent, in 1776, she at once succeeded to all the pre-existing rights of Great Britain over the unmeasured forests within her chartered limits. What was that right? Gentlemen say it was the right of discovery. Discovery, sir, confers no claim or right against the natives, the persons discovered, but only as between discoverers. It is said that the rights derived from this source were established and defined in Europe, upon the first discovery of this country. True, but it was by the mutual understanding and agreement of the nations of that continent only, in order to regulate their conduct among themselves. To prevent conflict and collision, it was tacitly agreed that the Sovereign who should find a country theretofore unknown should have the exclusive right to the benefits of the discovery, and should be permitted, without interference, to conduct toward the aboriginal inhabitants according to his conscience and his ability. He had, therefore, as against discovering nations who had assented to the arrangement, a conventional right to wage war and conquer the natives, and subject them to his sway. It is this right to which it is contended that Georgia succeeded upon the declaration of independence. Let it be so considered; and that in the war which she should wage to subjugate the Indians, no other state or nation could rightfully interfere. But the people attacked had a right to resist. They surely were under no obligation to acquiesce in the proposed subjugation. Suppose, then, that they should happen to be too strong for their assailants; that they should roll back the tide of war—the hunters should be hunted—that those who came to conquer should be in danger of being conquered; and, in such an emergency, the people of Georgia should call upon another State, Virginia, for example, for protection and defence. Georgia would thus have waived her conventional right to exclude all others from her limits, and Virginia would, at her request, become a party to the war. Would not Virginia, then, have the right to make peace for the security of her own citizens, and must she not be bound by its terms? Was France bound by her treaty of alliance with us during the Revolution? Yet her interference was without the consent of Great Britain, the discoverer. Are the United States now bound by their treaties with the States of South America?

But further: what if Georgia, in order to induce her neighbors to come in for her defence, had expressly agreed, beforehand, that Virginia should have the sole power of conducting the war, and concluding the peace; would not both States be bound by the treaty of peace thereupon made by Virginia? To proceed one step farther; suppose that this arrangement between the two States, instead of being occasional, should be established by a permanent compact; and that, in order to obtain the



aid and protection of Virginia, at all times, against the attacks of the Indians, Georgia should agree that she never would herself provoke such attacks by making war upon them; and that if it should arise, her more powerful ally should have the entire management of the war, and the exclusive right of agreeing upon the terms of peace and making the treaty: would not such terms be obligatory?

Now, sir, such a compact was actually made by Georgia with Virginia and eleven other States, by the articles of confederation. By the third article, the United States are bound to assist the several States "against all force offered to, or attacks made upon them, or any of them." And by the ninth article, the U. States have "the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article," and also of "entering into treaties." Here is the express grant. What answer can be given to it? What reason can be assigned, why each State should not be bound by the stipulations of a treaty of peace? Will it be said that we could not have the relations of peace and war with the Indian tribes? Ask the relatives of Braddock and Butler, of Wayne, Harmar, and St. Clair, if Indians can wage war? Consult the crimsoned pages of your history, and they will answer you. Nay, to banish such a suggestion forever, the same ninth article of confederation expressly declares, that by war it means to include contests with Indians; for, by reference, it incorporates into it the 6th article, which is in these words:

"Art. 6. No State shall engage in any war without the consent of the United States, in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States, in Congress assembled, can be consulted."

Here is, also, an unequivocal relinquishment by each State, of the right to make war upon the natives.

During the Revolution, war actually existed between the United States and the Cherokees: it continued to rage after the acknowledgment of our independence by Great Britain. Georgia needed our aid, and received it. The Indians were then powerful and terrific. The United States were desirous of peace; they sought it, and it was established, in 1785, by the treaty of Hopewell, which has been already referred to. It secured to the Cherokees their previous right to exist as a community upon the territory in their previous possession. Such a treaty would have been obligatory upon any State, if the articles of Confederation had never existed; but by that compact a right was expressly given by Georgia herself, to make it, and the United States were in duty bound to exercise that power.

And now I ask, what prior incompatible obligations to Georgia absolve us from its stipulations, or render it impossible to fulfil them?

Such was the power, and such the practice of the Confederation, up to the time of the formation of our present constitution, in September, 1787. No longer previous than the preceding month, we find a committee of Congress, in an able and elaborate report, declaring that the United States cannot interfere in behalf of a State against a tribe of Indians, "but on the principle that Congress shall have the sole direction of the war, and the settling of all the terms of peace with such Indian tribe." And this language was addressed particularly to Georgia, by name, and with respect to the Indians within her limits. This was in August.

The constitution was formed in the following September. The sixth article declares, that "treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land," "any thing in the constitution or laws of any State to the contrary notwithstanding." This was an express confirmation of the treaty of Hopewell, which had been made in Novem-

ber, 1785, less than two years before, and was then in full force. The State of Georgia, with full knowledge that it had been so made, and that it was considered by the United States to be valid and obligatory, voluntarily adopted the constitution, thereby herself most solemnly affirming and establishing that treaty; and, whatever may have been said before, never since that time, until recently, when the present controversy arose, has she in any manner denied its validity, or objected to its being carried into effect. Such is the argument in support of the treaty of Hopewell. I shall leave it by adducing but one other proof of its validity, in the opinion of General Washington, and the Congress of 1778, and their determination to enforce it with scrupulous fidelity. It is the proclamation of September 1, 1778; which declares it to be "the firm determination of Congress to protect the said Cherokees in their rights, according to the true intent and meaning of the said treaty;" and a resolution was adopted, to hold in readiness a sufficient number of troops to enforce that declaration. Under our present constitution, many treaties have been regularly made with the Cherokees. The first was at Holsten, in 1791. The reasons which have been adduced in support of the power to make the treaty of Hopewell are applicable to this with increased force.

The constitution was formed because the Confederation was too weak to answer the purposes of the Union. It substituted a Government in place of a mere Confederacy; conferring upon it additional powers, and farther limiting those of the individual States. By the articles of Confederation, the power of Congress to regulate the trade and manage affairs with the Indians, was subject to a proviso, that "the legislative right of any State, within its own limits, should not be infringed." This restriction is the only ground upon which doubts could ever have been suggested, of the power of the Confederation to enter into treaty stipulations; it gave no countenance, however, to such suggestions, because it was a limitation upon another grant of power, distinct from that of establishing peace and making treaties. But even this restriction is omitted in the constitution, and Congress are empowered to regulate commerce with the Indian tribes in unqualified terms.

The constitution vests in the United States the sole and exclusive power of making war and concluding peace. It expressly provides, that "no State shall engage in war," or, "enter into any treaty." Here is an unequivocal relinquishment of the right of Georgia to make war upon or treat with the Indians. And what is the right which it is said devolved upon her as successor to the sovereignty of Great Britain? The right of a discoverer; that is, a right, as against others, and without their interposition, to attack, and by force subdue the natives; to make war for the purpose of conquest. But Georgia covenants, by our fundamental compact, not to engage in war, for that or any other purpose; to attack no nation or political community.

The United States have the sole power of making peace; this can be done only by treaty. At Hopewell, in 1785, we made a treaty of peace. Open war had raged between the United States and the Cherokees up to that time. They had been the allies of Great Britain, but never had been ours; or in any manner contracted with us. Was not that treaty rightfully made and obligatory?

At Holsten, in 1791, we made a treaty of peace and friendship. It is so denominated on the face of it. It was the termination of an actually existing war; of this there is no doubt. The chairman of the Committee of Indian Affairs, in his written opinion of 1824, states the fact, that war was raging. The gentleman from Georgia says that his State applied to the United States for aid and protection in that war. The report of the Committee of Indian Affairs now before us, declares that the Cherokees waged war against the citizens of the United States. At Holsten we then undeniably made a treaty of peace to terminate an existing war. The authority was express and exclusive.

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Are not the United States bound—will they abide by it?

The first article is, "There shall be perpetual peace and friendship between all the citizens of the United States of America, and all the individuals composing the whole Cherokee nation of Indians."

"Article 7. The United States solemnly guarantee to the Cherokee nation all their lands not hereby ceded."

"Article 15. All animosities for past grievances shall henceforth cease, and the contracting parties will carry the foregoing treaty into full execution with all good faith and sincerity."

The question now is, shall we carry these articles into effect with any good faith or sincerity?

Will it be pretended that the United States might make peace, but had no authority to insert such stipulations as those I have quoted. Sir, the substance of these articles are of the essence of a treaty of peace. In every contract each party recognizes the separate existence of the other; and a treaty of peace—not a truce, not an armistice, not a temporary cessation of hostilities, but a treaty of peace—in its nature a permanent, enduring contract, must bind each party to respect the existence of the other, and never to assail or attempt its destruction: must obligate each also to permit the other to continue that existence upon its own territory without attack or violence. To attempt to expel them by force, or subjugate or destroy their separate being, is a violation of the compact of peace, and a renewal of the war. In terminating hostilities, therefore, by the undoubted constitutional power, the United States not only rightfully, but of necessity, embrace such terms as these. Are they not obligatory? I am not contending, [said Mr. S.] that the United States can cede away a part of any State to a foreign nation, as France or Great Britain, for example. That question I do not mean to touch; it is wholly unnecessary. I only say, that they may agree that the other party may continue to exist upon the lands which they have always occupied, may retain that which has ever been their own.

But this is not all. The constitution proceeds still farther, and gives to the United States the general right to make treaties, not merely of peace, but all others. This power is not only clearly and positively conferred on the Union, but expressly inhibited to its several members. It has been repeatedly and continually exercised in relation to the Indian tribes within the United States, and that by the acquiescence and assent of Georgia herself.

I know it is said Georgia protested; and this has been repeated, reiterated, and insisted upon, in every variety of form, as applicable to both the treaties, and all the questions which have been presented. Let us examine: The first alleged protest was in February, 1786, prior to the treaty of Holsten. It is the report of a committee, accepted by the House of Representatives only. The objections urged therein apply exclusively to the treaty of Hopewell, and must have rested only on the ground of the reservation before mentioned, in one of the articles of confederation, and which was omitted in the constitution.

The next protest was in February, 1797. It makes no objection whatever to the treaty of Holsten, and thereby impliedly approves and assents to it. It protests against two treaties with the Creeks made at New York, and Colerain, and the intercourse law of the United States. The grounds of objection insisted on are, that the intercourse law places the military above the civil authority, and prohibits pursuit and retaliation for Indian outrages. That the Creeks, by the treaty of Galphinton, in 1785, confirmed by a subsequent treaty at Shouderbone, had submitted themselves to Georgia, and become members of the State, and ceded to her a tract of land, which had been actually organized into a county by the name of Tallassee. And the State protests, "because the treaty of New York in 1790, after the said cession being acted on constitutionally, erected and laid out into a county, and the lands appropri-

ed, did sever, cut, and lop off the land so ceded before the power of the Federal constitution existed, and *ex post facto* declared they were vested in, and belonging to, the Creek nation of Indians; and because the said intercourse law and treaty of Colerain have confirmed the same.

Their complaint is, substantially, that the United States had taken from Georgia, lands which had "been duly ceded, fairly paid for, and legally and constitutionally laid out into a county." In conclusion, they "most fervently solicit a revision of the intercourse law and the New York and Colerain treaties, and requiring a confirmation of the county of Tallassee to the State." And "they most earnestly solicit the assistance of the United States to attain the cession of land the treaty of Colerain, they trust, was intended to establish." These protestations insist that the treaties of Galphinton and Shouderbone were valid by reason of the before named reservation in the articles of confederation; but no where deny, and, by implication, admit, the general right of the United States to make treaties with the Indian tribes, and guarantee to them the possession of their lands. They do not breathe a whisper of objection to the treaty of Holsten, of 1791, or to any of the powers involved in making it, but acquiesce therein.

In February, 1796, by an act of her Legislature, to which I shall hereafter recur, she expressly declared that the United States had the right to make treaties with the Indians; a right which they have continually exercised, and which she has never questioned, until this recent controversy arose. Not less than fourteen treaties have been entered into with this same Cherokee nation since the adoption of the constitution: in 1791, 1792, and 1794, by General Washington; in 1798, by Mr. Adams; one in 1804, two in 1805, one in 1806, and one in 1807, by Mr. Jefferson; three in 1816, by Mr. Madison; one in 1817, by Mr. Monroe, General Jackson being the negotiator; and one in 1819, by the same President, Mr. Calhoun being the negotiator. By more than half these treaties large cessions of land were obtained, boundaries defined, and the remaining territory, and the protection of the United States again and again guaranteed to the Indians.

Shall Georgia now be permitted to deny their validity? If a man seeing another in the act of making a deed of his land to a third person, shall stand by in silence, until the conveyance is completed, and the grantee has parted with his money, paid the consideration, would any chancellor, that ever sat in a court of equity, permit that man to reclaim his property, and thus consummate a fraud on the fair purchaser? But suppose that he shall not only thus witness the conveyance perfected and the money paid, but himself receive the consideration, can he, with the fruits of the contract in his pocket, lay his hand upon the property and wrest it from the innocent grantee? Georgia not only acquiesced but actually received all the lands ceded by the Indians, and for which they obtained our promise of protection. I have in my hand some of her laws disposing of the acquisitions.

The title of one is: "An act to dispose of and distribute the cession of land obtained from the Creek and Cherokee nations of Indians by the United States, in the several treaties of 10th August, 1814, 8th July, 1817, and 22d January, 1818."

And of another: "An act to dispose of the territory lately acquired of the Cherokee Indians by a treaty held by the honorable John C. Calhoun, at the City of Washington, on the 27th day of February, 1819." There are others of similar tenor.

And now retaining these acquisitions, holding the proceeds of these treaties in her hands, she declares that they are invalid; thus, at the same moment, binding the Indians by their stipulations, and denying them the benefit of ours. She has not only thus declared the right of the United States to make treaties, and assented to them when made, but has repeatedly urged that they should be en-

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tered into for the purpose of obtaining farther acquisitions for her benefit; and even as late as the year 1823, contended that the treaty of the Indian Springs with the Creeks was obligatory, and should be carried into effect. And it was not until the Indians had firmly refused to assent to farther cessions, and it was perceived that no more lands could be acquired by negotiation, that the doctrine arose which denies to the United States their right to make these compacts. What have the Senate heard to obviate the force of the facts and arguments which I have adduced? What answers have been given? I will advert to them all.

And, first, as to the acts and acquiescence of Georgia, we have the reply in the report of the committee, that, as she protested against the treaty of Hopewell, made in 1785, "no inference can be drawn to her disadvantage, from her silence, or from any thing she may have said in relation to any subsequent treaty, because in each of them a change was made, by which a portion of her territory and jurisdiction was restored to her, and thus her condition rendered better," &c. Who does not perceive that, under this form of words of restoring—what she never possessed, but which belonged to the Cherokees, before she had a being—the substantial, real cause of her assent is alleged to be the benefits which she received! Yes, sir; she did receive the fruits of these solemn contracts: by the establishing of peace and additions to her territories, in 1791; by the cessions of 1798, 1804, 1805, 1806, 1807, 1816, 1817, and 1819. And shall we be told that, because it was for her interest to be silent, because she was receiving the consideration of the compacts, therefore she now, after twenty years assent, is under no obligation to abide by them?

The honorable chairman, in his opening speech, assigned several reasons why the United States could not constitutionally form such treaties. The first was, that "the creature could not possess power to destroy its creator." This expression is calculated to mislead the judgment, because it refers the mind at once to the relation in which we frail and feeble mortals stand to our Omnipotent Maker; and it would seem to be just as true to say, the creature cannot diminish the power of its creator. The gentleman applies it to the General Government, as the work of the several States. Is it true that it cannot, that it does not take any power from its several members? The argument is, that if the Union can secure to the Indians any portion of her territory by treaty, they may cede away a whole State. This would, indeed, as the gentleman must admit, be a gross and palpable abuse of the authority. His reasoning, then, must be, that the United States cannot possess any power which, by perversion, may be exerted to the destruction of one of its members. Can they, then, make any treaty with a foreign nation? If so, there is the same danger of wrongfully transferring a State. Can they make war? It would be the readiest means of lopping off a member by leaving it defenceless. Can they organize, discipline, and call forth the militia, and control the whole physical strength? Sir, these are powers expressly inserted in the constitution, and they are not to be argued out of it by apprehensions of extravagant possible abuses.

The General Government was formed by the States, and the creature, says the gentleman, cannot have power to destroy any one of its creators. The State Governments, sir, were formed by individuals. If any of these should be guilty of a capital offence, might he not say, in the language of the chairman, you cannot take my life—it is impossible, in the nature of things, that the creature can have power to destroy one of its creators.

It is argued that the existence of an Indian community, within the chartered limits of a State, is inconsistent with "a republican form of government," as guaranteed by the constitution to every State. This argument has been

much relied on. It was advanced by the Secretary of War, repeated by the committee, and reiterated in the speech of the chairman. If this be so, a most unexpected result follows: it is, that Georgia has never yet had a republican form of Government: for there has never been a moment when such tribes did not exist within her borders. At the time of the adoption of the constitution, this same Cherokee nation was much more numerous, and held away over a much wider region than at the present time. Nay, the constitution itself confirms the pre-existing treaty of Hopewell, which recognized and guaranteed the separate existence of the tribe; and which is now contended to be incompatible with that fundamental compact. Is the existence of a body politic, which the Legislature cannot destroy, necessarily incompatible with a republican form of government? How is it with Dartmouth College in New Hampshire, or the chartered cities of other States?

Another proposition, derived from the same elevated source, and urged with equal vehemence here, is, that these treaties cannot be valid, because the constitution declares that "no new State shall be formed or erected within the jurisdiction of any other State, without the consent of the Legislature" thereof. Sir, no one proposes to create a new State, but to continue an old tribe, or State, if you so please to denominate it. It is to keep faith with a political community more ancient than Georgia herself; it is to preserve, not to form anew. Here, again, I would observe, that this nation of Cherokees was as much a State at the time of the adoption of the constitution as now, and had much greater power and more extensive dominion; and that the treaty of Hopewell, which, this argument insists, formed a new State, since the constitution, and in violation thereof, was made two years before its adoption, and was confirmed and sanctioned by it.

We are next told that the constitution recognizes the right of the respective State Legislatures to pass their laws over, and annihilate these communities, by that clause in the first article, which provides that an enumeration of inhabitants, as a basis for representation, shall be made, "excluding Indians not taxed." This provision undoubtedly implies that there could be individual Indians subject to taxation, and therefore to be counted; it also expressly declares that there might be those within a State "not taxed." There may have been, nay, there were, in some of the States, individual natives voluntarily residing within the white settlements, separate from any tribe, and freely subjecting themselves to the local laws. There were those, too, whose nation, as a body, had disappeared; and because these persons had, of their own accord, thus sought the State jurisdiction, does it follow that it could be extended over Indian nations, who had always resisted it, and with whom, at the moment this clause was written, and the constitution formed, the United States had a treaty guaranteeing them against such taxation, and every other exercise of State authority over them? By what imaginable process could these words, "Indians not taxed," produce the magical effect of annulling the treaty of Hopewell, then existing in full force? Let us substitute the word aliens for Indians. The clause would then exclude "aliens not taxed." Will it be contended that foreigners existing as a nation, with whom we had treaties as such, would be subject to the laws of a State? Would it not apply exclusively to the aliens, who had separated themselves from the nation and mingled with our citizens?

As a last resort, and to me it seems a desperate one, it has been earnestly contended by the gentlemen from Tennessee, Alabama, and Georgia, (Messrs. WHITT, McKINLEY, and FORTY,) that we cannot constitutionally make any treaty with any Indian nation within the United States; that the express power to make "treaties" does not embrace compacts or agreements with such communities.

Wherever, sir, the relation of peace and war can exist, the United States must, of necessity, possess the right to

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make a treaty of peace. That this relation may exist with these native tribes has never yet been doubted, and will not at this day be questioned. No one will have the assurance, in the face of all history, in defiance of what is known by the whole world, to declare that our contests with the aboriginal nations are, on their part, insurrections, rebellions, subjecting them to be tried and executed as traitors. The Secretary of War will not say so: for he told the Cherokees, in April last, "your people were at enmity with the United States, and waged a war upon our frontier settlements; a durable peace was next entered into with you until 1791." The committee and its chairman (Mr. WURTS) will not tell us so: for their report, accompanying this bill, declares that the Cherokees waged "a war against the citizens of these States prior to the treaty of Holsten, in 1791." Rebellion! by those who never owed allegiance, and with whom, ever since our national existence, we have either had open war or subsisting treaties! But, independent of this power of peace and war, why does not the general authority to make treaties embrace those with the Indians? Gentlemen content themselves with a positive and earnest denial.

The word treaties, say they, in the constitution, does not mean compacts or contracts with Indian tribes. Why not? Did not those who formed and adopted the constitution so understand it? To answer this question we must ascertain how that word was used, and what were the ideas attached to it, at the time and anterior to its insertion in that instrument. This rule of construction is the foundation of all science. When any term is used by an author, it is understood to carry with it the ideas which he has previously affixed to it; that he denotes by it what he always has done. Hence, in the science of law, when the student has ascertained what the writer means by the words fee simple, or larceny, if he subsequently finds those words used by the same author, he attaches to them the same meaning.

These contracts with aboriginal communities have been denominated treaties from the first settlement of this country. It has been their peculiar and appropriate name, without even an *alius dictus*. Great Britain made treaties with the Indians; the several colonies formed many, and gave them the same appellation. The Continental Congress, from the time it first assembled until it was merged in the present national Government, uniformly called them treaties. They did so in 1775, 1776, 1778, 1783, 1784, 1785, 1786, 1787, 1788, and even to the day of the formation and adoption of the constitution. We find them repeatedly and particularly mentioned in July, August, and October, 1787; the constitution being formed in September of the same year.

Nor is this all. In the articles of confederation, power was given to make treaties. It had been repeatedly exercised in establishing our relations with Indian tribes; particularly the Delawares, the Six Nations, the Cherokees, the Choctaws, the Chickasaws, and the Shawnees; and, on the first of September, 1778, was issued the proclamation of Congress and of General Washington, to enforce the treaty of Hopewell.

The word treaties, thus invariably known and used, and which had received a practical construction under the confederation, was inserted by the same great men in the constitution of the United States. Could any one doubt its meaning? Did Georgia misunderstand it? She had herself made treaties with all the forms of negotiation, through commissioners fully empowered, in 1773, 1783, and 1785, they were so denominated by her at the time and ever afterwards. On the 3d of August, 1787, a motion was made by Mr. Few, delegate in Congress from Georgia, seconded by Mr. Blount, from North Carolina, to take measures to "explain and confirm all former treaties" with the Creek Indians. There is much evidence that this word was intended to embrace conventions with such

communities as the Creeks and Cherokees, as those with transatlantic nations, such as France and Spain.

Contemporary exposition has always been deemed of great force in settling even the most difficult questions of constitutional law. Practice and precedent, too, have often been considered as decisive authority. Mr. Madison, who has, with so much justice, been denominated the great constitutional lawyer of this country, declared, in a message to Congress, that the question of the constitutionality of the Bank of the United States, had been so settled by the sanction of the different departments of the Government, that it was no longer to be agitated; and yet only one bank had then been chartered. If his argument had, in that instance, any force, it is here irresistible.

From the organization of the Government down to this very session of Congress, the practice has been unbroken and invariable. We find these treaties made in 1789, 1790, 1791, 1792, 1794, 1795, 1796, 1797, 1798, and almost, if not quite, every year since. I have counted no less than one hundred and twenty-four Indian treaties, formed under the present constitution, being more than three for each year. If authority and practice can settle any question, this is at an end.

In 1790, General Washington delivered a speech to the Seneca Indians, some extracts from which I will now read: "I, the President of the United States, by my own mouth, and by a written speech signed with my own hand, and sealed with the seal of the United States, speak to the Seneca nation.

"The General Government only has the power to treat with the Indian nations, and any treaty formed and held without its authority will not be binding.

"Here, then, is the security for the remainder of your lands. No state nor person can purchase your lands, unless at some public treaty held under the authority of the United States. The General Government will never consent to your being defrauded; but it will protect you in all your just rights.

"Hear well, and let it be heard by every person in your nation, that the President of the United States declares, that the General Government considers itself bound to protect you in all the lands secured to you by the treaty of Fort Stanwix, the 22d of October, 1784, excepting such parts as you may since have fairly sold to persons properly authorized to purchase of you."

Again—

"But your great object seems to be the security of your remaining lands, and I have, therefore, upon this point, meant to be sufficiently strong and clear.

"That in future you cannot be defrauded of your lands. That you possess the right to sell, and the right of refusing to sell your lands.

"That therefore the sale of your lands in future will depend entirely upon yourselves.

"But that when you may find it for your interest, to sell any parts of your lands, the United States must be present by their agent, and will be your security that you shall not be defrauded in the bargain you shall make.

"You now know that all the lands secured to you by the treaty of Fort Stanwix, excepting such parts as you may since have fairly sold, are yours, and that only your own acts can convey them away. Speak, therefore, your wishes on the subject of tilling the ground. The United States will be happy to afford you every assistance in the only business which will add to your numbers and happiness.

"The United States will be true and faithful to their engagements.

"Given at Philadelphia, 29th December, 1790.

GEORGE WASHINGTON.

"By the President:

THOMAS JEFFERSON.

"By command of the President of the United States.

"H. KNOX, Secretary for the Department of War."

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"The United States will be true and faithful to their engagement." Such was the solemn declaration of the Father of this Country in the infancy of this republic. Heaven grant that his sacred promises may be kept and his confident prediction verified. The question is now before us. No sophistry can evade, no ingenuity can elude it. Will "the United States be true and faithful to their engagement," or false and treacherous?

The Cherokees present this solemn interrogatory, and we must return a deliberate response. It seems almost as if their case had been formed for the purpose of determining whether it be possible to bind this nation by its plighted faith.

I have already referred to our repeated and reiterated engagements by the sages of the Revolution, in the Congress of 1783; by Washington and the constellation of brilliant names around him, in 1791, 1792, and 1794; by the elder Adams and his cabinet in 1798; by Mr. Jefferson, in four successive treaties, in 1804, 1805, 1806, and 1807; by Mr. Madison, in several formed in 1816; by Mr. Monroe, in 1817, General Jackson himself subscribing it with his own hand as commissioner; and by another in 1819, to which Mr. Calhoun affixed his name, as negotiator. All these treaties were ratified by the Senate, and sanctioned by every department of the Government.

In 1794, that greatest and best of men, whose name we profess so much to venerate, and which should be, of all others, the highest authority to this Senate, and to the nation, delivered a speech to the chiefs and warriors of the Cherokee nation, in which, speaking of the lands upon Cumberland, he says: "These have been confirmed by two treaties, of Hopewell, in 1785, and Holsten in 1791." Again—"The treaties which have been made cannot be altered. The boundaries which have been mentioned must be marked and established, so that no dispute shall happen or any white people cross over it."

In 1795, the Governor of Tennessee, upon which State it is now asserted these treaties are not obligatory, wrote a letter to President Washington, in order to "prevent infractions of them," by encroachments upon the lands of the Indians. And as late as 1824, the gentleman from Tennessee, who reported this bill, [Mr. WHITE] gave an able and elaborate opinion in writing, in which he strenuously asserts and maintains their validity and the rights of the Indians. He says "the Cherokees are to be considered as a nation, a community having a country distinctly marked out, and set apart for their use; that their interest is as permanent and fixed in it, as the pledge and the faith of the United States can make it; inasmuch as they have solemnly guaranteed it to them as a nation, without any limitation of time." With reference to the treaty of Holsten, he says they are "to be viewed as a nation possessing all the powers of other independent nations, which are not expressly, or by necessary implication, surrendered up by that treaty." And again, "they have not surrendered the power of making municipal regulations for their own internal government."

But now that we, the United States, are called upon to "be true and faithful to these engagements," it is contended that they are not obligatory; and, in order to sustain that position, it is insisted that the constitution gives no power to make treaties with Indian nations, within the United States. Although every President of the United States and the members of his cabinet, every administration and all the great men by whom it was surrounded and sustained, have formed and established such Indian treaties.

Every Senate of the United States, and I believe every member of every Senate, have ratified and confirmed such Indian treaties. Every House of Representatives of the United States, and I believe every member thereof, have affirmed and sanctioned them, by passing laws for their due execution, paying from year to year the annuities se-

cured by them, and making appropriations to enable the President to hold others. At this very session, the Senate has ratified new treaties: and during the present month, we have made an appropriation to enable the President to form another, with the tribes in Indiana. While that bill was under discussion, an amendment was proposed, prohibiting the use of any part of the money therein granted in secret presents to the chiefs; and it was insisted by the gentlemen from Tennessee, Louisiana, and Illinois, [Messrs GARNER, LIVINGSTON, and KANE,] that such a proviso, merely restricting the use of money which Congress was granting, would trench upon the high, independent, constitutional power of the President in negotiating treaties. Nay, the second section of the bill now under consideration, provides for the removal of "any tribe or nation of Indians, now residing within the limits of any of the States or territories, and with which the United States have existing treaties;" and now we are told by the chairman that such treaties cannot exist—that they are no treaties.

It is in effect asserted, that every President and every Senate have been guilty of usurpation, in extending the treaty-making power beyond its legitimate objects: for if these contracts are not treaties, within the true meaning of the constitution, they could be made only by the authority of Congress. But the President and Senate alone—the treaty-making power—have always negotiated them, ratified them, and by proclamation announced them to the nation, as the supreme law of the land. Every State Legislature, and the whole people, have heard these announcements, and looked on, during all these proceedings, in silent acquiescence.

Even in 1798, when all the acts of the General Government, and particularly those of the Executive, were scrutinized with the utmost rigor, it was never suggested, even in Virginia, where the discussions were most animated, that there had, in this respect, been any irregularity. But now, upon the pressure of an exigency, it is discovered, for the first time, that all has been wrong. The present occasion has brought with it new and peculiar lights, by which gentlemen now perceive what was in the minds and intentions of the framers of the constitution better than they did themselves. They were ignorant of their own work. The venerated fathers of the republic, and all the high and honored names who have presided over its destinies, have been involved in deep darkness, and wandered in gross error!

I have thus, [said Mr. S.] endeavored to present my views with respect to the claims of the State of Georgia. Whether we regard original principles of international law, as applicable to the right of discovery; or the express powers conferred by the articles of the confederation; or the confirmation of pre-existing treaties, by the adoption of the constitution; or the authority vested by that instrument in the General Government, and the renunciation of powers by the respective States; the invariable practice and usage of the Union, and the acts, acquiescence, and assent of Georgia herself; it is manifest that we are bound to perform our engagements to the Indians, and are under no incompatible and paramount obligations to that State.

But let us now, for the sake of the argument, make the violent supposition, that the pretensions of Georgia are well founded, and that the United States cannot rightfully fulfil their stipulations as against her. In that case the States of Alabama and Mississippi would stand on very different ground. Their claims have been mingled and blended with those of the elder sister, as if they were precisely the same, and hers have been put forward as the only subjects of discussion, when in truth there is a broad line of distinction which ought to be marked and remembered. For the sake of distinctness and brevity I shall speak of Alabama alone. It is conceded on all hands, as a fundamental proposition, that the United States are bound to

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fulfil their engagements to the Cherokees specifically, except when prevented by incompatible obligations, prior in point of time. Now, sir, the State of Alabama did not exist until the year 1819; when she voluntarily came into the Union after the fifteen treaties with this nation had been previously established and proclaimed as the supreme law of the land. But it is said that Alabama was formed from territory once belonging to Georgia, and succeeded to all her rights. Without stopping to examine the difficulties attending such a supposed transmission of a right to resist treaties, it is sufficient to say that, by the compact of 1802, Georgia ceded to the United States all her "right, title, and claim," "to the jurisdiction and soil" of all the territory now constituting Alabama and Mississippi. The whole right of Georgia, whatever it was, thus became vested in the General Government, and so remained until 1819; during which time not less than eight of these treaties were made. Who could then contest their validity? Are our treaties valid with the nations in Florida, Arkansas, and Michigan? Can we enter into engagements with any tribes within the boundaries of the United States, even beyond the Rocky mountains, or any where upon this continent? Can we make the solemn guarantee proposed by this bill? If so, we are legally constrained by our promises to the Indians of Alabama, made before the existence of that State.

But this is not all. Still another insuperable difficulty presents itself to her claims to legislate over and destroy the Indian nations. The following article is a part of the fundamental law to which Alabama owes her being, and without which she cannot exist: "The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them." This was originally a part of the fourth article of the ordinance respecting the Northwestern territory; and was, by express reference, incorporated into the first article of the compact of 1802, and made a fundamental and perpetual condition in the act of Congress which provided for the admission of Alabama.

What is the answer to all this? We have it from the gentleman from Alabama, [Mr. McKINLEY.] The compact of 1802 [says he] was unconstitutional; Georgia could not transfer to the United States either soil or jurisdiction. If this be so, the first consequence is that the dispute between that State and the General Government, respecting the ownership of the Crown lands obtained by conquest, which that compact was supposed to have happily put to rest forever, by mutual and reciprocal cessions, could never be settled! In the next place: that the combined powers of the State and of the Union cannot do that, under the constitution, which the members individually might have done without the constitution. It is an attribute of complete sovereignty to be able to convey and receive territory. It is insisted that this attribute, as between the States, is annihilated; although all powers not granted are reserved to the members. I will not say that such an effect could not be produced by the constitution; but it is at least so extremely improbable, that those who contend for it, in any particular instance, should be required to show it clearly, which has not been done.

It is insisted by the gentleman that no State can be subject to the restraining condition of the ordinance referred to, because it is inconsistent with her constitutional equality with the other members of the Union. That ordinance was established in July, 1787. It declares that "the following articles shall be considered as articles of compact between the original States and the people and States of said territory, and forever remain unalterable, unless by

common consent." Then succeeds an article embracing the clause before read, and which was incorporated into the compact of 1802. The ordinance subsequently declares, "That the said territory, and the States which may be formed therein, shall forever remain a part of this confederacy." This ordinance, with all its provisions, was affirmed and established by the adoption of the constitution, and thus that instrument itself contemplated that all the States to be thereafter formed northwest of the Ohio, should be forever subject to those conditions, by which it is now contented no one could ever be constitutionally restrained. It is insisted by the gentleman from Alabama [Mr. McKINLEY] that Georgia could not transfer soil and jurisdiction to the United States; that the compact of 1802, attempting to do so, was unconstitutional and void; and that the tract of country which it was intended to convey remained a part of that State until the year 1819. If the gentleman's doctrine is correct it remains so still, she having never conveyed it. Another consequence would flow from this doctrine, which I should exceedingly deplore; it is, sir, that Alabama is not a member of this Union! By the constitution no new State can be formed or admitted into the Union within the limits of an old one, without the consent of the latter. Now, sir, Georgia has never consented to the admission of Alabama, except by the transfer of soil and jurisdiction, by virtue of the compact of 1802. If that conveyance was inoperative, no consent has been given. If that compact was absolutely void, as the gentleman contends, it is a legal nullity, and he can hold no rights under it. Congress, too, have never given their consent, except upon the basis of the binding efficacy of that compact, and upon the express condition that its requisitions should be the fundamental law of the new State. But, says the gentleman, Congress had no power to pass such a law. If so, the act respecting the admission of Alabama was unconstitutional and void, and neither created nor admitted any new State. The ingenious gentleman has reasoned so profoundly upon constitutional law that he has argued himself and his colleague out of their seats in this Senate! Now, sir, against this I most seriously protest; they cannot be spared; we need the aid of their talents and experience.

How will the gentleman escape from the consequences which I have deduced? Will he contend that the compact and the law were valid and invalid at the same time? That they conferred rights, but could not impose obligations upon his State? Even if such an extraordinary position were assumed, how would it affect the present question? If he can infuse any degree of vitality into that which was dead before its birth; if he can make that compact efficacious, as the consent of Georgia to Alabama's becoming a State, would it not also be effectual as her consent that the United States should exercise jurisdiction over the territory, so far as to make treaties with the Indian tribes? If, then, the gentleman will admit that Georgia assented to any thing, by virtue of that compact, she consented to the formation of these treaties, and thus they were valid by her authority before Alabama was brought into being. As a dernier resort, the gentleman insists that the true construction of the language of the ordinance gives all the right over the Indians for which his State contends, because the latter clause requires that "laws shall, from time to time, be made for preventing wrongs being done to them, and for preserving peace and friendship with them." That is, laws restraining the whites, our own citizens, from encroaching upon the natives, and thereby endangering the public tranquillity. If Maine or New York should pass laws for "preventing wrongs being done to" the Canadians, "and for preserving peace and friendship with them," would that give jurisdiction over the British provinces? But let us read the whole clause, the true construction of which confers this unlimited power: "The utmost good faith shall always be observed towards the

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Indians," which means that we may violate all our engagements at pleasure; "their lands and property shall never be taken from them without their consent." that is, both may be taken by violence, against their utmost resistance! "In their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars, authorized by Congress." "There shall be laws for preventing wrongs being done to them, and for preserving peace and friendship with them;" the true construction of all which is, that a State may make war upon them at pleasure, deprive them of their lands, and annihilate their nation! To such arguments are gentlemen of great ability compelled to resort! The rights of the natives, both natural and conventional, have been strenuously denied. What right, it is asked, have the Indians to the lands they occupy? I ask, in reply, what right have the English or the French, the Spaniards or the Russians, to the countries they inhabit?

But it is insisted that the original claim of the natives has been divested by the superior right of discovery. I have already shown that this gives no ground of claim as against the discovered; that it is a mutual understanding or conventional arrangement, entered into by the nations of Europe, amongst themselves, to define and regulate their respective claims as discoveries, in order to prevent interference and contests with each other, all agreeing that the sovereign who should first find a new country should be left without interference from them to deal with it and its inhabitants according to his ability and his conscience. But, we are told, that grants from the King are the highest title, and have always been relied upon as such. True, as against other grantees from the Crown, or against the Government itself; but not as to the natives. If such a title gives any just claim as against them, then they are bound to yield to it: for to every right appertains a corresponding obligation.

Were the aborigines bound to yield to such pretensions? Suppose that, more than two centuries ago, when in unbroken strength they held resistless sway over this whole Western world, a royal patentee, with his handful of followers, just landed on these shores, should have found himself in the midst of a powerful Indian nation—the council fire is lighted up, and sachems and warriors are assembled around it—he presents himself, and says to them:

"This country is no longer yours. You must leave the forests where you hunt, and the valleys where you live. All the land which you can see from the highest mountain is mine. It has been given me by the King of the white men across the waters. Here is his grant—how can you resist so fair a title?"

If they deigned any other reply than the war-whoop, their chief might say—

"The Great Spirit, who causeth the trees to rise from the ground towards the heavens, and maketh the rivers to descend from the mountains to the valleys; who created the earth itself and made both the red man and white man to dwell thereon; gave this land to us and to our ancestors. You say you have a grant from your King beyond the waters; we have a grant from the King of Kings, who reigns in heaven: by this title our fathers have held it for uncounted generations, and by this title their sons will defend it."

It has been strenuously argued that the overflowing nations of Europe had a just claim to the occupancy of some portion of the vacant lands of the aborigines for their own subsistence. The excessive population of China, and of Holland, have, at this day, the same ground of claim against the United States. May they, therefore, drive us even from our cities and villages, and take all our territory by force? We permit them to come and possess, if they submit to our laws, and pay us for the soil. The Indians have been more liberal, having ceded both soil and sovereignty to hundreds of millions of acres. The Chero-

kees have no more to spare; they need the residue for themselves. Shall they be permitted to retain it? That is now the question.

To avoid, as far as possible, all questionable ground, I at present contend only that the Indians have a right to exist as a community, and to possess some spot of earth upon which to sustain that existence. That spot is their native land. If they have no claim there, they have no right any where. Georgia asserts that the lands belong to her—she must and she will have them—even by violence, if other means fail. This is a declaration of right to drive the Cherokees from the face of the earth; for if she is not bound to permit them to remain, no nation or people are bound to receive them. To that for which I now contend the Indians possess not only a natural, but also a legal and conventional right. These two grounds of claim have been blended and confounded.

The rights which the United States have claimed with respect to the territory of the aborigines have been twofold—pre-emptive and reversionary; a right to purchase, to the exclusion of all others; and to succeed the natives, should they voluntarily leave the country or become extinct. It will at once be perceived that this is a right to exclude others from interference, but not to coerce the Indians. It leaves to them the perpetual undisturbed occupancy. They cannot indeed transfer their country to others, but this does not impair their title, although it may diminish its value in the market. It still belongs to them and their heirs forever. If a State should, by law, prohibit its citizens from making sale of their lands without the assent of the Executive, would it destroy every man's title? Nay, the laws do now prevent conveyances to aliens. The right claimed is merely to exclude all others from purchasing of the aborigines. It will be divested of much of its appearance of harshness towards them by recurring to its origin. It was the primitive agreement or mutual understanding between exploring nations, that whichever should first find a new country, should alone possess the privilege of dealing with the natives; and upon this ground the discoverer excluded others from becoming purchasers. He had the right of pre-emption. This agreement trenched not upon the title of the aborigines; and as to its affecting the value of their lands, by preventing competition in the purchase, there would have been no purchaser but for the discovery.

There is no mystery in the international law of discovery. So far as it relates to this subject, it is the same as if five or six persons, being about to go in search of sugar lands in South America, should mutually engage that they would not interfere with each other in their purchases. Such agreement would do no wrong to the original owner.

The reversionary claim, as it may be denominated, although in strictness that cannot revert to another which always belonged to the present possessor, is the necessary consequence of the exclusion of others from purchasing. It is merely a right of succession of lands of the Indians when they shall have become extinct, or have voluntarily abandoned them by emigration; as the property of individuals sometimes escheats to the Government for the want of heirs.

The right of the aborigines to the perpetual and exclusive occupancy of all their lands has been always recognized and affirmed by the United States. It was respected by Great Britain before the Revolution, as appears by the royal proclamation of 1763, in which all persons are commanded "forthwith to remove themselves" from lands, "which not having been ceded to or purchased by us, are still reserved to the said Indians;" and after reciting that individuals had practised fraud upon the natives, forbids private persons from making purchases, "to the end that the Indians may be convinced of our justice," and provides that, if "the said Indians should be inclined to dispose of the said lands, the same shall be purchased only

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for us, in our name, at some public meeting or assembly of the said Indians, to be held for that purpose."

That right was recognized by the Confederation, as appears by the whole tenor of their proceedings, particularly their treaties, by which they purchased a part, and guaranteed the remainder; by the report of a committee in August, 1787, which declares that the Indians have "just claims to all occupied by, and not purchased of, them;" and the proclamation of Congress, in September, 1788, which has been already referred to.

That, under our present constitution, the rights of the natives, and the relation in which they stand to the United States, are such as I have described, is clearly manifested by the speech of President Washington to the Senecas in 1790, from which I have already presented some extracts; and by the following explicit and deliberate letter of Mr. Jefferson, written to the Secretary of War in 1791—"I am of opinion that Government should firmly maintain this ground; that the Indians have a right to the occupation of their lands, independent of the States within whose chartered lines they happen to be; that until they cede them by treaty, or other transactions equivalent to a treaty, no act of a State can give a right to such lands; that neither under the present constitution, nor the ancient confederation, had any State, or persons, a right to treat with the Indians, without the consent of the General Government; that that consent has never been given to any treaty for the cession of the lands in question; that the Government is determined to exert all its energy for the patronage and protection of the rights of the Indians, and the preservation of peace between the United States and them; and that if any settlements are made on lands not ceded by them, without the previous consent of the United States, the Government will think itself bound, not only to declare to the Indians that such settlements are without the authority or protection of the United States, but to remove them also by the public force." Also, by the intercourse law of 1790—prohibiting all encroachments by citizens of the United States, upon the "territory belonging to any tribe or nation of Indians;" by many other statutes, particularly that of March, 1805—by all the treaties of purchase and cession—all the laws to carry them into effect and pay the consideration—and all the acts for enabling the Executive to "extinguish Indian titles."

The gentleman from Georgia [Mr. FORTUN] has referred to the correspondence at Ghent to sustain his denial of rights to the Indian tribes. He relied upon the views of the American Commissioners, in repelling the claims of the British. As it is sometimes more satisfactory to read for ourselves, than to take the construction of others, permit me, sir, to present to you an extract from that correspondence. "Under this system, the Indians residing within the United States are so far independent that they live under their own customs, and not under the laws of the United States: that their rights upon the lands where they inhabit, or hunt, are secured to them by boundaries defined in amicable treaties between the United States and themselves; and when these boundaries are varied, it is also by amicable and voluntary treaties, by which they receive from the United States ample compensation for every right they have to the lands ceded." "Such is the relation between them and the United States: that relation is not now created for the first time, nor did it originate with the treaty of Greenville." And subsequently, "the treaty of Greenville was merely declaratory of the public law, on principles previously and universally recognized."

To this, sir, were subscribed the names of Adams and Gallatin, of Clay, and Bayard, and Russell.

The gentleman from Alabama, [Mr. McKINLEY] to show that the natives had no title to the soil, cited the case of Johnson and McIntosh, decided by the Supreme Court of the United States, and reported in the 8th of Wheaton.

To see how precisely that case sustains my position, let me read a few very short extracts from the opinion of the court, as delivered by Chief Justice Marshall. It declares that the right of the United States, or the several States, is "subject to the Indian right of occupancy." That "the original inhabitants are the rightful occupants of the soil, with a legal, as well as a just, claim to retain possession of it, and to use it according to their own discretion." And again, "it has never been contended that the Indian title amounted to nothing. Their right of possession has never been questioned."

Georgia herself has recognized those established rights of the natives, and the relation they bear to the General Government. By a law passed in 1796, respecting the vacant lands within her chartered limits, she held the following language: "The territory therein mentioned is hereby declared to be the sole property of the State, subject only to the right of treaty of the United States, to enable the State to purchase, under its pre-emption right, the Indian title to the same." A most pregnant act of legislation. It expressly admits "the Indian title;" that the claim of the State is only "to purchase" under its pre-emption "right;" that even this she could not do, unless "enabled" by the United States; that the United States had "the right of treaty" with the Indians, and that the claims of Georgia were "subject to" that right.

In the compact of 1802, she stipulated, by reference to an article of the ordinance before mentioned, for the inviolability of the lands, property, rights, and liberty of the Indians, upon the territory relinquished; and recognized their just claim to lands, in that which was retained, by the article which binds the United States, "at their own expense," to extinguish "the Indian title" thereto, as early as it could be done "peaceably, and upon reasonable terms."

The titles of the acts which I read, and several others, speak of the lands therein disposed of, as "acquired," "obtained," from the "Creek and Cherokee nations," by the treaties held by the United States.

Even the act of December last contains a plenary admission that the lands in question were never before subject to her jurisdiction. A part of the title is "to extend the laws of the State over"—"the territory now occupied by the Cherokees." The sixth section expressly extends the laws of the State over the same and the inhabitants thereof. Sir, does not the legislation of every State, of itself, operate upon all the country within its jurisdiction? The laws of Georgia were not before limited to any parts of the State; they were general; they covered the whole; and are now—extended over the residue!

We have heard a great deal, in this debate, of the rights of conquest; and are told, that it is always recognized as valid by the judicial tribunals. True, sir, by those of the conqueror. How can they do otherwise? Suppose that Congress should now declare a war for the sole purpose of wresting Canada from Great Britain, and should succeed; could our own courts question this exercise of political power, and refuse to sustain our jurisdiction over the country, however iniquitous the acquisition? And if in this Government, where the political sovereign is under the restraints of the constitution, the courts cannot interfere, how could they in Europe, where this doctrine had its origin? There, the legislative and political powers are unlimited. Even in England, the Parliament is legally omnipotent; and who ever heard of a judicial court undertaking to annul any of its enactments? Whatever may be the acquiescence of other nations in the exercise of power by a conqueror, it is no ground of just claim as against the conquered. They, surely, are not bound to submit, if new means of resistance can be found. To give to conquest—to mere force—the name of right, is to sanction all the enormities of avarice and ambition. Alexan-



der and Bonaparte are justified! Britain has done no wrong in sweeping India with the hand of rapine, and holding fifty millions of people in thralldom! All the cruelties of the Spaniards in South America; the crimes of Pizarro and Cortez, tracking the fugitive natives in terror and dismay with bloodhounds, to the caves of the mountains, and stretching their wretched monarch upon burning coals to extort from him the secret of his treasures, are sanctified by the name of right! This right of conquest, gentlemen contend, is the legitimate offspring of the right of discovery. Sir, the pirates on the coast of Barbary and Baratania exercise both. They find a ship alone on the ocean; this is discovery. They capture her, and murder or enslave the crew; this is conquest. Both these rights are thus combined and consummated, and their validity will not, I presume, be questioned either by the courts of Baratania, or other bands of similar conquerors.

But even this miserable argument of conquest is not applicable to the Cherokees. They were not subjugated. The Southern Indians had sixteen thousand warriors with arms in their hands. They were powerful; their trade was war; they did not solicit peace. We sought for it, as appears by the resolutions of Congress, of May, 1783, and March, 1785. We obtained the treaty of Hopewell, in which gentlemen find the expressions, the "United States give peace" to the Indians, and "allot boundaries;" and, by a philological criticism upon the English terms which we used, they logically deduce the rights of conquest! What did the unlettered Indian understand by those expressions, but that there was to be an end of war, and that his territory was to be sacred? The treaty contains many reciprocal stipulations of the "contracting parties." Will it still be contended that we are not bound by them, because the other party was conquered—in other words, because we were the strongest? If the United States made terms of peace, should they not abide by them? If a besieged town capitulates, are not the articles of capitulation obligatory? When Bonaparte dictated treaties of peace in the capitals of the nations which he had overrun, was he not morally bound to observe them? They, indeed, might complain that the contract was made by constraint, when they were not free agents; but who ever heard of the stronger party claiming to be absolved from his engagements, because the other was subject to his coercion?

It has been repeatedly asked, why not leave the Indians to the legislation of the States? I answer, because they protest against it, and they, alone, have the right to judge. They demand of us the protection which we solemnly promised.

Much has been said of their being untutored savages, as if that could dissolve our treaties! No one pretends that they are less cultivated now than when those treaties were made. Indeed, it is certain that they have greatly advanced in civilization; we see it in the very proofs introduced by the gentleman from Georgia to show their barbarism. He produced to the Senate a printed code of Cherokee laws, and a newspaper issued from a Cherokee press! Is there another instance of such productions from any Indian nation? I was surprised that, with all his scrutiny, he could find no more remnants of savage customs. I shall not dwell upon his selections from their laws. The first was, that, if a horse should be stolen, and the owner, finding the thief in possession, should immediately kill him, in the excess of passion, it should rest upon his own conscience. It is to be observed that the person slain must have been guilty; and for such an offence life is now taken by the laws of England. But this provision, inserted in the Cherokee code more than twenty years ago, has yielded to further light, and been since repealed. Time will not permit me to dwell upon their advances in the arts of civilized life. It is known to have

been great. They till the ground, manufacture for themselves, have workshops, a printing press, schools, churches, and a regularly organized Government. Indeed, the gentleman from Tennessee himself told us, that some individuals of that nation were qualified for a seat in this august assembly.

What danger, it is asked, have the Indians to apprehend from the laws of the State? What danger? Is it not here avowed that their presence is a nuisance from which Georgia wishes to be relieved? Has not her Legislature declared that she is determined to have their lands at all hazards, even by violence, in the last resort? And, if left to her unrestrained power, can it be doubted that she will find the means of carrying that determination into effect? If the laws heretofore enacted are not sufficient, may not others be resorted to? Let us, for a moment, look at the measures already adopted, and see if they have not some adaptation to the accomplishment of her wishes.

By the ninth section of the act of 1828, no Indian in the Creek or Cherokee nations can be a party or a witness in any suit to which a white man may be a party. It is said that this has been repealed by the statute of 1829. I think otherwise. The latter contains no repealing clause, nor any incompatible provisions. Both may well stand together, and both would be enforced according to the usual construction of statutes *in pari materia*. It is true, that a part of the title of the act is, to repeal that ninth section of the former. This is easily accounted for. The act, as first reported by the committee, probably contained a repealing clause, which was stricken out by the more zealous majority; the original title remaining unchanged.

But suppose that only the law of 1829 is now in force. What is to be its effect? All the laws, usages, and customs of the Cherokees are abrogated, and severe punishments denounced against those who shall presume to act under them. Their Government is dissolved—their political existence is at an end—their nation is destroyed—it is resolved into its original elements. We know that their lands are not holden by individual ownership; the title is in the nation. To annihilate the tribe, therefore, as a political community, is to destroy the owner; and the State is then to take the whole by her claim of succession. By this statute, no Cherokee, or descendant of a Cherokee, can be a witness against any white man, who does not reside within the "nation." This devotes their property to the cupidity of their neighbors; it leaves them exposed to every outrage, which lawless passions can inflict. Even robbery and murder may be committed with impunity, at noonday, if not in the presence of such whites as will become prosecutors or witnesses.

This, the gentleman from Georgia asserts, creates no new disability; that Indians are not competent to testify, by the common law, either in England or in this country. That I deny. They are good witnesses in both, and have been so, without question, ever since the case of the Gen-too, in the time of Lord Mansfield. Several were recently admitted by the courts of New York, in a very important question of title to real estate near the falls of Niagara; and I have myself seen a person convicted of larceny, to a large amount, in the Supreme Court of Massachusetts, upon the testimony of an Indian.

But the gentleman assigned, as a reason for his assertion, that a belief in a future state of rewards and punishments was essential to their admissibility as witnesses. True, sir, and so it is with respect to all others. The objection is as valid against a white as a red man. If this act creates no new disability, why was it passed? Why not leave them to the provisions of the common law? But, sir, we learn from an intelligent missionary, that there are a thousand members of Christian churches. These, and all other true believers are excluded. Even those

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who are so distinguished for their knowledge, integrity, and ability, that the honorable Chairman would be willing himself to be represented by them in the Congress of the United States, are not permitted to testify in a court of justice.

Under these enactments, the Cherokees are aliens in their native land: trespassers upon their own soil: outlaws in the bosom of their own nation!

But why should I dwell upon the laws already passed, when the same power can, at will, produce others to effectuate their avowed determination? Who will pretend that the Indians can live under the legislation of the State? The head of the bureau of Indian affairs, in a communication transmitted to Congress by the Secretary of War, declares that it will "seal their destruction, as admitted by their chiefs;" and the honorable chairman has frankly declared in this debate, that it will reduce them to the last degree of wretchedness. His words were: "You cannot make a full blooded Indian more miserable" than by such subjection; and, in his written opinion of 1824, he emphatically says, if "the protection of the United States is withdrawn," "the Cherokee nation cannot exist twelve months."

The question now proposed by this amendment is, shall that protection be withdrawn; and the Indians be compelled to leave their country, under the penalty of certain destruction if they remain?

The interrogatory has been often repeated, why should not Georgia extend her laws over the natives as well as other States?

Again, sir, I reply—our treaties—our treaties. The Indians object, and the United States have solemnly promised, to interpose at their request. In no other instances have they opposed State legislation, and demanded our interposition. This is a sufficient answer.

But this topic has been so much urged, and the effort has been so great to find shelter under the precedents of other States, that I will bestow upon them a moment's attention. That principally relied upon, and the only one specified, is a law of New York passed four or five years ago. The occasion was this. In one of the little reduced tribes, within that State, a female had been executed as a witch. The executioner was indicted in the State court before one judge and convicted. The question of jurisdiction was carried to the Superior Court, who never came to a decision, but advised a pardoning act; whereupon this law was passed, which punishes certain high crimes committed within the tribe. Its sole object was the protection of the Indians, and it seemed to have been by their consent. They have never objected, much less claimed our interposition. Does this bear any analogy to the case of Georgia and the Cherokees? When another tribe, the Oneidas, formed a constitution or Government similar to that of the Cherokees, did New York interfere to destroy it and dissolve the nation? Far otherwise; they protected them in its enjoyment. And such has been the general character of the legislation of other States. I shall not go back to the early days of colonial vassalage, although it is surprising that so little care of precedent is to be found, even when the weakness of infancy was struggling for existence against the power of the savages. I speak of the States, since they became such, under the confederation, or the Federal Constitution; and say that their general legislation has been—not over the Indians, and acting upon the individuals within the territory of their tribe; but protecting and preserving them as a distinct community—operating upon the whites, and restraining them from inflicting wrongs and injuries. The legislation of Georgia has thrown over them a net, which binds every limb in fetters, but is no shield of defence against assaults; whilst that of other States has erected around them a wall of defence, guarding them against encroachments.

This bill [said Mr. S.] provides for the removal of the Indians to distant regions, beyond the Mississippi; and it is proposed to place no less than half a million of dollars in the hands of the Secretary of War for that purpose. The amendment, now under consideration, declares that they shall be protected, in the enjoyment of their rights, until they shall choose to remove. The necessity for such a provision is apparent. Without it, they have no option. Without it, this bill will add to the pressure of the torrent that is sweeping them away.

It is not known that acts for holding Indian treaties have been used as instruments of coercion! When our commissioners have met the chiefs in council to obtain farther acquisitions of territory, have they not sometimes asked only, what will you reserve? And when the answer has been, we have no lands to spare—we will cede nothing; this question is repeated—what will you reserve? Congress have passed a law for the purpose of obtaining a portion of your soil—the United States are strong—their arms now sleep in peace; beware how you arouse them from their slumbers!

Not only has terror been inspired, but other means have been resorted to, to cause the women to influence their husbands; the children to beseech their parents; the warriors to urge the chiefs; until their firmness is overcome. It is related of a venerable chief, that, yielding at last to this irresistible pressure, he signed the fatal parchment in tears; declaring at the time that it was the death warrant of his nation.

Apprehending that our object is to obtain further cessions, the Indians have met us in council with fear and trembling. In one instance, five or six tribes being assembled, our commissioners announced to them that our only desire was to establish and preserve peace among themselves; that we asked for no lands; they instantly rent the air with acclamations of joy. No difficulties, no delays intervened—the treaties were accomplished at once.

Is it uncharitable to suppose that agents, to be appointed under the direction of those who are now concerned in our Indian affairs, may resort to force or terror? Sir, the officer now at the head of the Indian Bureau, in his official report of a treaty of cession, made by him with the Creeks, states the fact, that in two successive councils he met only a firm denial; and in the third, he says, one individual being most prominent in his opposition, it was not until he "broke him upon the spot" that the treaty was obtained! Yes, sir, that officer avows that he "broke" one of the prominent chiefs in their own council, as the only means of accomplishing his purposes. And in an official communication sent to us by the Secretary of War at the commencement of this session, the same officer recommends that the Government should send an "armed force" to the Cherokee country, to further the objects of this bill—the removal of the natives. He says, indeed, that he would make a solemn declaration that the military were not to be used to compel them to leave their country; but only to give security to those that were willing to go. And would such a declaration, even if made, do away the effect of the presence of our bayonets? What is the avowed purpose? To protect, against their own Government and people, the individuals who may choose to emigrate; but not to afford any aid or countenance to those that may choose to remain. The chiefs may inquire—will these soldiers give us protection against the power of Georgia, if she shall attempt to force her laws upon us? The reply must be, Oh no, the President has decided that she has a right to govern you; and if you should resist, the United States are bound to assist her in the execution of her laws against all opposition. When the British minister remonstrated against the Emperor Alexander's annexing a part of Poland to his dominions, he replied: I have three hundred thousand soldiers in that country. The argument was conclusive. If the Cherokees should

hesitate, they might, in significant silence, be pointed to our glittering bayonets!

It is recommended to send an armed force to enable the Cherokees to deliberate freely. When the Roman orator appeared in defence of Milo, he found the forum surrounded by an armed force, accompanied, no doubt, by the declaration that it was only to preserve tranquillity. But even the tongue of Cicero was palsied by the formidable array, and his friend and client was abandoned to his fate. We know, sir, how the deliberations of the Parliament of Great Britain, and the National Conventions of France, have been aided by the presence of an armed force; and history abounds with similar examples.

I confess, sir, that I cannot but indulge fears of the use which may be made by the War Department, of the half million of dollars, to be appropriated by this bill. We do know, that, in making Indian treaties, there have been instances of valuable reservations of lands, and large sums of money being secretly given to individual chiefs, by confidential arrangements, to induce them to yield to our wishes, and betray the confidence reposed in them by their nation. Is it uncharitable to apprehend that such things may happen under the directions of the present Secretary of War? Towards that high officer I have no feeling of unkindness. I seek no imputation upon his motives; but his official acts I am bound, by the duties of my station, to examine. Look at the instructions given by him in May last to General Carroll, who was sent as an agent of the Government to induce the Cherokees to a removal. They express throughout much solicitude for the welfare of the Indians, and profess to consult their best interests. But I am constrained to look at the acts to be done—the course of conduct prescribed. He is directed not to meet the Cherokees in "General Council" for "the consequence would be, what it has been, a firm refusal to acquiesce;" but to "appeal to the chiefs and influential men—not together, but apart, at their own houses; and to make offers to them of extensive reservations in fee simple, and other rewards" to obtain "their acquiescence." He is further told, "the more careful you are to secure from even the chiefs the official character you bear, the better"—and again: "go to them not as a negotiator, but friend." "Open to each a view of his danger. Again: "enlarge on their comparative degradation as a people, and the total impossibility of their ever attaining to higher privileges, while they retain their present relations to a people who seek to get rid of them"—that their laws "will be superseded and trodden under foot." Again: "enlarge upon the advantage of their condition in the West—there the General Government would protect them—improve them by instruction." They would become our equals in privileges, civil and religious, and that "by refusing" to remove, "they must, necessarily, entail destruction on their race."

I cannot but remark the parallel between the course here prescribed and that which expelled our first parents from Paradise. When the Arch Tempter sought their removal, he assailed them "not together," lest their joint "council" should have baffled his arts; but he found feeble woman "apart" from her husband, deprived of the aid of her natural adviser, and carefully concealing his "official character" of Satanic majesty; assuming the guise of a "friend"—a kind instructor; he told her—pursue the course which I advise, and the evils which have been predicted shall not follow!—"ye shall not surely die"—but you shall be enlightened and elevated—"your eyes shall be opened, and ye shall be as gods, knowing good and evil." She listened and yielded—

"Earth felt the wound, and nature, from her seat,  
Sighing through all her works, gave signs of woe  
That all was lost."

She was made the instrument of seducing the man also; and both were driven from the garden of Eden, where the

Creator had placed them, to the unsubdued wilderness of the world—and a flaming sword forever barred their return.

The adoption of such measures is, in the language of the military Secretary, to "move upon them in the line of their prejudices." And upon whom is it that we thus move? Those whom we have most solemnly promised to protect as faithful guardians; whom we have called brothers; whom we have taught to look up to the President as their great father. Yes, we have endeavored to obtain over them the influence of a parent; but do we perform towards them the duties of that sacred relation?

It is said we must resort to such measures; they are unavoidable. The plea of state necessity is advanced. And is this great country, with peace in all its borders, now controlled by an irresistible power, that knows no rule and consults no law? Does this measure wear the garb of state necessity? That, sir, is a high-handed tyrant—not a smooth-tongued seducer. It is a lion, seizing its prey with open and resistless strength—not a serpent winding its sinuous way in secret to its victim.

Without the adoption of this amendment, the Cherokees have no choice; but between the miseries of emigration, and destruction where they are, it is contended that it is for their best interest to remove. Leave that, sir, to their own decision. Our judgment may be too much guided by our own convenience. We undertook to judge for the Seminoles in Florida. We asked for their fertile lands; they objected, asserting that the residue would not support existence. We persisted; and found means at last to obtain a reluctant cession. They departed in the deepest sorrow from their homes of comfort and plenty, to encounter want and misery upon a barren waste. Nineteen-twentieths of the territory which we left to them consisted of sands where no verdure quickened, and of swamps upon which human life could not be sustained. The dreary description officially given by Governor Duval can hardly be exceeded. The consequence was—what the Seminoles foresaw—want, suffering, and starvation. The Government was forthwith compelled to give twenty thousand dollars for food to preserve life, and to retrocede a portion of their territory.

Whither are the Cherokees to go? What are the benefits of the change? What system has been matured for their security? What laws for their government? These questions are answered only by gilded promises in general terms; they are to become enlightened and civilized husbandmen.

They now live by the cultivation of the soil, and the mechanic arts. It is proposed to send them from their cotton fields, their farms, and their gardens, to a distant and an unsubdued wilderness—to make them tillers of the earth; to remove them from their looms, their workshops, their printing press, their schools, and churches, near the white settlements, to frowning forests, surrounded with unkind savages—that they may become enlightened and civilized! We have pledged to them our protection; and, instead of shielding them where they now are, within our reach, under our own arm, we send these natives of a southern clime to northern regions, amongst fierce and warlike barbarians. And what security do we propose to them? A new guarantee! Who can look an Indian in the face, and say to him, we and our fathers, for more than forty years, have made to you the most solemn promises: we now violate and trample upon them all; but offer you, in their stead, another guarantee!

Will they be in no danger of attack, from the primitive inhabitants of the regions to which they emigrate? How can it be otherwise? The official documents show us the fact, that some of the few who have already gone, were involved in conflicts with the native tribes, and compelled to a second removal.

How are they to subsist? Has not that country now, as great an Indian population as it can sustain? What

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has become of the original occupants? Have we not already caused accessions to their numbers, and been compressing them more and more? Is not the consequence inevitable, that some must be stunted in the means of subsistence? Here, too, we have the light of experience. By an official communication from Governor Clark, the superintendent of Indian affairs, we learn that the most powerful tribes, west of the Mississippi, are, every year, so distressed by famine, that many die for want of food. The scenes of their suffering are hardly exceeded by the sieges of Jerusalem and Samaria. There might be seen the miserable mother, in all the tortures which hunger can inflict, giving her last morsel for the sustenance of her child, and then fainting, sinking, and actually dying of starvation! And the orphan! no one can spare it food—it is put alive into the grave of the parent, which thus closes over the quick and the dead! And this not in a solitary instance only, but repeatedly and frequently. "The living child is often buried with the dead mother."

I am aware [said Mr. S.] that their white neighbors desire the absence of the Indians; and if they can find safety and subsistence beyond the Mississippi, I should rejoice exceedingly at their removal, because it would relieve the States of their presence. I would do much to effect a consummation so devoutly to be wished. But let it be by their own free choice, unawed by fear, unseduced by bribes. Let us not compel them, by withdrawing the protection which we have pledged. Theirs must be the pain of departure, and the hazard of the change. They are men, and have the feelings and attachments of men; and if all the ties which bind them to their country and their homes are to be rent asunder, let it be by their own free hand. If they are to leave forever the streams in which they have drank, and the trees under which they have reclined; if the fires are never more to be lighted up in the council house of their chiefs, and must be quenched forever upon the domestic hearth, by the tears of the inmates, who have there joined the nuptial feast, and the funeral wail—if they are to look for the last time upon the land of their birth, which drank up the blood of their fathers, shed in its defence—and is mingled with the sacred dust of children and friends—to turn their aching vision to distant regions enveloped in darkness and surrounded by dangers—let it be by their own free choice, not by the coercion or a withdrawal of the protection of our pledged faith. They can best appreciate the dangers and difficulties which beset their path. It is their fate which is impending; and it is their right to judge, while we have no warrant to falsify our promise.

It is said that their existence cannot be preserved; that it is the doom of Providence that they must perish. So, indeed, must we all; but let it be in the course of nature, not by the hand of violence. If, in truth, they are now in the decrepitude of age, let us permit them to live out all their days, and die in peace; not bring down their grey hairs in blood to a foreign grave.

I know, sir, to what I expose myself. To feel any solicitude for the fate of the Indians may be ridiculed as false philanthropy and morbid sensibility. Others may boldly say, "their blood be upon us;" and sneer at scruples, as a weakness unbecoming the stern character of a politician. If, sir, in order to become such, it be

necessary to divest the mind of the principles of good faith and moral obligation, and harden the heart against every touch of humanity, I confess that I am not, and, by the blessing of Heaven, will never be—a politician.

Sir, we cannot wholly silence the monitor within. It may not be heard amidst the clashing of the arms, in the tempest and convulsions of political contentions; but its "still small voice" will speak to us—when we meditate alone at eventide—in the silent watches of the night—when we lie down and when we rise up from a solitary pillow—and, in that dread hour, when, "not what we have done for ourselves, but what we have done for others" will be our joy and our strength; when—to have secured, even to the poor and despised Indian a spot of earth upon which to rest his aching head—to have given him but a cup of cold water, in charity, will be a greater treasure than to have been the conquerors of kingdoms, and lived in luxury upon their spoils.

MONDAY, APRIL 19, 1830.

## FUNERAL HONORS TO GEN. SMYTH.

After the sitting was opened—

A message having been received from the House of Representatives, by their clerk, announcing the demise of the honorable ALEXANDER SMYTH, one of the Representatives in Congress from the State of Virginia—

Mr. TYLER, of Virginia, rose and addressed the Senate as follows:

The death of ALEXANDER SMYTH, just announced to us, leaves a considerable void in society. For the long period of probably forty years, he has been engaged in public life. His services in the Virginia Legislature will long be remembered, while his career in the House of Representatives will best attest his character. Possessing fine talents, with a mind logical and precise, his manners were retiring and unobtrusive. If he did not possess the *suaviter in modo*, he undeniably possessed the *fortiter in re*. His speeches, delivered in the various stations which he has filled, will survive as the best monument of his virtue, industry, and his intellectual firmness and strength. With high claims to public preferment, he preferred to rest for his support upon the people of the district in the service of which he has died, and that people have over and over again awarded to him the highest meed of their approbation, and know best how to estimate his services. As a mark of respect to his memory, I move the following resolution:

*Resolved*, That the Senate will attend the funeral of the honorable ALEXANDER SMYTH, late a member of the House of Representatives from the State of Virginia, this day, at twelve o'clock; and, as a testimony of respect for the memory of the deceased, they will go into mourning, and wear crape round the left arm for thirty days.

The resolution was unanimously agreed to; and then,

On motion of Mr. TAZEWELL, of Virginia, the Senate adjourned.

TUESDAY, APRIL 20, 1830.

## MASSACHUSETTS' CLAIM.

The bill to authorize the payment of the claim of the State of Massachusetts, for militia services during the late war, having been taken up—

Mr. BENTON, as Chairman of the Military Committee, by which the bill had been reported, rose to explain it. He said the claim was founded on militia services rendered during the late war, and had been thirteen years before the Federal Government for payment. It had been in a continued state of examination, either by Executive officers or by committees of Congress, during all that time; and the results of these examinations had been uniformly the same, namely, that a part of the claims rest on the same principles on which claims from other States rested which have been paid, and of course ought to be

\* Extract from an official report of Governor Clark, Superintendent of Indian Affairs, dated March 1, 1826.

"The condition of many tribes west of the Mississippi is the most pitiable that can be imagined. During several seasons, in every year, they are distressed by famine, in which many die for want of food, and, during which, the living child is often buried with the dead mother, because no one can spare it as much food as would sustain it through its helpless infancy. This description applies to Sioux, Ojibwa, and many others, but I mention these because they are poor, cold tribes, and live near our borders, and my official station enables me to know the exact truth. It is in vain to talk to people in this condition about learning and religion."

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paid also. The brief history of these examinations and results, is this: these claims were first presented at the War Office in 1817, and filed for examination. In 1822, the delegations in Congress from Massachusetts and Maine presented a memorial to the President, asking an examination and settlement of them. In 1823, the third auditor of the Treasury was directed to audit them, and to proceed on the same principles which had governed the settlement of like claims from other States. In 1824, the President [Mr. MONROE] having carefully examined the proceedings of the auditor, brought the claims before Congress in a special message, and recommended that provision should be made for their payment, to the extent that like claims had been paid from other States. This message went to the Military Committee of the House of Representatives, which reported favorably; but as their report did not ripen into a law, the subject was referred again to the same committee in 1826, and a favorable report again made. That payment of the claims, to a certain extent, ought to be made, seemed then to be agreed on all hands; but the accounts were numerous, complex, and depending upon variety of testimony, as well as on different principles. A body so numerous as the House of Representatives, found it difficult to examine particulars and liquidate a long account; and they did what every public body ought to do under the like circumstances: they referred it to the accounting officers to make the examination, and report the amount which ought to be paid. The reference was to the War Department, and the third auditor was charged with the business. He occupied himself about it for nearly eighteen months, a period of time which I mention particularly, to show the degree of care which a most careful officer bestowed upon the examination, and reported in favor of about one half of the amount of these claims. The entire claim was for eight hundred and forty-three thousand six hundred and one dollars and thirty-four cents; the report is for four hundred and thirty thousand seven hundred and forty-eight dollars and twenty-six cents. To the amount thus allowed, the bill now before the Senate is limited. It proposes to pay what the third auditor has found to be due under the reference made to him. I consider this bill in the light of an appropriation, to meet a liquidated demand. The third auditor is the officer of the Government; he has adjusted the account under the instructions of the House of Representatives; and the payment, unless his settlement can be impeached, would seem to follow as a matter of course. I have seen no reason to impeach his settlement. The committee to whom it was referred saw none. References to the opinions of a committee may not be strictly regular; but, in this case, it may be allowable, and I can say that our opinion was unanimous in reporting this bill. Prejudices have prevailed against these claims. I have felt these prejudices. I have seen the time when I never expected to vote for their payment. These prejudices continued until it became my duty to examine them; and that examination has resulted with me, as with all others who made it, in the conviction that a large part of them ought to be paid.

Mr. SILSBEE said, that after the satisfactory explanation of this case, which had been given by the Senator from Missouri, who presides over the committee which had just investigated it, he should be much more brief in his remarks upon it than he might otherwise have been. But as the bill was introduced by me, [said Mr. S.] in the discharge of what I conceived to be my duty to the State which I have the honor in part to represent in this body, it may be expected of me, in pursuance of that duty, to say a few words in its support.

This Massachusetts' claim [said Mr. S.] is a claim not only of one, but of two sovereign States of the Union—Massachusetts and Maine; for military expenditures by the people of those States, (then forming but one State,) for the defence of the State against a foreign and common enemy.

This claim has been over thirteen years under the scrutiny of the different branches of this Government. In February, 1817, it was presented for payment to the executive branch of the Government; and at the succeeding session of Congress of 1817-18, it was presented to the consideration of the House of Representatives, and it has been before that branch of the Legislature, or the Executive branch of the Government, or travelling by the side of Presidential messages, or Congressional resolutions, from one to the other, from that time to this, receiving favorable reports from each, and from all, but no payment yet from either. Under these circumstances, and aware of the just complaints of the Government and people of Massachusetts of such delay, I considered it to be my duty, after consultation with the other Representatives of that State in Congress, to present this claim, for the first time, to the consideration of the Senate, where, it was hoped, a prompt and just decision would be obtained upon it.

This claim has been presented and urged for payment, as a fair and just one, not only by the administration of Massachusetts, under which it originated, but by every succeeding administration of that State, from that time to the present moment; in the course of which time we have had four different Chief Magistrates in Massachusetts, all of whom were perfectly acquainted with the whole history of this claim; and two of them (the late Governor Eustis and the present Governor Lincoln,) ardent supporters of the late war and of the measures of the General Government connected with it. We have also, had, in the course of this time, sixteen different Legislatures in Massachusetts, coming annually from the people, and possessing their views upon the subject; and every one of these Legislatures have, I believe, united with the different Executives of the State, in support of this claim.

Although ready and willing, sir, to go into a full investigation of this claim, I shall avoid trespassing so far upon the time of the Senate as would be requisite for that purpose, unless it becomes necessary, for the present, at least, to a few remarks in relation to it. Although the enemy was on our coast, capturing our shipping and other property, and occasionally committing depredations upon some of our most exposed towns, in the course of the years 1812 and 1813, yet it was not until 1814, and after the peace in Europe, that we became seriously apprehensive of invasion. And the expenditures embraced by this claim, with the exception of two or three thousand dollars, accrued after April, 1814, and the bill now under consideration embraces only such parts of the claim as, after the most rigid and prolonged scrutiny, by every branch of the Government, have been found to come within the rules and principles which have been observed in the settlement of similar claims of other States—not what has been asked by the creditor, but what the debtor admits to be due. Sir, but for these expenditures, the State of Massachusetts must, and would have been invaded, and much of its property captured or destroyed; for, as is shown by one of your own officers then in command there, there were not a sufficient number of United States troops within the State of Massachusetts, if they had all been drawn to one point, to man the guns of one of its fortifications; and, sir, here let me add, that by a portion of these expenditures, the property of the United States was prevented falling into the hands of the enemy. Yes, sir, your navy yards at Charlestown and Portsmouth, and the public ships then lying at them, were defended, and successfully defended, by the militia of Massachusetts, as can be shown by the correspondence of your own officers. [Here Mr. SILSBEE read extracts of letters from General Dearborn, from Commodore Bannbridge, from the Adjutant General of Massachusetts, and from the then Secretary of the Navy.]

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Sir, [continued Mr. S.] during the whole summer of 1814, the whole seacoast of Massachusetts was kept in a constant state of alarm, so much so, that but little else was thought of by any one but the defence of his person, his property, and his country: the enemy was not only on our coast, but often in our harbors; invasion and the destruction of property were daily and nightly apprehended, during the whole season; to prevent which, guards were established on the whole extent of the coast; many of the militia constantly on duty, not only the militia on the seaboard, but that of the interior, were often marched to the coast and kept on duty, for the protection of the public, as well as private property, which was there located, and the whole militia of the State under orders to march at the shortest notice. A large portion of these services were rendered on sudden and pressing occasions, to meet "invasion, or well founded apprehensions of invasion," and are such as come clearly within the class of claims which has been allowed and paid to other States. Sir, no one who has examined the documents appertaining to this claim, can, I think, have failed to be convinced, that during the summer of 1814, the State of Massachusetts was in constant and imminent danger of invasion, and without any other means of defence than its own militia, acting, some under United States' officers, some under their own officers, and all acting in concert and upon plans of operation, mutually agreed upon by the officers of the United States, (both military and naval) and the officers of the State. By this union of council and operation, the State was protected from invasion by the people of the State, at their own expense, and at less expense than it could otherwise have been done, for which they ask such remuneration, and only such, as has been made for the like services, rendered by their fellow-citizens of other States; they expect no less, they ask no more; but, sir, they have been asking for this a long time.

[Mr. STANBEE here gave a statement of the proceedings upon this claim, by the executive and legislative branches of the General Government, from its first presentation in February, 1817, to the present time, and read extracts from the reports of the different committees of the House of Representatives, to which it had been referred in 1818, in 1824, and in 1826; also from the special messages of the late President Monroe, of 1823, 1824, and 1825, and from the resolution of the House of Representatives of December, 1826, under the authority of which the report of the Third Auditor was made, upon which the bill before the Senate was founded.]

It is shown by these documents, [said Mr. S.] which have been furnished by the Government of the United States, in relation to this claim, that the late President Monroe, (than whom no one knew more of its history, and who had no reason to entertain predilections for it) in three special messages to Congress, recommended its settlement and payment, according to the rules by which similar claims of other States had been adjusted and paid. And every committee of Congress, to whom it has been referred, (and it has now been under the consideration of four different committees) have been led to the same conclusion, and have reported that it ought to be paid to that extent. The amount specified in the bill now under consideration, is that which has been found to be due, by an investigation of the most scrutinizing officer of this Government, under a resolution of the House of Representatives, founded upon the recommendations and reports just mentioned. And it is now before the Senate with these high testimonials in its support. Such testimonials, emanating from such sources of information in relation to this claim, seem to be sufficient to show that it needs only to be examined, to be approved by all, of which, if any doubt remained, that doubt must be considered as entirely removed by the frank and honorable avowal of the Chairman of the Committee; that the examination which

he has been called to make of it, has removed the unfavorable impressions which he had previously entertained towards it, so far, at least, as to satisfy him of the justice of passing this bill. Deeming it needless at present to trouble the Senate with a more detailed representation of this claim, I shall forbear doing so, unless it should hereafter become necessary. I shall, however, willingly meet any questions that may be proposed, and afford any and every information I possess in relation to it, which may be asked.

Mr. HOLMES made also a few remarks in explanation and support of the claim; after which

The question was put, and the bill ordered to a third reading without a division.

#### THE INDIANS.

The consideration of the bill to provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the river Mississippi, was resumed.

Mr. ADAMS said he was sure that all must feel embarrassment in addressing, for the first time, the Senate of the United States; and, especially, on a subject of so much importance as that now under consideration. But mine [said he] is greatly increased from never before having been a member of a legislative assembly. But I feel great encouragement, from a knowledge that this circumstance will increase towards me the generous indulgence and courtesy for which this body is so distinguished; and I feel that it will be owing to that indulgence that I will be able to lay before the Senate the few imperfect observations which occur to me on the subject before us.

The question, which is submitted to us by the bill itself, as reported to the Senate by the Chairman of the Committee on Indian Affairs, is this: whether Congress will authorize the President of the United States to exchange territory belonging to the United States west of the river Mississippi, and not within the limits of any State or organized Territory, with any tribe of Indians, or the individuals of such tribe, now residing within the limits of any State or Territory, and with whom the United States have any existing treaties, who may voluntarily choose to make such exchange for the lands which such tribe of Indians, or the individuals of such tribe, at present occupy; to compensate individuals of those tribes for improvements made upon the lands they now occupy; to pay the expenses of their removal and settlement in the country west of the Mississippi, and provide them necessary subsistence for one year thereafter.

The authority contemplated by the bill is, to make the exchange of territory with those Indians, and with those only, who are willing to make it. The friends of this measure do not wish to vest power in the President of the United States to assign a district of country west of the Mississippi, and, by strong arm, to drive these unfortunate people from their present abode, and compel them to take up their residence in the country assigned to them. On the contrary, it is their wish that this exchange should be left to the free and voluntary choice of the Indians themselves.

Is there any thing alarming in this proposition? any thing to cause that fear and trembling for the fate of the unfortunate Indian, which have been manifested in the opposition to this bill? Is there any thing to call forth those animated denunciations against those who disregard and violate the faith of treaties? As if those who support this measure were ready to prostrate at the foot of their own sordid interest the honor of the nation, and inflict a stain upon her escutcheon that all the waters of the Mississippi could not wash out. I confess, for my own part, I can see nothing in the provisions of the bill before us unbecoming the character of a great, just, and magnanimous nation. And, indeed, if I had heard only so much of the eloquent speeches of those who oppose the passage

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of the bill as enjoined upon us the strictest good faith in the observance of treaties, I would have concluded that they were the warmest advocates of the proposed measure.

As early as the year 1802, the United States entered into a compact with the State of Georgia, which compact was ratified in the most solemn manner, being approved by the Congress of the United States and by the Legislature of the State of Georgia. By this agreement, the United States obtained from the State of Georgia a cession of territory sufficient, in extent, to form two large States, and in part consideration for such an immense acquisition of territory, agreed, on their part, in the most solemn manner, to extinguish, for the use of Georgia, the Indian title to all the lands situated within the limits of that State, "as soon as the same could be done peaceably and upon reasonable terms." Although this is not, in the technical sense of the term, a treaty entered into by the United States with the State of Georgia, yet it is an agreement upon a full and valuable consideration; and good faith on the part of the United States requires its fulfilment, according to its true spirit and intent. The bill under consideration proposes a mode by which this agreement may be performed; by which the Indian title to all the lands within the boundaries of that State may be extinguished, peaceably, and upon reasonable terms. Peaceably, because it is only to operate upon those Indians who are willing to remove. And upon reasonable terms, because they are to receive other lands in exchange for those which they give up; just compensation for improvements made by them; the expense of their removal and settlement paid, and subsistence for one year furnished them. Would it not, therefore, have been reasonable to suppose, that those who have said so much about the high and sacred obligation of treaties, and how essentially the great name of every nation depends upon their strict observance, would be amongst the foremost and warmest supporters of the bill under consideration? And certainly it was matter of astonishment to me to find that all their mighty efforts had another aim. And, as an excuse for that, we are told, that although this bill appears harmless on the face of it; that although all its exterior seems well ordered, and no objection can be urged against it in the abstract, yet there are facts and circumstances so connected with it as to make it in the highest degree objectionable, and to justify the unsparring animadversions which have been bestowed upon it.

The following portion of the message of the President of the United States to the present Congress, has been read, and urged as one of the causes of alarm.

[Here Mr. A. read several paragraphs from the message to which he had alluded.]

The principle insisted on in this part of the message, denying to the Indian tribes within the limits of the States the rights of separate government; recommending to them to remove beyond the Mississippi, and declaring to them distinctly, that, if they remain within the limits of the States, they must submit to the laws of the States within whose limits they reside, is contrary to the provisions of the treaties made by the United States with several of those tribes, and now existing in full force—particularly with the Creeks, Choctaws, Chickasaws, and Cherokees; that the acts of the Legislatures of Georgia, Alabama, and Mississippi, extending the laws of those several States over the Indians residing within their respective limits, are also in violation of those treaties; that they are calculated to compel the emigration of those tribes; and, to counteract and defeat the operation of the opinion expressed by the President of the United States, and this improper legislation, as it is called, of those States, an amendment has been offered. The amendment is in these words: "Provided, always, that, until the said tribes or nations shall choose to remove, as by this act is contemplated, they shall be protected in their present possessions,

and in the enjoyment of all their rights of territory and government, as heretofore exercised and enjoyed, from all interruption and encroachments."

This is, perhaps, the first attempt, by an act of Congress, to operate directly on the legislation of the States, which has been made since the institution of this Government, and it is to be hoped it will be the last. The avowed intention is, to interpose the power of the Federal Government to prevent the action of the laws of the States in question, within their own acknowledged boundaries, and to exempt from the influence of those laws a portion of the population. It has sometimes happened to States that acts of their Legislatures have been declared unconstitutional by the Supreme Court of the United States, and, consequently, inoperative and void in the particular case in question. The Supreme Court, however, act on a single statute at a time; but, in the mode proposed by the amendment in question, Congress may sweep off whole codes in a moment by a single clause. It is plain, then, if the bill pass with this amendment, that the laws of the States and of the Federal Government must come into collision. The bill speaks of tribes residing within any State or Territory, and with whom the United States have existing treaties. Treaties exist between the United States and Indians residing within the States of New York, Georgia, Alabama, and Mississippi, and the Legislatures of all these States have extended all, or a part of their laws, over those Indian tribes respectively. The collision which will arise between the laws of the Federal Government and of the States will extend to four of the States of the Union. And if the federal law be constitutional, the President of the United States will be bound by his oath of office to see that it shall be faithfully executed. And gentlemen have told us that, if milder means will not answer the purpose, the strong arm of the Government must be employed; by which I understand that a military force must be arrayed against the contumacious States, to bring them into subjection, and to compel them to acknowledge the right of the Indian tribes to live under their own usages, government, and laws.

Let us see what will be the practical operation of this Indian protective system. According to the usages and laws of the nations of Indians residing within the State of New York, witchcraft is declared to be a crime, and capital punishment is to be inflicted upon those who are found guilty. But, by the laws of the State of New York, extended over those tribes, the infliction of such punishment by any one of the tribe, for such supposed offence, is declared to be murder, and the offender is liable to be convicted, and to suffer the penalty of the law in such cases. Here is a conflict of laws, and under the proviso in question, the Indian tribe, upon complaint made to the Executive of the United States, to see that they should be protected in the enjoyment of their own government, usages, and laws, and upon the refusal of the State of New York to yield to the persuasion of the President of the United States, and to surrender all claim to govern the people within her limits—the strong arm of this Government—its military force must be interposed to protect the Indian tribes, and to see that they enjoy the usage of punishing their own witches in their own way.

By a law of the Cherokee republic, a plurality of wives is authorized: but, by the laws of Georgia and Alabama, this is regarded as a crime, and those who are guilty are liable to severe punishment. But, by the guarantee contemplated in this proviso, if the laws of Georgia or Alabama were to interpose between the privileged Cherokee, and the enjoyment of his fifty wives, all that would be necessary to ensure that enjoyment, would be to call on the Executive Department of this Government, point to the guarantee, claim its execution, and, if nothing else will do, the claims of Georgia and Alabama must be silenced by the military force of the nation.

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By a usage of the Choctaws, homicide is punishable with death in all cases, with a single exception, which exception is when one man kills another in a ball play. But, by the laws of Mississippi, it is excusable when done in self-defence, and to save the life of the person attacked. But if the laws of that State were to interfere to prevent the life of an innocent man from falling a sacrifice to this absurd and barbarous usage, the laws of the Union would be violated, and the State must submit to chastisement for an act of humanity.

But the argument on the other side shows this proviso to be unnecessary. For, it is insisted that, by virtue of treaties now existing, the separate existence as nations, of the several Indian tribes within the limits of those States, is acknowledged, and that, in their character of nations, the United States have promised them protection; and that, by virtue of the obligation of treaties, this protection ought to be extended to them. If such treaties exist, and they are the supreme law of the land, then no additional supremacy can be conferred by the proviso, and no additional obligation can be imposed on the Executive Department of the Government, to do that which is already enjoined by treaties. The argument, therefore, shows all further legislation to be unnecessary.

The Cherokee tribe of Indians having erected an independent Government within the limits of the States of Georgia and Alabama, and those two States claiming the rights of exclusive sovereignty within their respective limits, extended their laws over those Indians. Under these circumstances, an appeal was made to the Executive of the United States by those Indians, claiming to be protected in the enjoyment of the Government which they had established for themselves. The question was then submitted for the decision of the President of the United States, and, under the oath which he had taken to support the constitution, he determined that no such Government could be erected without the consent of the States within which it was formed. The question is, therefore, decided as to them. If it was unconstitutional, under the state of things which then existed, it would continue to be unconstitutional under the proposed amendment; and it would never do for Congress to reconsider a question of constitutional law, decided by either of the other distinct and independent departments of the Government, upon a question properly submitted to such departments, and reverse that decision. If they can do so in regard to the Executive, why not in regard to the Judiciary? For both the Executive and Judiciary derive the power of decision from the same source, not because it is expressly said in the constitution, that the Judiciary or the Executive shall disregard a law not made in conformity to that instrument, but because each is required to take an oath to support the constitution as the paramount law; and when any statute or any treaty is made or passed contrary to its provisions, each of those departments before which the question may arise, is bound to declare it a nullity. The Executive has, then, upon the matter fairly submitted to it, decided the constitutional question, as to the Government erected by the tribe of Cherokees, and no law which we can pass can possibly change the principle of that decision. It rests upon the authority of the constitution itself.

But it seems that, for the sake of doing justice to Indian rights, all things are to be resolved into their original elements, and we are called upon to decide the subject before us according to principles of abstract justice.

The vast country which now forms the United States, with the exception of Louisiana, was, at one time, subject to the jurisdiction and sovereign dominion of Great Britain. She claimed it by right of discovery and conquest, and, added to this, the superior claims of an agricultural over a savage and barbarous people. This title has always heretofore been considered sufficient by the jurist and

the statesman, and no inquiry beyond it has been thought necessary, or even tolerable; and it has been left to the sympathies—the mistaken sympathies, as I must call them—of the present day, to call up this title of the savage from its sleep of ages, and urge it on this floor and elsewhere, as prior and paramount to that of civilized nations.

If gentlemen are really in earnest in the opinions which they have expressed; if the remonstrants who have loaded your table with their petitions, are really in earnest; if the pamphleteers who have inundated the country with abuse upon the present administration, and poured out the phials of their unsparing wrath upon Georgia, are really in earnest; if they really believe that civilized man has lawlessly usurped the territory and dominion of the barbarian, then let them show their sincerity and consistency, by asking for this much injured and almost exterminated race, that ample measure of justice which the magnanimity of their professions purport: let them not only ask, but do justice; call them back from the deep wilderness to which they have been driven; restore to them this fair and happy land, from which they have been cruelly expelled; give them up your fields, houses, cities, temples of justice, and halls of legislation. All I have to ask is, that those whose sense of justice is with them a principle so prevailing, shall begin this retrograde to barbarism at home; that they shall first surrender that which more immediately concerns themselves, and over which they would seem to have a more direct control, and then call upon us to follow an example so worthy. But I think it is not difficult to foresee that this work of restoration would not proceed far before the pretended philanthropist would quarrel with his own rule of abstract justice, and content himself with permitting things to remain as they are.

But, it is said, it was the policy of Great Britain, and most of her colonies, to procure cessions of territory from the Indians by treaty; and, of course, in the settlement of this great account of domain and empire with the red man, credit should be allowed for all that was thus acquired. But, according to the rule of hard morality and abstract justice, which we have been taught on this occasion by the advocates of Indian rights, there is but slight difference in the title to that which has been acquired by conquest in the strictest sense of the term, and that which has been acquired by treaty and cession: for I am sure that, if the history of those transactions could be truly known, it would appear, that, if the one originated in force, the other was obtained by fraud. In the one case, the physical strength of the Indian, his daring courage, and his knowledge of his own terrible mode of war, placed him upon something like terms of equality with the white man; whilst, in the other, his ignorance of negotiation, and the arts, and stratagems, and deceptions, always used upon such occasions, rendered him a blind and easy victim. In the rotunda there are two alto-relievos intended to commemorate important events in the history of this unfortunate people, and which, in some degree, illustrate the truth of what I have said. In the one, 1682, the great founder of Pennsylvania is represented in the act of presenting a treaty to his red brethren; with his right hand he grasps that of the chief, with his left he unrolls the treaty. The pipe is withdrawn from the lips of the old Indian, and he is all attention to the earnest talk of the younger. You can see that the whole savage is tamed, and his terrible spirit, the only power with which nature had endowed him, to preserve unmolested the ancient possessions of his fathers, is subdued and conquered by the irresistible superiority of the white man, and that he is ready to subscribe whatever terms may be dictated. And we cannot help thinking, that, without much violence to historical truth, another figure might have been introduced into the group, and we almost expect to see, half concealed behind the lofty elm which overshadows them, the well trained pedestrian ready to set off and measure,



with the velocity of a bird, the day's journey which was to bound the ceded territory."

In the other, we behold that immortal hunter of Kentucky, Daniel Boone, not only immortal from his own deeds and the monument here erected to him, but married to a more enduring immortality in the verse of Byron. We behold him engaged in mortal combat against fearful odds. Having planted his foot on one of the enemy who had fallen before his rifle, he fearlessly braves the uplifted tomahawk that gleams in the hand of the surviving savage; and we tremble lest the deadly weapon should descend ere the intrepid Boone can strike. And thus it is with the poor ill-fated Indian. In the one case, he is subdued, and blindly compelled to yield up his country by the superiority of mental strength. In the other, it is the issue of more doubtful controversy. But the melancholy truth is established, "that the day on which the white man set his foot on these shores, the destiny of the red man was fixed forever."

But how has title derived from Indian tribes been regarded, when urged by individuals in courts of justice? Has it not been considered utterly worthless? How has it been regarded by States, when they were interested in insisting on it? Have they not held it in such low estimate, that not one has ever relied on it as conferring even a shadow of right? A few facts will show this. Disputes with respect to territory and territorial jurisdiction have at various times arisen between different States of this Union. Pennsylvania and Virginia, Pennsylvania and Connecticut, Virginia and North Carolina, South Carolina and Georgia, have contested questions of this kind with each other. And controversies of this kind are always conducted with the greatest possible care. The best talents are employed; the greatest research takes place; every color of claim which promises the least avail is set up, and every reason and every argument are urged. Is it known, that, upon any such controversy, a treaty or cession from an Indian tribe, however ancient, has ever been set up to turn the scale even in a case of doubt? I confess that, if such a case has happened, I have not heard of it. On the contrary, those disputes have always turned upon the terms and dates of the charters from the crown, and the external objects called for as designating their locality, and show the opinions of all those concerned, that the title, and the only title, originated with those charters. For surely, in some of those many disputes, priority of Indian cession might have been made a question, if it had not been for the universal opinion that it would be unavailing.

But how did Great Britain regard the rights of Indians? And before I enter upon this part of the subject more particularly, it would be well to state the question which arises out of the acts of the State Legislatures, by which the Indians within their limits are subjected to the laws of the State. Those States do not claim the right of depriving the Indians of any title which they may have to the land or territory they occupy, or of disturbing them in the possession or enjoyment of any other property which belongs to them. Those States only claim the right to legislate over them, as a part of the population subject to their laws. With this question in view, let us inquire what was their situation whilst this country was subject to the jurisdiction of Great Britain. By the proclamation of the 7th of October, 1763, the following provision is made on

this subject: "And whereas, it is just and reasonable, and essential to our interest, and the security of our colonies, that the several nations or tribes of Indians with whom we are connected, and who live under our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories, as not having been ceded to, or purchased by us, are reserved to them, or any of them, as their hunting ground.

"And we do, hereby, strictly forbid, on pain of our displeasure, all our loving subjects from making any purchases or settlements whatever, or taking possession of any of the lands above reserved, without our special leave and license for that purpose, first obtained."

The first remark which occurs on the provision in this proclamation with regard to the Indians, and the reservation to them of hunting grounds is, that those very hunting grounds are regarded in the instrument itself as the "dominion and territories" of the crown; and the Indian right as an emanation from the crown; and the power to grant "leave and license" to any person to purchase or to take possession of the reserved lands, is clearly and distinctly recognized. Then the question occurs, could Great Britain, consistently with the principle expressed in the proclamation of 1763, legislate over those Indians? or, in other words, could she legislate over every individual of whatever color, habits, or nation, resident within her acknowledged "dominions and territories"? I believe that no one who has any knowledge of the theory of the British constitution will say that she could not so legislate.

Lord Mansfield, in delivering the opinion of the Court in the case of *Campbell vs. Hall*, reported by Cowper, lays down the following propositions: "That the law and legislative government of every dominion equally affects all persons and all property within the limits thereof, and is the rule of decision for all questions which arise there. Whoever purchases, lives, or uses there, puts himself under the law of the place. An Englishman in Ireland, Minorca, the Isle of Man, or the Plantations, has no privilege distinct from the natives."

The sixth and last proposition is, that if the King (and when I say the King, I always mean the King without the concurrence of Parliament) has a power to alter the old and to introduce new laws, in a conquered country, this legislation being subordinate, that is, subordinate to his own authority in Parliament, he cannot make any new change contrary to fundamental principles. He cannot exempt an inhabitant from that particular dominion, as, for instance, from the laws of trade, or from the power of Parliament, or give him privileges exclusive of his other subjects, and so in many other instances that might be put.

The question in the case in which these propositions are laid down, arose out of the proclamation of 1763, in regard to the inhabitants of Grenada, the government of which was erected by that proclamation. And here the principle is not only asserted, that the law and legislative government of every dominion is supreme over all persons and property within its limits, but that the King himself cannot exempt any inhabitant from the power of Parliament.

In regard to the other colonies in America, the power to legislate was conferred by the charters from the crown; and, I believe, no doubt was ever entertained, during the existence of the colonial government, that the Legislatures thereof had full power to enact laws for the government of the Indians within their respective limits; and if a question arose at all, it could not have been a question of power, but a question as to what kind of law was proper and expedient in the particular case. And, accordingly, we find that Massachusetts, Connecticut, New Hampshire, New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, and Georgia, all legislated on the subject of Indian affairs, and no exception seems ever to have been taken to the exercise of that power.

"I have heard it said, that, in one of the treaties negotiated in early times with a tribe of Indians residing in Pennsylvania, and by which a large tract of country, situate on the Delaware river, was acquired, the agreement was, that the Indians ceded to the proprietor of the colony so much territory as lay on the river above a certain point, and as far up as a man could walk in a day. The fact was, that, between the points, the river made a great bend, and much could be gained to the proprietor by walking in a direct line. This was the course pursued. But this was not all. The most expeditious pedestrian was procured to walk the boundary. The Indians set off with him, but long before night they were tired out, and he was left to determine the distance as he pleased.—*Noted by Mr. A.*

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Thus stood the matter as to the power to legislate over Indians within the limits of the colonial governments prior to the Revolution. A power undisputed and indisputable.

The United States declared themselves independent on the 4th day of July, 1776. The arms of the Union were victorious. Great Britain was conquered. This conquest was followed by a definitive treaty of peace in 1783. This treaty acknowledged the independence of the United States. And all our statesmen and jurists consider that the independent sovereignty of each State in the Union, respectively, commenced, and must be dated, to all legal purposes, on the 4th day of July, 1776. But it has been said, that whatever was gained by conquest belonged to the conqueror: that the United States were the conqueror, and that all acquisitions accrued to them. I know that this argument was once urged by some of the small States, who had no unpatented lands, as a reason why they should participate equally in the vast regions of ungranted lands, situated within the chartered limits of the larger States. But I never knew it to be urged as a reason to show that sovereignty and legislation were a joint acquisition, and belonged, by right of conquest, to the United States, and not to the States respectively. On the contrary, I believe it has never been doubted, much less denied, that the States, respectively, from the declaration of independence, possessed every attribute of sovereignty. That each State was sovereign within her own limits, to the same extent that Great Britain was before the declaration of independence. The capacity to affect, by her legislative government, all persons and all property within her limits, is an essential attribute of that sovereignty which belongs to every State. I must conclude, therefore, that the Indians within the limits of the States did not form an exception, and that, subsequent to the declaration of independence, the States had the power to legislate over them.

But it is insisted that, by the articles of confederation, the States surrendered up this power to Congress, and that any exercise of such power by the States after that was void. One of the clauses of that instrument relied on in support of this argument, is in these words: "That Congress shall have power to regulate the trade and manage all affairs with the Indians not members of any of the States; provided that the legislative rights of any State within its own limits are not infringed or violated."

During the continuance of the articles of confederation in the years 1783 and 1786, the treaties of Hopewell with the Cherokees, Choctaws, and Chickasaws, were entered into. And, without going into the particular stipulations of those treaties, which is unnecessary in the examination of the power vested in Congress under the clause of the articles of confederation in question, it may be taken for granted, that the treaties either infringe the legislative rights of the States, within the limits of which the tribes with whom the treaties were made, resided, or that they do not so infringe those rights. If the latter, the States are left free to legislate as if no such treaties had been made. If the former, then Congress had no power to enter into any stipulation with the Indian tribes, by which the legislative rights of the States within their own limits would be infringed or violated; and such stipulations are without authority, and, as regards the States affected by them, are absolutely void. What are the legislative rights of a State? Are they not those rights, or rather that power, by which a State dictates the rule of civil conduct to every rational being within her territorial limits? This power is expressly reserved by the clause in question—not in regard to a particular district, and to a particular description of people, but throughout her whole boundaries, and over every subject within them. The proposition, therefore, for which I insist, is, that, if the treaties referred to abridge this legislative power in regard to any description of people residing within the limits of the States, as to the States themselves, these limitations of

power are void, and the States may legislate as if no such limitation had been imposed: and the whole argument on the other side against State legislation over the Indians, which is made to depend upon the stipulations of the treaties of Hopewell, goes upon the very ground, that by those treaties the legislative power of the States is limited; which, as I have endeavored to show, is a self-destroying argument.

But the question arises,—Were those treaties binding on the United States? I answer, unquestionably they were. That the United States were bound, either to execute the treaty specifically, or, if they had not power to do that, they were bound to give compensation. And it has been admitted, that, if the United States were under two obligations, that which was first in point of time must be specifically executed, if both cannot be so executed; and that the subsequent obligation can only be discharged by indemnity, and that good faith requires no more. Apply this rule to the present question. Was not the obligation on the United States, commencing with the articles of confederation themselves, to preserve from all violation and infringement the legislative rights of the States within their limits, prior to any stipulation inconsistent with such obligation in the treaties above referred to? and, therefore, according to the rule as admitted, the States must be preserved in their right and power to legislate; and from any injury arising from this cause to the Indians, they can only call on the United States to indemnify them.

It is insisted that those tribes of Indians are nations capable of making treaties. If so, surely it would be proper for the States to say, in this controversy, to those tribes of Indians—you were bound, when you entered into treaty stipulations with the United States, to know the limits of their power; and if in those stipulations they have exceeded their power, you are properly chargeable with the knowledge that they did so exceed their power. In a case of this kind, compensation is complete justice. If A covenant to convey to B a certain house and land, to which A has no title, and cannot procure one, so as to comply with his covenant, the only satisfaction which B could obtain would be damages for the breach of the contract. If B, in the case supposed, had no notice of the want of power on the part of A to make the conveyance, it might be considered as a hard case that he could not obtain specific performance; but if he was chargeable with such notice, then ample justice would be done him by compensation in damages.

But it is said, according to the articles of confederation, that "the United States in Congress assembled shall have the sole and exclusive right and power of determining on peace and war;" and that, in the constitution of the United States, power is also given to the United States to declare war, and that the treaties in question are valid under these powers.

I admit, that, whenever the relation of war arises between the United States and any other party, whether it be a tribe of Indians, the leaders of an insurrection—for insurrection might be so formidable as to create the relation of war—or an independent nation, the United States may conclude such war by a treaty of peace. But surely this is a limited power, and the United States could not, constitutionally, agree to every kind of condition which might be proposed; otherwise it would follow, that, whenever war existed, the President and Senate would have the constitutional power to destroy the rights of any or every State in the Union. And yet all will agree, that all the departments of the Government of the United States combined could not take away any of the reserved rights of the States. Thus, if in a treaty of peace made with an Indian tribe residing within the limits of the State of Georgia, the right of that State to legislate over those Indians could be taken away, what would prevent the treaty-making power, if so disposed, from taking away

the power of that State to legislate over the Dutch, or Irish, or slaves, within the State. If the power of abridging the legislative rights of the States is once admitted to exist in the General Government, under any circumstances of fact, those circumstances may always be brought about, and the States would, ere long, hold all their powers at the will of the United States. Suppose that, in the treaty concluded by our commissioners at Ghent, a condition had been inserted that the State of Pennsylvania should not exercise the power of legislation over the English resident within the limits of that State. A state of things might have existed which would have rendered it imprudent and impolitic for Pennsylvania to assert and exercise the power. But, as soon as that state of things passed away, and she was relieved from the necessity which might have induced her to abstain from the exercise of that power, could any one contend that the treaty could have any legal and binding force upon her? On the contrary, would it not be void, as to the State, from the beginning? And if any obligation arose out of such a treaty, would it not be a matter to be adjusted by the United States, and in which Pennsylvania would have no concern, any more than any other State in the Union?

Suppose the United States were to conclude a war with an Indian tribe, by which they would stipulate, that, notwithstanding the tribe resided within the limits of a State, that State should not legislate over them, but that they should be governed exclusively by their own laws and usages? This would be a case of express stipulation; and while the nation were formidable; while they were capable of exciting terror and alarm among the people of the State within whose limits they were situated; the State, out of motives of policy, would not attempt to exert her legislative power over them; not because the constitutional power could be surrendered by the treaty; not because the constitutional power to legislate did not exist; but because safety required that it should not be exercised. But if the tribe, from being formidable, were reduced to insignificance, as so many tribes, once so terrible, have been, surely the State could assert her power over them, and compel them to submit to her laws, and that too without any release by the remnant of the nation or tribe to the United States. Whatever obligation rested on the United States would be a matter for them to settle, in which the State would have no more than a common interest with the other States. I know that this reasoning is unsatisfactory to those who refer the decision of this question to their feelings, to their magnanimity, and to principles of abstract justice. But I believe the history of Indian relations will show that this has always been the case. Whilst the tribes were warlike and powerful, no matter what were the stipulations of treaties; no matter how much those treaties infringed the legislative rights of the States; all acquiesced: all submitted. But as soon as they became reduced to a handful; as soon as their power was lost, and they were no longer formidable, they fell from the cognizance of the General Government, and became subject to the control and legislation of the States. What was the situation of the country with regard to Indian tribes before and after the adoption of the constitution, when the policy of treating with them commenced? The whole frontier, from the northern lakes to the southern boundary of Georgia, enclosed by numerous tribes of warlike savages, terrible, not only from their numbers, but from their mode of warfare; aping neither age, nor sex, nor condition. Under these circumstances, it was not to be wondered at, that the whole population who were exposed to their ravages, and who had suffered from the tomahawk and scalping knife, should send up to the Government of the United States one universal cry for peace. These were not times for scrupulous examination of constitutional questions. And under such circumstances, if treaties were made, which,

by their letter, infringed the legislative rights of the States, whatever claim they may give to the Indian tribes for compensation or indemnity as to the United States, they cannot be obligatory on the States. And the time has now arrived when the forbearance of the States is no longer necessary in their opinion, and when it has become worse than visionary to look upon those tribes as independent nations. They have, therefore, extended their laws over them, which is nothing more than the exercise of a power which they always had, and which the United States could not take away, and which the States could not lose by not using.

But, it is said, that the treaties with the several tribes, concluded at Hopewell, and all subsequent treaties, are valid and binding under the following clause of the constitution: "All treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land." A treaty cannot be said to be made under the authority of the United States, when its provisions are contrary to the constitution. But when it is consistent with the constitution, then it is under the authority of the United States, and valid. I have endeavored to show that the treaties in question, so far as they affect the legislative sovereignty of the States, are not consistent with the constitution; and as respects the States, they are not binding on them.

But, it is said, that the following clause in the constitution of the United States, "Congress shall have power to regulate commerce with foreign nations, among the several States, and with the Indian tribes," contains no such reservation in favor of the legislative rights of the States. I know that such is the doctrine of those who learn the thousand articles of the constitution from the precedents with which the records of Congress abound. And I know, too, that its sure and inevitable tendency is to unlimited power; and the day is not far distant, when the omnipotence of an American Congress will be as little startling, even to our ears, as the omnipotence of a British Parliament. I tell you, sir, this doctrine is rapidly gaining ground, and if there exist on the part of the States, respectively, no original, ungranted, constitutional power, to interpose for the purpose of arresting the progress of the evil, its march will be triumphant; not because it addresses itself to our patriotism, or our love of the true honor and glory of our country, which consists in the government of a written constitution, but because its patrons carry in both hands the purse of this nation, and buy up the disciples of their faith. And how is that purse supplied? By a levy of two-thirds of all the revenue of the United States, not directly, but indirectly, upon the industry of the South and the Southwest; and thus is the fund created by which this war against her most sacred rights is carried on. And by whom and by what power is this enormous exaction made? By an interested majority in Congress, acting on this express principle, that they have all power, and are every thing; and that the States respectively have no power and are nothing. And the latter have even become familiar with the cry of treason, sounded from these walls against them, because they have dared to say that the majority in Congress had trespassed upon the sacred powers which they had never granted away. Is not this consolidation? Is not this unlimited power? Is it not tyranny? What is the relation which is thus created? Is it not the most odious which can possibly exist? That which exists between the majority who demand and receive, and the oppressed minority who are compelled to pay. Was not this the relation which existed between the colonies and the Parliament of Great Britain? Was not that the subject of complaint in those many remonstrances which our ancestors presented at the foot of the British throne? Did they not complain that Parliament claimed the right to tax them in all cases whatsoever? Did they not remonstrate against that power? And what answer did they receive? And

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what answer has the injured South received from this majority in Congress? Are they not the same? An unqualified denial, almost without a hearing. But I have heard gentlemen say the majority will relent; seeing that their measures operate oppressively on a particular portion of the people, they will repeal them. Not until their interest changes: for "when self the wavering balance shake, 'tis never right adjusted." And the marble columns which surround us, compared to a drop of water, is but a feeble comparison to show the unyielding character of an interested majority to the petitions, and prayers, and remonstrances of the oppressed minority; and, unless that interest change, the drop may fall; and fall until eternity's sun shall go down, and not one particle of that human marble will dissolve. No; the power being once gained, the precedent being once established, that majority will claim the right to tax us in all cases whatsoever! The purse which we are every day emptying will be filled again, and from the same source. And with a few miserable dollars of the millions wrung from the cultivators of the soil, judiciously laid out, friends enough will be obtained, even amongst those who are plundered, to preserve this system.

But, to return to the argument, from which, I confess, I have wandered too far. The argument is, that, in the clause of the constitution conferring upon Congress the power to regulate commerce with foreign nations, among the several States, and with Indian tribes, contains no reservation in favor of the legislative rights of the States. And is it indeed true that the States have no powers but such as are expressly reserved in the constitution of the United States? Is it true that the States, respectively, possessing all the power, all the sovereignty, and granting away a portion of it to another, that the grant will carry the whole, without an express reservation in the instrument as to the residue? Surely this was not the understanding of those who framed or those who adopted the constitution. On the contrary, did they not say, the States have now all the power and sovereignty, and that which they do not give up remains where it is, in the States respectively? If the friends of the constitution had said any thing else, if they had said what is now insisted on, that instrument, instead of being adopted by small majorities, would have been rejected by all. The constitution of the United States was not made by the people of the United States, in mass, each one of all that mass having individually the same voice, the same power and influence to make, to adopt, or to reject. On the contrary, it was the work of the States, in their sovereign capacity, and in which capacity the small numbers of the least State in the Union had as much power as the large numbers of the most populous State. Each one was sovereign; no one was more than sovereign. I will be excused for resorting to these first principles of our Government; for it is the duty of those who stand in the minority with respect to the powers claimed and exercised by the Federal Government, whenever a question of that kind arises, to resort to the constitution itself, and to the principles upon which it rests; for this is their only safety. It was, emphatically, for the benefit of the minority it was made. The majority can take care of themselves.

The grant of power in question to Congress is to regulate trade with the Indian tribes; and every power not necessary for the regulation of trade, so far as the Indians are concerned, remains with the States, not only upon the principles which I have mentioned, but by an express reservation, adopted from the most jealous caution, that all the powers not delegated by the constitution to the United States, nor prohibited by it to the States, are reserved to the States respectively, or to the people. And is it any more necessary, in the regulation of trade with the Indian tribes, that the power of the States to legislate over those residing within their acknowledged limits should be taken away, than that the power to regulate

trade with Great Britain and France should take away from the States the power to legislate over Englishmen or Frenchmen residing within the limits of any of the States? But the constitution expressly recognizes the power of the States to legislate over the Indians within their limits.

The second section of the first article of the constitution provides, that "Representatives and direct taxes shall be apportioned among the several States, which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons."

The intention of this section of the constitution is to apportion direct taxes and representatives among the several States, and the standard by which that apportionment is to be regulated, is the amount of the population of the States. If the section had stopped thus, "Representatives and direct taxes shall be apportioned among the several States, which may be included within this Union, according to their respective numbers," then all Indians, and all other persons within the States, would have been included as a part of the numerable population; otherwise, why exclude "Indians not taxed," and two-fifths of the slaves? If these had not been included in the general expression, the exception was not necessary. Indians being, therefore, a portion of the population of the State, would it not be a strange and absurd proposition to say that the State could not legislate over her own population? But by what power is the tax which is to make the distinction in regard to Indians to be imposed? It must be either by act of Congress or the State Legislature. It cannot be by act of Congress, because Congress, in the following clause, is prevented from imposing any such tax: "No capitation or direct tax shall be laid, unless in proportion to the census or enumeration heretofore directed to be taken." The taxings, therefore, by which Indians are embraced in the enumeration must necessarily precede any capitation imposed by Congress, and must necessarily be by State legislation. From these clauses of the constitution, Indians within the States are regarded as a part of the population of those States, and a tax is contemplated which can only be imposed by State legislation over them.

But there is another reason which shows that the tax to be imposed was not a tax to be imposed by act of Congress, but by act of the State legislation; and that is this, if Congress had the power to impose the tax, they might choose not to exercise the power, so that they could increase or diminish the numbers of the States at pleasure. And they might increase it for the purpose of direct taxes, and reduce it for the purpose of representation.

The Indian resident within the State of New York, with whom the United States have held frequent treaties, and with whom they now have an existing treaty, differing but little in terms from those which exist in relation to the Southwestern tribes, have long since passed under the jurisdiction of that State, and one of them, belonging to the Seneca tribe was actually convicted of murder in a court of the State for having put to death a woman, according to the usages of his tribe, for the supposed crime of witchcraft. And again, in another case, it was decided in the Supreme Court of the State of New York, that an Indian could inherit lands which had been granted in the name of his Indian ancestor; and although the decision of the Supreme Court was reversed by the Court of Errors, it was because there was no law of the State of New York which authorized a purchase from an Indian in the manner in which the purchase was made in that case by the lessor of the plaintiff; clearly, however, acknowledging the power of the State to legislate in regard to Indians and Indian affairs. No complaint has ever been made by the friends of Indian rights against the State of New York, nor against any of the other States to the north or north-

east, for legislating over the Indians. Nor has any reason been assigned, nor can any be assigned, why a distinction should be made. It will not do to say that one State has legislated wisely and another unwisely. It is a question of power, and when that is decided, each State, in the exercise of the power, must be governed by its own discretion, as they are in every other act of legislation.

But here we are met by another formidable difficulty. It is said that if the State of Georgia, or any of the old thirteen States, had the power to legislate over the Indians within their limits, yet none of the new States have that power, and that Alabama and Mississippi have transcended their constitutional powers in their acts of legislation in regard to those people. I confess it did not sound gratefully to my ears to hear it asserted on this floor that the State which I have the honor, in part, to represent, had been admitted into this Union with powers of legislation more limited than those which belong to other States. I had always supposed that she was admitted upon terms of perfect equality; at all events, so far as she had not voluntarily, in her own sovereign capacity, in convention, expressly agreed to an abridgment of her power. And upon this ground I am willing to place the argument. So far as the State, or the people of the State, in their highest sovereign capacity, in convention, have agreed to a limitation of their legislative power, and the limitation not inconsistent with the constitution of the U. States, the State, whilst that constitution of her own adoption remains, must be bound by it. But what is the process of the reasoning on the other side? It is said that the fifth condition of the articles of agreement and cession between the United States and the State of Georgia, in 1802, contains the following provision: "That the territory thus ceded shall form a State, and be admitted as such into the Union, as soon as it shall contain sixty thousand free inhabitants, or at an earlier period if Congress shall think it expedient, on the same conditions and restrictions, with the same privileges, and in the same manner, as is provided in the ordinance of Congress of the 13th day of July, 1787, for the government of the Western territory of the United States, which ordinance shall, in all its parts, extend to the territory contained in the present act of cession, that article only excepted which forbids slavery."

That the act of Congress of March, 1817, to enable the people of the western part of the Mississippi territory to form a constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States, contains the following provision: "Provided, that the same, when formed, shall be republican, and not repugnant to the principles of the ordinance of the 13th of July, one thousand seven hundred and eighty-seven, between the people and States of the territory northwest of the river Ohio, so far as the same has been extended to the said territory by the articles of agreement between the United States and the State of Georgia, or of the constitution of the United States." That the third article of compact in the ordinance of the 13th of July, 1787, is in the following words: "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools, and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians: their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress. But laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them." And the argument is, that the States of Alabama and Mississippi have been admitted into the Union upon the express condition that they will not legislate over the Indians within their limits; that this con-

dition is binding upon those States, and that their laws, so far as the Indians are to be effected, are void. The first defect of the argument is, that it is not true in point of fact. The article of compact referred to, authorizes laws founded "in justice and humanity" to be enacted in regard to Indians. Is not this the foundation of all legislative authority—the right to pass laws founded in justice and humanity, and not to pass laws founded in injustice and inhumanity? But the question arises, who is to be the judge of what is just and humane? I insist that there is no limitation but the constitution or legislative discretion. The same article of compact declares "that schools and the means of education shall forever be encouraged." Who is to be the judge of the manner and extent of that encouragement? The Legislature, unquestionably. There is no other rule than legislative discretion. And so it is in the other case; and Congress, or the treaty-making power, might as well undertake to call the State to account for not properly exercising the power of encouraging schools and the means of education, as for not properly exercising the power of passing laws founded in justice and humanity in relation to the Indians. The argument has, therefore, no foundation in the true construction of the provisions in the different acts referred to. But as I consider my constituents as having a deep interest in the question which has been raised in regard to their powers as a State, I would not think myself justifiable if I did not investigate more at large the principle upon which the objection rests. By the constitution of the United States, article four, section three, it is provided that "new States may be admitted by Congress into this Union." What is a "State," in the meaning of the constitution? Does it not mean the people composing a political society, in their highest sovereign capacity? I take this definition of the term "State," from a paper of high authority—the report of the Committee of the Virginia House of Delegates at the session of 1799 and 1800, to whom were referred the communications of various States relative to the resolutions of the Assembly of that State, of 1798, concerning the alien and sedition laws. The whole passage is in these words: "It is indeed true that the term States is sometimes used in a vague sense, and sometimes in different senses, according to the subject to which it is applied. Thus, it sometimes means the separate sections of territory occupied by the political societies within each; sometimes the particular government established by those societies; sometimes those societies as organized into those particular governments; and lastly, it means the people composing those political societies, in their highest sovereign capacity. Although it might be wished that the perfection of language admitted less diversity in the signification of the same words, yet little inconvenience is produced by it when the true sense can be collected with certainty from the different applications. In the present instance, whatever different construction of the term States in the resolution may have been entertained, all will, at least, concur in that last mentioned; because in that sense the constitution was submitted to the States; in that sense the States ratified it; and in that sense of the term States they are consequently parties to the compact from which the powers of the Federal Government result." And in that sense of the term States, and in that alone, I contend, has Congress the power to admit "new States" into the Union. Certainly, Congress has not power to admit into the Union a political society so crippled by conditions that it would not answer to this meaning of the term. If so, then one State might be admitted into the Union upon condition that only one Senator, or none at all, should be sent to Congress to represent the State; or upon condition that the laws of the State should be subject to the revision of Congress; whilst another might be admitted upon condition of double representation in Congress. The moment, therefore, that

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power is granted to a society of people within the jurisdiction of the United States to meet in convention and form a constitution for their own government, any conditions which may be added calculated to diminish the essential rights and powers of a State, are absolutely void. Among the powers essential to State sovereignty, is that of legislating over every rational being within the limits of the State, unrestrained except by the constitution of the United States and the constitution of the State itself. If, then, in the acts of Congress authorizing the people of the western part of the Mississippi territory to hold a convention, and admitting them into the Union, such conditions are imposed as diminish this essential right, those conditions are void. But I deny that any such conditions were imposed by those acts. But whilst I say such conditions would be void, there is one subject on which I wish not to be misunderstood. I take it to be true, that the principle of relation applies to new States admitted into the Union, and that, when they are admitted, the society forming them must be considered as having been endowed with the rights of sovereignty from the time when authority was given to hold a convention. If this be correct, then it would follow, that whatever restrictions, not inconsistent with the constitution of the United States, this society, represented in convention, imposes on its own legislature, or the other departments of its organized government, and its own constitution, must be binding upon it until that constitution is changed. In the constitution of the State of Mississippi there is the following provision: "Whereas, it is required by the act of Congress, under which this convention is assembled, that certain provisions should be made by an ordinance of this convention: Therefore, this convention, for and in behalf of the people inhabiting this State, do ordain, agree, and declare, that they forever disclaim all right or title to the waste or unappropriated lands lying within the State of Mississippi; and the same shall be and remain at the sole and entire disposition of the United States: and moreover, that each and every tract of land sold by Congress shall be and remain exempt from any tax laid by the order or under the authority of this State, whether for State, county, township, parish, or other purposes whatever, for the term of five years from and after the respective days of sale thereof; and that the lands belonging to the citizens of the United States residing without this State, shall never be taxed higher than the lands belonging to person residing within the same; that no tax shall be imposed upon lands the property of the United States; and that the river Mississippi, and the navigable rivers and waters leading into the same, or into the Gulf of Mexico, shall be common highways, and forever free, as well to the inhabitants of this State as to other citizens of the United States, without any duty, tax, impost, or toll, therefore, imposed by this State. And this ordinance is hereby declared irrevocable without the consent of the United States."

According to this ordinance, made a part of the constitution of the State of Mississippi, that State, acting in its highest sovereign capacity in convention, has solemnly disclaimed all title to the waste and unappropriated lands within the State, and declared that they shall be at the disposal of the United States; that they should not be taxed by the State for any purpose, until five years after the sale thereof by Congress; that no lands, the property of the United States, should be subject to taxation; that the lands of non-residents should not be taxed higher than those of residents; that the river Mississippi, and the navigable waters emptying into it, and into the Gulf of Mexico, should remain common highways, without any duty, toll, &c. to be imposed by the State; and that the provisions of this ordinance should remain irrevocable without the consent of the United States. The point on which I wish to be understood is, that, as far as the State has bound itself, whilst acting in convention, the different departments of

its Governments are unquestionably bound whilst that constitution remains. The question whether one convention can, by a particular provision, act in derogation of the powers of subsequent conventions, is one which it is unnecessary to discuss. But whilst I admit that the State, in all its departments, is bound as far as it has restricted itself, yet surely it cannot be contended that it is bound beyond that. The constitution which the people of that State framed was submitted to Congress; and they admitted the State, with that constitution, into the Union. There is nothing in that instrument which takes away the power to legislate over the Indians, or modifies that power in any particular. The conclusion, therefore, clearly results, that they have the same power—are subject to the same limitations; that the United States have no more power in relation to those States than in relation to either of the thirteen original States; that they are bound by all the limitations, as it regards the one class of States which obtain in relation to the other. In short, that all the States are upon the same footing, to all intents and purposes; and that their power of legislation are the same in regard to all the free population of the State.

Sir, I have done. My principal object was to vindicate the right of the State, of which I am one of the Representatives, to legislate over all the population within her limits. How I have succeeded, in the humble effort which I have made, will be for the Senate, and all others interested in the question, to decide.

WEDNESDAY, APRIL 21, 1830.

## POWER OF REMOVAL BY THE PRESIDENT.

The resolution of Mr. BARTON, calling upon the President for the reasons which induced him to remove Theodore Hunt from the office of the Recorder of Land Titles in Missouri, being under consideration—

Mr. McKINLEY moved to lay it on the table until Friday next; but, at the request of Mr. BARTON, the motion was withdrawn.

Mr. BARTON said he did not intend to re-argue the general question of the powers of the President to remove the Federal officers, as the Senate had removed the injunction of secrecy from one case, and he had published his argument upon that question, made in secret session on the 17th March. There was [he said] some peculiarity in the tenure of this office, distinguishing this case from those of the officers who hold under the act of 15th May, 1820, for four years. The office of Recorder of Land Titles was established soon after the purchase of Louisiana. Some of his duties are of a ministerial, and some of a judicial nature. It was first held by J. L. Donaldson, Esq. who fell at the battle of North Point, near Baltimore, in the late war, until he resigned and left the country; then by Mr. T. Bates, until he was elected Governor of Missouri, in 1824; then by Mr. Hunt, the present recorder, until some of the office-hunting loungers around the President, had persuaded the President to exceed powers during the present session, and remove, or affect to remove him, to make room for a person now nominated to fill it. From the establishment of the office to the present session of Congress, it has been treated and considered as an office during the good behaviour and fitness of the incumbent. Not coming under the law of 1820, or any other special law, as to the tenure and duration of the office, there was no power of removal but what could be derived from the constitutional obligation of the President to see that the laws be faithfully executed. He admitted that if the incumbent were guilty of official delinquency, or labored under physical or mental disability to perform the duties, the President could suspend his functions for that cause, and place a fit person in his place; the whole proceeding being, like other originating acts of the President, subject to the subsequent sanction or re-

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straint of the Senate, participating in the displacing as well as the appointing of such officers, according to the contemporaneous exposition and original understanding of our form of Government. He denied that in any cases, except the cabinet officers, the federal officers were ever intended to be rendered the servile creatures of the Executive, by being placed under his arbitrary will; but were intended to be freemen, looking to the faithful performance of their duties, and to the protection of the Senate and the laws, for their offices. It was fit [he said] that the officers of a despot should live or die by the breath of their master—that suited such form of government. Not so in a republic—a government of law.

Such was the exposition of the fathers—such his early lesson upon the nature of the government of the United States. A contrary doctrine enabled a President to use the offices of the republic as hirings or weapons; rendered all our public officers, civil and military, dependent for official existence upon a President; and put it in his power to employ or wield the whole official force of his country—nay, the purse and sword of the country, against its liberties, whenever he pleased. We have been told of late, by the majority, that the President is nearer to the people than the Senate—holding for only four years, and the Senate for six; and that, therefore, he should be left to his responsibility, at the end of his term, to the people, without examination or restraint by the Senate during his term. Mr. B. said, he had been taught by the contemporaneous expositions of the fathers, that the long term, and comparatively independent tenure of Senators, was the very reason why the founders of the republic gave to them the high charge of restraining the President at every step during his term, supposing it impossible that such a body, the most permanent and constant of any in the Government, could ever meddle in the election of a President or prostitute their stations to the end of party strife.

But, [said he] look at the inconsistency of the majority! They say the President is responsible to the people at the end of his term; and, by way of enabling the people to judge whether he has, or has not, abused a power entrusted to him for the public safety, they refuse to let the people know for what causes the power was exerted! How can the people tell whether he was right or wrong, when thus kept in the dark?

To remove for cause relating to the official conduct, or to the mental or physical fitness of the incumbent, is a public and a patriotic virtue; but to pervert the power, which we all acknowledge, to the purposes of punishing freemen for their opinions or votes, or to purchase supporters, or reward office-hunting wretches for their prostituted services or acclamations, would be a great offence, a gross violation of our constitutional rights, by a President. How can the people tell for which cause the power was exerted, unless the rights of inquiry into the cause of the removals be tolerated? He re-asserted that the cause, instead of being a state secret, was the very essence of the power to remove at all; and nothing but a consciousness of having violated the duties of a President, and the rights of a citizen, could induce any President to submit to be thus covered up in the dark, if he could find a Senate servile and corrupt enough to screen him from the public eye and examination.

But, [Mr. B. said] he would put this call, moreover, on the ground of public interest, by presenting to the consideration of the Senate the case as it really existed, in relation to this office. There was a combination of speculators, official and unofficial, to make fortunes by getting the unconfirmed Spanish land claims, amounting to some two or three millions of arpents, confirmed by this Government. They were men who had engaged on shares to do this for the old inhabitants, and other claimants. Hitherto, even with the aid of their own interested oaths and official helps, they had been unsuccessful, except in a few small claims. They had made war upon all honest men and public func-

tionaries, who had stood as barriers against their schemes, and endeavored to prostrate them. Their object is to have every honest man removed out of their way; and among the rest, this Recorder Hunt, who happens to be both intelligent and honest, so far as he had ever heard or believed. And who would this Senate suppose the coterie proposed in his place? A young man of no known capacity for business, who, like too many youths in slave holding countries, seems to have no honest calling whatever; but relies on the office-hunting trade, or smiles of Presidents or Governors, for support. He has shown himself eminently qualified for the purposes of the land jobbing speculators in these claims, by having been twice convicted of fraudulently concealing the property of a debtor from his creditors, at St. Louis, which, by our law, is a criminal and indictable offence.

A bill [he said] had lately passed the Senate to refer all those unconfirmed claims to the recorder and two commissioners to be appointed by the President and Senate, to re-examine and report upon them. Judging from the samples of Missouri appointments, and particularly the illustrious consul to Chihuahua, and the nomination of a convicted fugitive from the justice of Missouri, to be an Indian agent, he presumed those concerned would find no difficulty in imposing on the President such a board as would perform as well as the courts had done in Arkansas; that is to say, to confirm all the claims really in existence, good and bad; and then confirm all the new ones that might be forged and presented! He spoke [he said] from the documents reported to Congress at this very session, by the Commissioner of the General Land Office, when he spoke thus of Arkansas. These considerations not only demanded inquiry into the causes of these passing events; but he protested that, with the present prospect of proscribing common honesty from Missouri, if the bill for the revision of those claims were again before the Senate, he could not, and he would not, vote for it.

He protested against the course of the present administration towards the State of Missouri. All that Missouri had thrown off, in her efforts to purify and elevate her society, seemed to be carefully hunted up, and restored upon her. It seemed to be a general restoration, as if her Botany Bay and her Siberia were to be emptied in her streets, to mark the epoch of this administration! The President must surely be imposed upon by the corps of recommenders and office distributors in Missouri, who have so full a delegation here at present, or else the President was no better than they. The President had sadly departed from his original intention in relation to the offices of the country. He presumed all this was part of the "party discipline" of the day, intended to make the high places low, and the low ones high, to prepare the way to some future Presidential election. The offices of our country are converted into bribes in our elections, and weapons of destruction in our party contentions.

Mr. KANE said he would reserve any observations he might have to make on the character and qualifications of the gentleman who had been nominated to fill the vacancy created by the removal of the gentleman alluded to in the resolution, until the proper opportunity had arrived for making them known. This opportunity would hereafter be afforded in Executive session. The objection urged by the gentleman from Missouri, [Mr. BARON] against the power of the President to remove this officer, presented, in one respect, a new question, and furnished the occasion for a few observations upon the character of the office, the tenure of which was somewhat different in appearance from any to which the attention of the Senate had been heretofore directed. The tenure of the offices heretofore considered, had been fixed, either by the constitution or laws of the United States in terms. Such was not the case here. The office of Recorder of Land Titles for Upper Louisiana was created by law, and the President was

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authorized to fill it: the consent of the Senate was not by the law required. Yet it had been the practice of Mr. Madison and Mr. Monroe to make the nomination to the Senate, and the present Executive had followed the example. The act creating the office says nothing of the term for which the officer should hold the office, nor of its tenure in any way. What, then, is the tenure of any office by law created, in the absence of any particular provision, as to time, or the manner in which its duties are to be discharged? Is it an office for good behavior, or for life? If for good behavior, is this and all other petty officers to be impeached and tried before this high tribunal? Mr. K. said he understood the Senator from Missouri as admitting that the Executive had the power to remove, but then this power was to be exercised only upon sufficient cause; and pray, [said Mr. K.] who is to be the judge of this cause? The Executive alone, or the Executive and Senate united? The President is bound to see the laws faithfully executed; and this duty he cannot perform without a control over his agents. He is responsible for the execution of the high trust reposed in him by the constitution, and in this responsibility, so far as the execution of laws is concerned, the Senate does not participate. Suppose, then, the President should think fit to employ in the public service no man who was a public delinquent, a defaulter, for example, of many years standing, and the Senate should suppose this no objection, this power of removal cannot be exercised at all, because the removing power vested in the President and Senate is neutralized by this division of opinion, and in the mean time, the execution of the laws is rendered injurious in its operation, on account of continued delinquencies. The President may be called to an account for an abuse of his executive authority. How should we, the Senators of this republican confederation, appear, when sitting as his judges, if his plea of justification was filed that the Senate would not consent to the removal of the very officer whose mal-conduct had brought upon him the impeachment? Sir, an Executive officer whose tenure of office is not fixed by law, must, of necessity, hold his commission at the pleasure of the Executive, otherwise the Executive is an irresponsible agent of the Government. The practice of every President showed that such had been their opinion. The practice with regard to the very office in question fully exemplified the correctness of this opinion. [Here Mr. K. read the commission first issued by Mr. Madison, followed by another from Mr. Monroe, both in terms declaring that the appointee held his commission at the pleasure of the President of the United States for the time being.] Mr. K. said it had been his intention to discuss the questions of the President's power of removal, on some fit occasion, at large; but he would not trespass upon time allotted for an important discussion, by consuming more of the time of the Senate at present.

Mr. BARTON said, he desired only to reply to a few prominent remarks of the Senator from Illinois. He intimates that Mr. Hunt may be a defaulter. Is not that a good reason for inquiry instead of concealment? Is a citizen to be stabbed in the dark by insinuations, and denied the benefit of the open light? Let us know what the cause is, and if it be a reasonable one, I will even say no more about the removal, although I cannot vote for the person contemplated to take charge of the old land titles and records in Missouri. Mr. Hunt had an old navy account with the Government, many years ago; but asserts his integrity and fairness in that matter, and challenges investigation and light. That account, if it be hinted at, was understood by the former administration that appointed him, I presume. Let us have the causes, be they good or bad. The Senator from Illinois declined saying any thing about the character or qualifications of the proposed successor; as, he says, the nomination is pending. Mr. B. said, he had not gone behind the Executive veil to get the facts he had stated. On the 19th instant, he had received the re-

cord of conviction to which he had alluded; and he chose to use it here before he committed it to that prison house whence he found it so very difficult to extract the secret matters of this fight-shunning administration. And, for the special edification of the majority, he informed them, that, on the 17th instant, he had received another record of conviction, and of a deeper dye; for which he had been waiting some time, and was now ready for another executive session, when it suited their convenience. The Senator from Illinois has asked, who is to judge of the cause of removal but the President? The former proceedings of the Senate might answer that question. Is the President, [Mr. B. asked] irresponsible in the exercise of this power? You say he is responsible to the people. Can the people come here in mass and inquire the causes of the exertion of such powers? If not, their representatives have a right to ask for them; and especially the Senate, to which matters of this nature are confided, in our representative form of government. The practical result of the Senators' doctrine established a despotism in the President. Every body knows the people cannot come here, in mass, to examine these matters. The majority say we shall not do it for them. Then, it follows, it must go undone, and the President is, practically, unexaminable; and the fate of our public men depends on the arbitrary will of a single man! They live or die by his breath! All our offices are but bribes and weapons in his hands; and if that be not despotism, and we a nation of slaves, he did not know the definition of such things. The truth is, [Mr. B. said] the administration had gone to such a length, that there was no way of saving their reputation with the people, but by screening them from the light of inquiry and truth. The Senator from Illinois had read an old commission from Mr. Jefferson, stating the office to be held at the pleasure of the President. Did that alter the relative powers of President and Senate? Did that change the form of our Government? The form of the commission was probably drawn up by some attorney, clerk, or notary. Could they repeal our constitution and laws, and make our President a four years' despot, contrary to the avowed intention of the framers of our Government? He had answered that argument, if argument it were, on the 17th of March. When a citizen buys public land, and pays for it, he is lord of the little domain, by the law of purchase. But if a form of patent should be adopted, saying he held the land at the will of the President, would not that will be subject to the law, or have we a President above law? He put it as a grave law question, to the best lawyer in the majority, whether the form of the commission, or of the patent, in such cases, did, or did not, "nullify" the pre-existing, legal, or constitutional rights of the citizen? Did it, or did it not, "nullify" the relative powers of the President and Senate, and change our republican form of Government into an unexaminable and irresponsible tyranny, for four years, at the pleasure of our President? Truly, that would be placing a veto on the constitution itself! Mr. B. said, he had observed that Mr. Jefferson's mantle was very anxiously sought by this administration, since the late determination to abandon every republican principle; even the right of inquiry. The prophet Elijah, it would be remembered, had also shed his mantle upon Elisha, amid the smoke and savory fumes of a meat offering, made of the oxen of the latter. He presumed a public dinner, and set toasts, would have quite as good an effect in controverting all sorts of party denominations into republicans of the modern type; and if a voracious appetite for office were any test, the combination was composed of genuine republicans; but he entered his solemn protest against the doctrines of the majority, with regard to the removing power. The President's cabinet, for whose acts he is responsible, ought to be freely chosen by him; but the officers of the public were ours; they have legal rights, for the benefit of the public, and to be



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protected by the Senate and the laws. He protected against this latter class of the public officers being rendered servile instruments in the hands of the Executive, dependent for official existence on the smile of his favor, or liable to official death at his capricious nod.

Mr. BIBB said, questions have been started, at this day, touching the power of the President to remove executive officers, and the power of the Senate to demand and judge the cause of removal. In organizing the Executive departments at the first session of the Congress under the new constitution, the powers of the President necessarily came under consideration. The decision of both Houses appears in the act for establishing the Department of Foreign Affairs, approved by President Washington, on the 27th of July, 1789. [Vol. 2 Bioren's Laws United States, p. 6.] By that act, a principal officer, denominated the Secretary for the Department of Foreign Affairs, was authorized. He was to conduct the business "in such manner as the President of the United States shall, from time to time, order or instruct." This principal officer was authorized to appoint an inferior officer, called the chief clerk, "who, whenever the said principal officer shall be removed from office by the President of the United States, or in any other case of vacancy, shall, during such vacancy, have the charge and custody of all records, books, and papers, appertaining to the said department." This department, by the act of September 15, 1789, was denominated the "Department of State," and the principal officer called the "Secretary of State." The Department of War and Naval Affairs was established by the act, approved August, 1789, with a principal officer and a chief clerk, with a like provision for the case of removal of the principal officer by the President, or other case of vacancy, as in the Department of Foreign Affairs. In the act to establish the Treasury Department, approved September, 1789, the like provision is made for a principal officer and chief clerk, and for the case of removal of the principal officer by the President of the United States, or other case of vacancy, as in the other acts alluded to. In these three acts the power of the President to remove the principal officer is conceded, as of constitutional right, not conferred by law.

[Mr. B. then read a long list of removals, by Presidents Washington, Adams, and Jefferson.]

Gen. Washington, from May, 1792, to January, 1797, removed many officers whom he had appointed, and appointed others in place of those removed, as appears by the nominations and confirmations on the Executive Journal. Among these are collectors, inspectors, officers of the army, a vice consul at Paris, in place of one recalled, William Short, minister resident in Spain, in place of one recalled, and C. C. Pinckney, minister plenipotentiary, in place of James Monroe. President Adams removed collectors, supervisors, inspectors, officers of the army, and, finally, the Secretary of State, Mr. Pickens, was removed, and Mr. Marshall was appointed in his place. President Jefferson exercised this power of removal; so did President Madison, and the succeeding Presidents. In February, 1814, President Madison nominated Return J. Meigs, as Postmaster General. A resolution was offered in the Senate to ask the President if this office was vacant, "and, if vacant, in what manner it became vacant." This resolution was rejected.

From the commencement of this Government to this time, the power of removal has been conceded, first, by both branches of the Legislature, in organizing the Departments; 2d, by the uninterrupted exercise of that power by all the Presidents.

From May, 1792, when President Washington made his first message, nominating Mr. Wigglesworth, as the Collector of Newburyport, in place of Cross, superseded, down to this time, notwithstanding the various removals made known to the Senate, by nominations to fill vacancies

so happening, not one single instance has occurred in which the Senate, as a body, has asserted the right to ask the cause of removal, or to exercise an appellate or revisory power over the President's decision. The attempt, in 1814, to ask the cause of the removal of Gideon Granger from the office of Postmaster General, was rejected by the Senate. Thus the Executive and Legislative departments have construed the constitution.

In the case of *Marbury vs. Madison*, (February, 1803,) the Supreme Court of the United States express their opinion, that the nomination, appointment, and commission, are three distinct operations. "1st. The nomination. This is the sole act of the President, and is completely voluntary. 2d. The appointment. This is also the act of the President, and is also a voluntary act, though it can only be performed by and with the advice and consent of the Senate. 3d. The commission.

"Where an officer is removable at the will of the Executive, the circumstance which completes his appointment is of no concern, because the act is at any time revocable. By the constitution of the United States, the President is invested with certain political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience. To aid him in the performance of these duties, he is authorized to appoint certain officers, who act by his authority, and in conformity with his orders. In such cases, their acts are his acts; and whatever opinion may be entertained of the manner in which executive discretion may be used, still there exists, and can exist, no power to control that discretion. The subjects are political.

"The power of nominating to the Senate, and the power of appointing the person nominated, are political powers, to be exercised by the President according to his own discretion. When he has made an appointment, he has exercised his whole power, and his discretion has been completely applied to the case. If, by law, the officer be removable at the will of the President, then a new appointment may be immediately made, and the rights of the officer are terminated."

To those who contend for the supremacy of that Court in settling all questions arising under the constitution, this case of *Marbury vs. Madison*, ought to be conclusive. But as I am one of those who deny that the Legislative and Executive departments, with the concurrence of the Supreme Court, can change the constitution, I will examine these questions upon the principles of the constitution.

When the Government is so organized as to secure, by reasonable precautions, the enacting of good laws, it is of the highest importance that they be faithfully executed. Good men are interested in the faithful execution, because their conduct is, in the general, in conformity with the laws. Bad men are interested against the faithful execution, because their conduct is, in the general, in violation of the laws. A feeble Executive produces a feeble execution of the laws; it is, in effect, a bad execution of the laws. A government ill executed degenerates into a bad government in fact, however good it may be in theory. Energy in the Executive is essential to a good government. What does it avail, to have a good government in theory, but a bad government in practice? good laws upon the statute book; but those laws ill executed and evaded? In a government looking to our intercourse with foreign nations to preserve peace; direct the energies of the nation in war; spreading over such an extent of territory, an energetic Executive is more necessary than in one of the confederated States.

In the Federal Government, the Executive should be invigorated as far as consists with the safety of the republican principles upon which it is founded. If sufficiently guarded to prevent usurpation, a vigorous Executive is appropriate to the faithful execution of the great powers

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of war, peace, treaties, and commerce. The Federal Government is doubly watched; first, by the ordinary safeguards of a simple republic; secondly, by the federative rights and reserved powers of the State Governments. The principle ingredients which constitute energy in the Executive, are unity of action, competent powers, adequate provision to maintain itself against the encroachments of the other departments, and against anarchy. A numerous Legislature and a single Executive, seem best calculated to unite the two great ingredients of a good government, salutary laws, and a faithful execution of them. Decision, activity, and despatch, will generally flow from the proceedings of a single Executive, in a more eminent degree, than from two or more. As the number is increased, these qualities of decision, activity, and despatch, will be diminished; and it matters not whether the power be vested in two or more of equal authority, or in one, subjected to the control and co-operation of others, as counsellors to him.

Whenever two or more are invested with a public office and trust, with equal dignity and authority, there is danger of difference of opinion, personal emulation, and animosity. Whenever these dissensions arise in the Executive department, they weaken the executive arm, distract the plans and operations, split the community into factions. They counteract the most necessary ingredients in an Executive—vigor and despatch.

The history of Rome, in her best days, furnishes instances of dissensions between the Consuls, and also between the military tribunes who were substituted at times to the Consuls.

To guard against more frequent dissensions, prudence suggested in the Consuls the policy of dividing the administration between them by lot, assigning to one the government of the city and the suburbs; to the other, the command in the distant provinces; but frequently in extremities, recourse was had to a dictator.

In legislation, differences of opinion, and the jarings of parties, promote, in the general, deliberation and circumspection, and check excesses in the majority, although they may sometimes obstruct salutary measures. But the evils of dissension in the Executive department are unmitigated with any advantages. These dissensions weaken, embarrass, and perplex the execution, of any plan from the first to the last. In our foreign relations, in all the duties devolved on the President, by the constitution, relative to war and peace, treaties and commerce, at home and abroad, where unity, decision, activity, and expedition are so necessary, we would have every disadvantage to apprehend from a plurality in the Executive. Besides the tardiness and inefficiency which would be thereby produced, responsibility to censure and to punishment would be lessened, if not destroyed. In a plurality of Executive heads, amidst mutual accusations, it is difficult to determine on whom the blame of pernicious measures ought to fall, and more difficult to fix the punishment according to the degree of culpability of each. The executive power is more easily confined when it is one—multiplication in the Executive is more dangerous than friendly to liberty. One tyrant is more tolerable and more easily brought to conviction and punishment than twenty-seven. The influence and credit of many individuals united in the executive power and responsibility, are more dangerous to liberty than either of them singly.

By the constitution, the powers of this Government are distributed into three departments; the Legislative, the Executive, and the Judicial. The President of the United States is the head and fountain of the Executive department. But his powers are not solely executive. He has a qualified negative upon the proceedings of the legislative department. Moreover, "he shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as

he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them." "He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur." "He shall take care that the laws be faithfully executed." "To perform efficiently these important duties devolved upon him by the constitution, means are necessary. Therefore it is, "he shall be Commander-in-chief of the army and navy of the United States." "He shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, and other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers as they think proper, in the President alone, in the courts of law, or in the heads of departments." He shall have power "to fill up all vacancies that may happen in the recess of the Senate, by granting commissions which shall expire at the end of their next session." "He shall take care that the laws be faithfully executed, and shall commission all the officers of the United States." In interpreting the constitution, we ought to view it as one entire work. All the members should have such order, strength, and proportion, as to be homogeneous. All and singular the parts should cohere and fit, the one with the other, so as to answer to the design and end, and make one uniform, fair proportioned, natural whole. This rule of examination is founded in common sense, and is applicable to all the works of genius and of art. In this rule, artists, writers, critics, jurists, the sages of the State, and the fathers of the church, all concur. The constitution provides that the President shall commission all officers of the United States. What is the tenure of office which he shall grant in the commissions? When the tenure of office to be expressed in the commissions is decided, then the power of the President to remove this or that officer, or his want of power to remove, is determined by an inspection of the respective commissions. The constitution declares that the judges, both of the Supreme and inferior courts, shall hold their offices during good behavior. This is the tenure of office to be expressed in their commissions. Taking this declaration of tenure in favor of the judges, in connexion with the power to nominate, appoint, and commission all officers, and the consequence seems to follow clearly, that none but the judges are to be commissioned during good behavior. Affirmative words here are, in their effect, negative of other kindred subjects than those affirmed. *Expressio unius est exclusio alterius*. The expression of one tenure in favor of the judges is the exclusion of the like tenure as to all other officers. When the constitution was framed, the States had exploded the notions that public offices were private property, and had established the principle that public offices are public trusts, instituted for the public benefit, and to be held either during good behavior and the continuance of the offices, or during pleasure, as the one or the other tenure should be, according to the character of the respective offices, most consistent with the beneficial management of the public affairs. The duration of the offices is one thing; the tenure by which the officer holds his commission is another. The office may be created expressly for a limited and defined portion of time, or otherwise, the office continuing, yet the commission may be directed by the constitution or laws to be issued for a limited time. In either case, however, the tenure by which the officer holds that commission may be during good behavior, within the extent of the commission, or only during pleasure. There were, then, at the making of the constitution of the United States, but two tenures, or manners of holding the commissions issued for public offices—during good behavior, or during pleasure.

When, therefore, the constitution declared that the President should nominate, appoint, and commission all officers, and that he should commission the judges during good behavior, it followed clearly that he should commission no other officers during good behavior; but that all officers, other than the judges, should be commissioned to hold during the pleasure of the President.

This interpretation is enforced by other considerations. The President is elected for four years only. If the officers, other than the judges, were commissioned during good behavior, and not during pleasure, then the Executive department would not be duly ordered and proportioned in its parts; the different members would not be suited to the head; the head, the body, and the feet, would not be homogeneous; they would not be adapted to the design. A President elected for four years, as the head and fountain of the Executive department, with all the executive officers under him, appointed and commissioned during good behavior, not removable by him, but holding for life, would be inconsistent with the plan, and with the duties and responsibilities imposed upon the President. The term of four years is sufficient for unfolding the measures of a President, and his course of administering the affairs of the Government, to bring them distinctly to the view of the people for their approbation or disapprobation. If disapproved, a change is intended by the constitution, through the medium of election. If the President is changed with a view to a change in the course of measures, then, if all executive officers hold at the will of the President, he has the means of changing the executive officers throughout, so far as may be necessary to effect and ensure the change proposed in the course of administration. All executive officers would be subordinate to the President. Dependent on his will for the tenure of office, all would be controlled by his plans and views of administration, and held in obedience and activity, by his power of removal. The President would then have the competent means to cause the laws to be faithfully executed, and to effect his plans and measures of administration. The Executive would be well ordered and adapted to its end and design—harmonious in its members from the head to the foot. The responsibility imposed upon him to take care that the laws be faithfully executed, is then reasonable. But if all the executive officers were appointed during good behavior, removable only by impeachment, trial, and conviction, then the head of the Executive department would be elected every four years, but all the other officers would be established for life, independent of the President; not controlled by the will, plans, and views of the President; not held in subordination by their immediate dependence on him for the tenure of office; but held in activity and the course of duty only by that distant prospect of impeachment. The vacancies happening by death and resignation would be annually so few as to leave the spirit of the executive corps perpetual and unalterable by the Presidential election. We should then have an Executive department, with a President elected every four years, but the whole executive corps established for life, permanent in its spirit, and independent of the President and the people. A President for four years, but heads of departments for life, ministers for life, consuls for life, custom house officers, collectors, inspectors, marshals, attorneys, receivers of public moneys, registers, postmasters, officers of the army and navy, &c. &c. all, all for life! In a Government instituted expressly for conducting the great affairs of war, peace, and treaties, levying money, and regulating commerce; such a system of a President for four years, but all other executive officers for life, would have been a political monster.

If a painter should join together a human head, a horse's neck, members collected here and there from the feathered tribes, and ending with the tail of a fish, would not the spectacle be ridiculous? The framers of the Federal constitution never drew such an unnatural, deformed picture for the Executive department. The Congress and the States would have turned, in disgust and loathing, from such a hideous deformity. Let us pursue the consequences of an executive corps, appointed during good behavior, and not removable by the President. Would it not be passing strange, and strikingly out of order, to see one President discarded by the people for disapprobation of the course of his administration, another elected to change the course of measures, and yet that the President elect be surrounded by cabinet ministers, operating through inferior officers, whose views of policy were hostile to his, and accordant with those of his predecessor? A President elected to bring about a spirit of economy, and healthful action in the body politic, yet with heads of departments fastened on him, whose views of policy are at war with economy, allowing the most extravagant constructive claims on the treasury, operating upon the theory that a national debt is a national blessing, and endeavoring to consolidate all the reserved powers of the States into the powers of the Federal Government? That the President elect should be without the power to discard heads of departments in whom he had no confidence, and unable to effect a change in the inferior executive officers, would make him the meagre emblem of an Executive; a skeleton stripped of his integuments, a something but little better than a puppet, moved by the undersprings and wires of ministers and officers holding for life, and destitute of all sense of dependence on the President or the people. What reasonable responsibility could be fixed on the President for mal-administration, either as to the preservation of peace, or effecting a favorable commercial intercourse with foreign nations, or in the execution of the laws, if he had no power to recall ministers and remove officers, and substitute them by others more suitable to the occasion, and adapted to the exigency? Suppose a revenue officer, for instance, a collector at the port of New York, who collects near a million of dollars per month, should be suspected of infidelity, would it not be highly injurious to suffer him to remain in office until he had consummated his fraud? until he could be removed by impeachment? or until the President could lay hold of some overt act to present to the Senate to move them to advise and consent to his removal? Suppose a collector, or other receiver of public moneys, in actual default in accounting and paying to the treasury; must the defaulting officer be suffered to continue his peculations until he can be impeached, or until the Senate can be convened to advise and consent to his removal? Such a construction of the executive powers of the President would render them wholly inadequate to a faithful execution of the laws. It would make the injunction upon him, "to take care that the laws are faithfully executed," an idle mockery. To impose a duty and deny the means to execute it, can impose no responsibility for non-performance. The power of nominating, and appointing, and commissioning all executive officers, during pleasure, and consequently of removing them at pleasure, is a political power vested in the President, for wise and salutary purposes, not only to guard existing laws against evasions, to protect the revenue against dilapidations, and to enforce a faithful execution of the laws generally; but also to assure due weight and influence to the executive recommendations of measures which he shall deem necessary and expedient to be adopted by the Congress.

The President is required by the constitution, "from time to time, to give to the Congress information of the state of the Union, and recommend to them such mea-

"Humani capiti cervicem pieior equinum

"Jungere si velit, et varas inducere plumas

"Undique coactis membris, ut turpiter atum

"Desinit in pieior—

"Spectatum admisi risum tenuate amici!"

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sures as he shall judge necessary and expedient." It must be evident that the President, from the nature of his office, and from the facilities afforded him, as being the head of the Executive department, of commanding every information which can be afforded by the heads of the departments, and through them from all the other executive officers, and of obtaining through them information from other sources, can have a more distinct and commanding view of the state of the Union and of the measures which may be necessary and expedient, than the several members of the Legislative departments. The duties, therefore, devolved on the President to give information of the state of the Union, and to recommend measures which he shall judge necessary and proper, as well as his qualified veto upon the acts of the Congress, are wise and salutary, deduced from his superior means of information. His veto is calculated to prevent impolitic legislation. But the veto is but conditional, not absolute. How far his veto may influence the Congress in their deliberations upon it, depends upon the weight and influence of the executive power as a whole, and then upon the power of the President to prevent the momentum of the whole from being split and divided into parts pulling into opposite directions. The same considerations will apply to the weight and influence which the recommendation of the President will have in forwarding the adoption of measures by him communicated to Congress as necessary and expedient. For what purpose is he required to recommend measures to the Congress, if his recommendations are to have no weight, no influence? And what weight or influence can they have, if the heads of departments, and all the other executive officers, who ought to be aiding in giving them life and activity, may be opposing and counteracting the recommendations of the President. If all the executive officers were to hold their offices for life, independent of the will of the President, then he would have no means of enforcing an unity of action in aid of his recommendations. A President surrounded by a corps of executive officers, not holding at his will and pleasure, but independent of him, and for life, or during good behavior, would have but little influence at any time. The executive corps, in opposition to the President, could stifle the measures recommended by him. The members quarrelling with the head would be a disordered, feverish, disturbed action of the body politic. Confusion and anarchy are the necessary consequences.

If the executive officers were to be commissioned for life, then the President would be disarmed of the necessary and competent means to protect the Executive department against the encroachments of the co-ordinate departments. Mr. Madison, in the forty-eighth and forty-ninth letters of *Publius*, has illustrated, by reason and by historical facts, the insufficiency of mere paper barriers, to confine the several departments of powers, Legislative, Executive, and Judicial, from passing the limits assigned; that it is necessary to furnish auxiliaries, other than definitions on paper, to prevent one of the departments from encroaching upon the chartered authorities of the others; that "the Legislative department is every where extending the sphere of its activity, and drawing all power into its impetuous vortex." And if I might be permitted without offence, which certainly I do not intend, to remark upon the claim set up in this Senate, for its participation in judging and supervising the Executive in his removals from office, after such long and settled practice to the contrary, I would cite this, in addition to those referred to by Mr. Madison, as another example of the activity of the Legislative department to enlarge the sphere of its powers, and draw within its vortex the powers properly belonging to the Executive department.

The power of nomination belongs to the President—the power of appointment is his. "He shall nominate,

and, by and with the advice and consent of the Senate, shall appoint." "He shall nominate, and he shall appoint, and he shall commission, all officers." The nomination and appointment are each the acts of the President. The Senate may refuse their advice and consent, when an unworthy and unfit person is put in nomination; but they can neither nominate nor appoint the person removed from office. The removal from office is the sole act of the President. It is his political power. It results from the constitution; from the tenure of office established by the constitution. The executive officers hold at the pleasure of the President. The determination of his will, the removal, is the previous act; the nomination to fill the vacancy happening by that removal is the subsequent and consequent act. The Senate cannot touch the removal. That is not submitted for their advice and consent. It is the person nominated who is submitted for their advice and consent. The rejection of the person nominated to fill the vacancy happening by removal, cannot restore to office the person removed. The removal is a fact done. The rejection of the consequent nomination to fill the vacancy cannot undo the fact of the removal—it cannot fill the vacancy.

If the Senate should invest themselves with the power of demanding and judging the causes of removals, then this would be an appellate power in the Senate, exercised over the acts of the President in removing; not a counsel and advice upon the person nominated. The power to demand the cause of removal goes behind the nomination, and acts not upon the question submitted by the proposed appointment. It leaves the question submitted by the constitution and the nomination of the President—the fitness or unfitness of the person nominated—and wanders into the causes and motives of the presidential will and pleasure, exercised in removing the former incumbent. It is an inquisition over the motives of the President. It changes the tenure of office. The President would no longer be the head and soul of the Executive department, but the Senate would be placed above him, to revise and control his political decisions. The unity, activity, and despatch, of the Executive department would be destroyed, by having forty-nine heads instead of one. Men often oppose a thing merely because they have had no agency in planning it, or because it has been done by those whom they dislike. To make the Senate a council whose concurrence is necessary to the operations of the ostensible Executive, would be intolerable in a Government like this, intended to manage our relations of war and peace, and treaties; and the powers of levying money and regulating commerce. "An artful cabal in that council would be able to distract and to enervate the whole system of administration. If no such cabal existed, the mere diversity of views, opinions, and feelings, would alone be sufficient to tincture the exercise of executive authority with a spirit of habitual feebleness and delay."

Over and above the inadequacy of the executive means to take care that the laws be faithfully executed, in case the Senate should invest itself with the power to demand and judge the causes of removal, another weighty objection would arise. The legislative duties of the Senate, connected with this appellate power over the causes for removal, would require the perpetual session of the Senate; and the system, if not impracticable, would be at war with the theory of the constitution. The House of Representatives are to impeach, and the Senate to try impeachments. But by this extraordinary course of demanding and judging the causes for removal, the Senate would pre-judge the cases of officers supposed to have offended. If the cause of removal was demanded, then the existence or non-existence of the cause must be tried. If the removal is advised, the conduct of the officer is condemned; if the removal of the officer is negatived, then the conduct of the officer is approved. The Senate will then be converted into a secret inquisition into the conduct of of-

ficers, to hear and decide, in their absence, and affirm or disaffirm the causes for removal. Whereas, by considering the power of the President to remove as a political power, a removal then only evidences the will and pleasure of the President, but does not necessarily involve the guilt of the officer removed. His guilt or innocence must depend upon such ulterior measures as may be instituted before the judicial tribunals, or before the House of Representatives as the impeaching body.

Considering the powers of the Federal Government as few and defined, as conferred for the purpose of administering and protecting the foreign relations of the States, in respect of war, peace, treaties, and commerce, and for maintaining the mutual interests and general concerns of all the States, at home and abroad, as connected with those subjects; believing that all the powers delegated look to, and are connected with, those objects of general concern and general interest; viewing the safeguards over the executive power as reasonably competent to watch and secure against tyranny and usurpation, I am satisfied that the powers of the Executive department were wisely vested in a single head.

In this view of the constitution, it seems to me very necessary and proper that all executive officers, commissioned by the President, shall hold at his will and pleasure, liable to be removed at his will, but subjected, nevertheless, to the additional restraint of impeachment by the House of Representatives, and trial by the Senate.

This tenure at the will of the President is calculated to preserve,

1st. Due subordination in the officers to the executive head, so as to ensure a faithful execution of the laws.

2d. To preserve that unity of purpose and action necessary for decision, energy, and despatch.

3d. To maintain the Executive against the encroachments of the co-ordinate departments, as well as against anarchy.

4th. To maintain that due weight and influence to the President which was intended by the constitution, in giving him a qualified negative upon the proceedings of Congress, and in assigning to him the duty to recommend to Congress such measures as he shall judge necessary and expedient.

It seems to me that the exposition of the constitution, in relation to the executive power, which prevailed at first, and which has been practised upon for more than forty years without interruption, is in conformity with the true principles and sense of the constitution. That exposition gives due order, strength, and proportion, to the different members of the Executive department, preserves the due subordination to the executive head, and adapts the means to the ends and design. According to that exposition, each successive President has the same momentum of executive power which belonged to the first and every preceding President. The periodical elections of the President thus give to the people the effective control over the course of executive measures and executive administration, by arming each President clothed with competent means to give efficiency and activity to the principles which bring him into power, as well as to arrest a course of administration which shall have put his predecessor out of power. This exposition subjects the whole executive power to the control of the people, directly and mediately, at every periodical election of President. The contrary construction would entail upon the people an executive body of officers, independent of the President, subject to alteration by such slow and imperceptible degrees, as to render the spirit of the corps perpetual, and independent of any change in the executive head.

On motion of Mr. GRUNDY, the resolution was then laid on the table.

# THE INDIANS.

The bill to provide for the removal of the Indians west of the river Mississippi, having been laid on the table, was resumed, on motion of Mr. JOHNSTON.

Mr. ROBBINS said that the whole argument in favor of this bill turns upon the question whether the Indian nations within our territorial boundaries are competent to make treaties with the United States: for it makes no difference whether the Indian nation be within the chartered limits of a State, or out of those limits, if within the limits of the United States: for, if being within a State renders the Indian nations incompetent to make a treaty, the being within the United States makes them equally incompetent, the reason being the same in both cases, viz. the being within the jurisdiction of another power, and therefore, as the argument is, subject to that jurisdiction. If these Indian nations are competent to make treaties, then the proposed law is unnecessary, as its objects may be effected by treaty; and this law is not necessary to aid the Executive in making this treaty. And if these Indian nations are competent to make treaties, then this proposed law is not only unnecessary, but it is unconstitutional; for it is to make a treaty by the Legislature, which can only be made by the Executive and Senate. The turning question, then, of this whole debate, I repeat, is, whether the Indian nations within our territorial boundaries are competent to make treaties?

Before I proceed to discuss this question, I have to remark, that it is a matter of surprise that this question should now be made, when it is now made for the first time. From the time of the discovery of this new world by the old, down to this time, now more than three hundred years, the competency of an Indian nation, situated within the jurisdiction of another Power, has never been made a question before. No jurist, no writer upon public law, has ever made it a question. But, through all that long tract of time, treaties upon treaties, and almost without number, have been made with them, without a doubt, in a single instance, of their competency to make them. This is not denied on the other side; indeed, it is admitted that the doctrine and the practice of all past time, for century upon century, has been, to consider these nations, thus situated, as competent to make treaties. But all this is treated as if the whole world, from the beginning down to this time, had been benighted upon this subject; as if they had ignorantly supposed and believed that the Indian nations, thus situated, were competent to make treaties, when, in truth, they were not competent to make treaties: that Great Britain had been in this deplorable state of ignorance, with all her statesmen; that our Governments, both State and National, had been in this deplorable ignorance, with all their statesmen; that the jurists, or writers upon public law, of all the world, had all been in this deplorable state of ignorance. I say so treated; for I do not perceive that this new opinion is advanced with any less confidence, or with any more diffidence, on account of that mass of authority and usage against it.

I have farther to remark, that, if, indeed, it be so, that these Indian nations, thus situated, are not, and have not been, competent to make treaties, then all the treaties made with them are nullities. If so, the consequences of that consequence would be enough, I should think, to make gentlemen pause a little, and even fear the success of their own argument; for the consequences would be such that the whole body of the rights acquired by Indian treaties, or held under them, or derived from them, would be torn from their foundations, and the resulting evils would be incalculably great. I have said that, in that case, these treaties would be nullities; and who can doubt it? The President and Senate have the power to make treaties; but a treaty made with a party not competent to make it, is not a treaty; it is a compact, as distinguishable

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The Indians.

[SENATE.]

from a treaty; and the President and Senate are not competent to make a compact which is not a treaty; so that every such treaty is void, as a treaty, because the Indian nation was not competent to make it; and it is void as a compact, because the President and Senate are not competent to make it. If this be so, my honorable friend from Tennessee need not disquiet himself upon the subject of his contradictory obligations; for, upon his doctrine, these treaties have created no obligations upon the United States.

Again: I have to remark, that, if these Indian nations, thus situated, are not competent to make treaties, no more treaties can be made with them; that the treaties which have been made, and not ratified, if any such there be, must be rejected; treaties which have been projected, for the purchase and extinguishment of Indian titles, as that in Indiana, for instance, must be abandoned: we are to get no more lands from them by treaty; if you are to get them at all, you are to get them by compact, and this compact to be made, not by the Executive and Senate, but by the Legislature. And, pray, how is the Legislature to make such a compact? It would not be possible, I think, to overcome the difficulties to this mode of acquiring Indian lands.

And then, in case of future wars with those Indian nations, how are they ever to be terminated, and how are the relations of peace ever to be restored, without the intervention of treaties? Can any one, then, wish to see established a doctrine fraught with these, and it may be with other equally deplorable consequences? I should hope not. But, if we must prove what has never before been denied—what has always been admitted—admitted in theory, and in practice admitted—namely, that the Indian nations within our territorial boundaries are competent to make treaties—how is that competency to be made out?

I agree that an Indian nation, to be competent to make a treaty, must be a sovereignty; for that treaties, properly so called, can only be made by sovereigns with sovereigns; but, for this purpose, it is not material whether the sovereignty be dependent or independent; sovereignty is all that is necessary to this competency. The honorable gentleman from Alabama [Mr. McKINLEY] said the sovereigns must be equal; but he will find no authority for that opinion, if, by equal, he meant any thing more than that both must be sovereigns. A dependent sovereignty is still a sovereignty, and competent to make a treaty. I understood this to be admitted by the honorable gentleman from Georgia, in the outset of his argument; though I could not reconcile the subsequent part of his argument with this admission.

Now what is sovereignty? It is to be *sui juris*—that is, to be subject, within itself, to no law but the law of its own making; externally, it may be subject to another jurisdiction, and then it is a dependent sovereignty—to what degree dependent, will depend upon the treaty or treaties by which it is made dependent, if so made by treaty. Now this is the condition of every Indian nation in our country, *sui juris*, and therefore sovereign; but subject externally to another jurisdiction, and therefore a dependent sovereign. This has always been their condition since they ceased to be independent sovereignties. Since they ceased to be independent sovereignties, there never has been a time when this was not their condition. When, or where, I would ask, has any Indian nation been subject within itself, to the law of another jurisdiction? I know of none; I have heard of none. If there be one, that one would be an exception from the rest, but would not affect the right of the rest; that one may have relinquished its right to be *sui juris*; and then it would not be regarded as an exception.

Now the fact of being *sui juris*, and always of having been so, constitutes the right to be so. I would be glad to know if any nation has, or ever had, a better title to be *sui juris* than the fact of being so, and of always hav-

ing been so? than a present position, fortified by a prescription that knows no beginning; that runs back as far as memory or tradition goes, and beyond, to where it is lost in that oblivion in which unknown times and their memorials are all buried and lost! And such is the title of every Indian nation now in fact *sui juris* to be, and remain *sui juris*. There never was, there never can be, any better title to the right of being *sui juris*. To the validity of such a title, its acknowledgment by other sovereignties is not necessary; but if it were, there never has been a time in which it was not acknowledged by other sovereignties, or was denied by any other; but it is not necessary, for a right in present possession, fortified and sanctified by such a prescription as this is, stands on higher ground, much higher, than any acknowledgment by other sovereignties could place it. Unquestionably, then, these nations are *sui juris*, of right *sui juris*; therefore, sovereign; therefore, competent to make treaties.

A multitude of matters have been urged upon our consideration on the other side, not to disprove the fact of the Indian nations being at this moment *sui juris*, nor the fact that they always have been *sui juris*—for these can neither be disproved nor denied—but to prove that though the are *sui juris de facto*, that they are not *sui juris de jure*; not being aware, as it appears to me, that the fact constitutes the right. It is said, for instance, that the crown of Great Britain claimed a right to this country by the right of discovery; that what was the right of the crown is now our right; and, therefore, that the Indian nations are not *sui juris de jure*.

Now what was the right as claimed by discovery? (I make no question of that right, for the time has gone by for making that question, except as a moralist or historian. Whatever was the defect of that right originally, time now has supplied that defect, as far as defect of right can be supplied by lapse of time.) But what was that right as claimed by discovery? It was this; a right to the domain of the country, subject to the right of occupancy by the Indian nations; and that occupancy to be without restriction as to mode, and without limitation as to time; with the right of alienation of their possessory title, restricted to the proprietor of the domain. This was the claim of the British crown as founded on discovery: it was so defined and settled in the case referred to by the honorable gentleman from Alabama, [Mr. McKINLEY] the case of Johnson and McIntosh. It was so settled by the court, in that case, because it had been so settled by what had become the customary law of nations. But did the King of Great Britain claim, (for that is the important question) did he claim these Indian nations as his subjects, over whom, or for whom, he had a right to legislate, for their internal regulation? No, never; never was a claim of that kind advanced; never heard of; never thought of; that claim left them as it found them, subject within themselves only to their own jurisdiction.

Besides this notorious fact, the right of pre-emption claimed by discovery is decisive to prove that the right of jurisdiction was not claimed. If the Crown claimed these Indian nations as his subjects, why claim a pre-emptive right to their titles? Did any King claim a pre-emptive right to the land titles of his own subjects? Never. If discovery then is a good authority for what it claims, it is good for what it disclaims: it disclaims the right of jurisdiction over and, for the Indian nations. It therefore affirms and confirms this right in them, and guarantees it to them. Is it possible that the honorable gentleman from Mississippi can suppose that the case of Grenada is a case in point? That was the case of a conquest, and the conquest ceded by the treaty of peace to the conqueror, to be holden as a part of his dominions, and the people as a part of his subjects; and both have been so holden ever since.

It is said again, that a State has a right to exercise jurisdiction over persons within its territorial limits, and, of

course, over the Indian nation within its limits; and, therefore, that such Indian nation can have no right to exemption from that jurisdiction. If this State right was admitted, it would not disprove the Indian right; it would only prove that the two rights were incompatible, and that if the State right is exerted and executed against the Indian right, that the Indian right must be annihilated. That the Indian nation is placed within the limits of another jurisdiction, proves nothing against the Indian right, for that must be the situation of every Indian nation within our territorial limits. It is so, and was to be so, by the very claim originally made to the country, on which it was originally settled, and by which it is now held. This country was in the possession of these Indian nations; the British claim to it, as founded in discovery, was a claim to the domain of their country, subject to their right of occupancy. They of course must be situated in that domain. That domain was parcelled out into colonies, now become States; the Indian nations of course must fall within the limits of those States. So that, by our very claim to their country, they were to be, and to remain within our jurisdiction, and exempt from that jurisdiction, and subject only to their own.

To strengthen this State claim against the Indian right, it is said that the State within its territorial limits has all the rights which the crown of Great Britain had within the same limits. But, as has been stated, the crown of Great Britain made no such claim against the Indian right. Happy will it be for these nations, if the claim of that crown is adopted by the States as the measure of their claim, and if they will content themselves therewith.

Still it is said that a sovereign independent State has a right to jurisdiction over all its own population; and that these States were sovereign and independent when they adopted this constitution; and that they did not surrender this attribute of sovereignty by that adoption. Admitting all this, it is still to be proved that an Indian nation within a State, is a part of the population of that State. How can this be seriously pretended? The population of a State, is the population which constitutes the community, which constitutes the State, which is protected by the laws, and amenable to the laws of the State, as that community. But an Indian nation within a State is not a part of that community; is not protected by the laws, and amenable to the laws of the State as a part of that community.

The population of the United States is taken periodically, by regular census; it is now about to be taken for the fourth time; were the Indian nations within the United States ever included in any census as a part of the population of the United States? Never, as every one knows. And why not, if all persons within the limits of a sovereign jurisdiction are necessarily the subjects of that jurisdiction, as a part of the population under that jurisdiction?

The States pay direct taxes to the United States, in proportion to their numbers; that is, to their population. But are the Indian nations within the States included in that population? Never; they are expressly excluded by the constitution of the United States. Then, the States themselves, by adopting the constitution, have defined what constitutes their own population; and have excluded from it these Indian nations.

Still, it is insisted, and as a branch of the same argument, that the constitution gives the Executive no authority to go within a State and make a treaty with a part of its population. This is true; but an Indian nation within a State, as we have just seen, is not a part of its population. The power to make treaties, as given by the constitution, is a general power, and may be exercised at the executive discretion, with any nation or people competent to make a treaty; and it is not material where that nation is situated or placed; if competent to make a treaty, our Executive is competent to make it with them.

Again, it has been said that in several States in which is situated some tribe or remnant of some tribe of Indians,

that these States have subjected those Indians to State legislation. Without stopping to inquire how that fact is, and, if a fact, whether it has been with the will or against the will of these Indians; it is enough to say, that if those States have undertaken that legislation over those Indians, against their will, and while they were a tribe and *sui juris*, and when, up to that time, they had always been *sui juris*, that fact, instead of proving a right in that legislation, proves a wrong by that Legislature; and instead of disproving the Indian right, it proves a violation of that right. I trust it is too late in the day, and so enlightened as this is, to contend that a fact which is a wrong is a precedent to justify a similar wrong; and that a violation of right in one case becomes a warrant for a violation of right in all similar cases.

In the multitude of matters urged upon our consideration, to show that the Indian nations are not *sui juris de jure*, these are all which appear to me to have the appearance of argument; for in the rest, I confess I cannot see even that appearance. It is said, for instance, (and I notice it as a sample of the rest, for it would be endless to notice them all in detail,) that the Indian is an inveterate savage, and incapable of civilization. Admitting this to be the fact, which I by no means do admit, what has it to do with the question, whether his nation is *sui juris*, and competent to make a treaty? Is the Indian right less a right because the Indian is a savage? Or does our civilization give us a title to his right? A right which he inherits equally with us, from the gift of nature, and of nature's God. The Indian is a man, and has all the rights of man. The same God who made us made him, and endowed him with the same rights; for "of one blood hath he made all the men who dwell upon the earth." And if we trample upon these rights, if we force him to surrender them, or extinguish them in his blood, the cry of that injustice will rise to the throne of that God, and there, like the blood of Abel, will testify against us. If we should be arraigned for the deed before his awful bar, and should plead our boasted civilization in its defence, it would, in his sight, but add deeper damnation to the deed, and merit but the more signal retribution of his eternal justice. As to the civilization of the Indian, that is his own concern in the pursuit of his own happiness; if the want of it is a misfortune, it is his misfortune; it neither takes from his rights, nor adds to our own. As to his being an inveterate savage, and incapable of civilization, I do not believe it; in that respect, I believe he is like the rest of mankind. The savage state is the natural state of man; and that state has charms to the savage, which none but the savage knows. Man, no where, at no time, ever rose from the savage to the civilized man, but by the spur of an absolute necessity; a necessity which controlled and could not be controlled; it was not until he could no longer live as a savage, or go where he could live as a savage, that he would submit himself to that incessant labor and severe restraint, which lies at the foundation of all civilization; and to which nothing but education and habit reconciles the nature even of civilized man. The wild and free nature of the savage, unaccustomed to involuntary and constant labor, and to the multiplied and severe restraints of civilized society, revolts at the idea of that labor and those restraints; and his strong repugnance to them can be only overcome, as I have said, by the force of an overruling necessity. I have said this, not that I disapprove or would discourage attempts at their civilization; but to account for the only partial success, if it has been only partial, which has attended those attempts; and at the same time to vindicate the Indian from the charge of incapacity for civilization, any farther than as it is applicable to all mankind, while in a savage state. That very necessity exists, and is beginning to exert its civilizing tendency, where the tribes in question now are, but will no longer exist, if they are removed as is contemplated by this bill.

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The Patent Office.

[SENATE.]

Again, it is alleged against one of these nations, situated not in one, but in several of these States, that they have been guilty of an act which forfeits their right to live independently of State jurisdiction, and which requires that the forfeiture should be immediately and rigorously enforced. It is the act of their having changed the form of their government for their own internal regulation. It seems that, to better their condition, and with a view to their own civilization, they have discarded that of the savage, and adopted the government of civilized man. And it is a government well devised to improve that condition, and ensure that civilization—a government that is in itself a monument of wisdom; that speaks volumes in favor of their capacity for civilization, and of their advances therein; for it has every essential feature of a free and well balanced government. It is evidently not a work of blind imitation; for while it has followed the best models, it has followed them only so far as they were adapted to their circumstances; and it is original so far as their circumstances required it to be so—and, where it is original, it is no less admirable than where it is imitative. Attentive to those circumstances, so far from assuming any powers inconsistent with their external relations, either to the United States or to those States, that Government recognizes and ratifies those relations exactly as they exist, and confines itself entirely to provisions for their own internal police. Sensible of their rude state, and with a view to their own civilization, it makes it the primary duty of the nation to provide the means of education, and to promote the acquisition and diffusion of knowledge. Indeed, all its provisions show a wise survey of the present, and a provident forecast for the future. Now, this new government is not to be tolerated for a moment: State legislation must come and abate it as a nuisance; and the nation are to be punished for this atrocious act, with the forfeiture, and for ever, of every national right. They are not to be permitted even to resume the government they had discarded, and to live again as savages; but they are at once, and for ever, to be subjected to the rule of another jurisdiction, never again to enjoy the right of self government—a right which has come down to them from their fathers, and through an unknown series of generations, and for an unknown series of ages—a right which they had used, but not abused; certainly not in the act which is made a pretext for its destruction.

All fated Indians! barbarism and attempts at civilization are alike fatal to your rights; but attempts at civilization the more fatal of the two. The jealous of their own rights are the contemners of yours; proud and chivalrous States do not think it beneath them to take advantage of your weakness. You have lands which they want, or rather which they desire, for they do not want them; your rights stand in their way, and those proud and chivalrous States do not think it beneath them to destroy your rights by their legislation. Proud and chivalrous States do not think it beneath them to present to your feeble and helpless condition this alternative—either to abandon your homes, the habitations you have built, the fields you have planted, and all the comforts you have gathered around you; the homes of your fathers, and the sepulchres of their dead; and go far into the depths of an unknown wilderness, there to abide the destiny which may there await you, or to surrender your rights, and submit yourselves to their power, but to expect no participation in their rights.

An alternative which has planted dismay and despair in every heart that palpitates in that nation; for they see their situation, and that nothing is left them but resignation to their fate. Within themselves, they have no resource; without, they have no hope. The guarantees of treaties made with the United States—the faith of a mighty nation pledged for their protection, which was their hope—is now their hope no more; like the morning cloud and early

dew, it has passed away; for the chief of that mighty nation has been appealed to, to make good that guaranty, but has been appealed to in vain. He has told them that he will not make it good; and that they must submit to that alternative.

But we are told they have deserved all this, because they have changed the form of their government. But has this changed their external relations with the United States, or with those States? Not in the least. Not in any one possible respect. The new government, like the old, is made for their own internal regulation, and for that object merely. *Sui juris* as they are, and always have been, they had a right to make the law for their own internal regulation, according to their own will, and to change it from time to time, according to that will. They have done this, and, in doing this, they have done no more than they had a right to do. If they now are a government within a government, at which such an outcry is made as justifying their destruction, so they always have been; and not more so now than they always have been. They have always been what the gentleman calls an *imperium in imperio*—dependant, and without the external prerogatives of sovereignty; but still an *imperium*. But no matter—no matter how justifiable, how proper that change of government was, how strictly a mere exercise of right; they see and feel that their doom is sealed—that the decree is gone forth, and will be executed.

The cry of the miserable Indian will not arrest it; the sympathy of this nation in that cry will not arrest it; that sympathy is not credited, or, if credited, is despised; and we are told here, and in a tone of defiance, too, that no power shall arrest it. My fears are, that no power will arrest it—none certainly will if this bill pass, and without this amendment; for then the Executive will not arrest it. But if executed, and when executed, for one, I will say, that these Indians have been made the victims of power exerted against right—the victims of violated faith, the nation's faith—the victims of violated justice; yes, I call God to witness, of his violated justice.

Mr. WHITE said, that, as chairman of the committee who reported the bill, it was expected of him to notice some remarks made by gentlemen in opposition to it, and overlooked by those who supported it, but did not desire to do so while any gentleman wished to say any thing on the subject.

Mr. FORSYTH then took the floor, and occupied it until the usual hour of adjournment.

THURSDAY, APRIL 22, 1830.

## THE PATENT OFFICE.

On motion of Mr. HAYNE, the bill providing for the further regulation of the Patent Office was taken up for consideration, together with an amendment proposing to admit foreigners to the privilege of patenting inventions in this country, and increase the fees both to foreigners and on our citizens.

Mr. H. explained its object, and the circumstances which induced them to adopt the amendment. It appeared that a number of petitions from foreigners had been regularly before the Committee on the Judiciary, for special laws to enable them to exercise their inventions in this country; and were productive of great expense to the nation, as well as to the individual applicant. In consequence of this inconvenience, both to the patentee and the country, the committee had come to the conclusion to admit the subjects or citizens of all other States, Empires, and Kingdoms to take out patents in this country, subject to the laws of their respective countries, by paying two hundred dollars into our treasury, instead of seventy-five dollars, the amount of the sum claimed by the provisions of this bill from our own citizens.



Mr. DICKERSON said, he had doubts about the propriety of adopting the amendment proposed to the bill, or even the first section of the bill itself. He was of opinion that the sum required by the present law for the privilege of taking out a patent was quite sufficient. He believed it was now placed at thirty dollars; and, if he was called upon for an opinion on this subject, he would reduce instead of increasing the fees. He thought it was the duty of Congress, as it was the interest of the country, to promote, and not to discourage, the inventive genius of those who devote their talents, ingenuity, and time, in prosecuting discoveries in the useful arts, for the benefit of the country. It was well known [said Mr. D.] that many of those who applied for patents had exhausted all their little means in perfecting their discoveries and rendering them serviceable to the country; and if difficulties were thrown in the way of taking out patents, their inventions could not be tested, and their utility lost both to the inventor and the country. He was opposed to that feature in the amendment which proposed to raise the fees on foreign patentees to two hundred dollars; because if it be admitted that the patents are of importance to the country, as he believed all would admit, then he thought that all should be placed on the same footing.

Mr. HAYNE said, at an early period of the session, a communication was received by the committee from the Secretary of State, covering a report from the superintendent of the Patent Office, recommending what ought to be done for the better regulation of the institution; and stating, among other things, that great inconvenience had resulted from the low sum for which patents can be obtained, in consequence of which the office was crowded with a number of useless inventions, of no earthly use to the patentees or the public. The committee, after the examination of the subject, with such lights as were presented to them, thought it would be better, by raising the price of patents, to restrict the issuing of them in such numbers, rather than throw open the doors so widely as hitherto, for the admission into the office of useless lumber, by which the business of the office was increased, and the community at large, in a great many instances, imposed on. In raising the price of a patent from thirty dollars to seventy dollars, the committee were of opinion that no useful invention would be prevented from being known; though he thought there could be no doubt that the increase of price would have a salutary effect in preventing applications from ignorant or unworthy persons. With regard to that branch of the amendment which permitted the issuing of patents to foreigners, in certain cases, he would observe that the committee had been subjected to much trouble for several years past, in consequence of applications from that class of persons who could not obtain patents under the existing laws. He thought it much better to establish a general principle by law, for granting patents to foreigners, than to legislate, as heretofore, for each individual case, after subjecting the committee to the labors of an investigation and report. To the gentleman from New Jersey, he would reply that there could be no difficulty in the way of the superintendent's ascertaining the laws of other countries in relation to patents, so as to grant them to citizens of countries which did not exclude ours from like privileges; the usages of foreign countries under their patent laws were not necessary. A difference ought to be made between our own citizens and foreigners; and the committee, in establishing the difference, had turned their eyes towards England and France, and had ascertained that the fees paid in those countries were higher than any proposed to be fixed by the bill.

Mr. HOLMES observed, that it seemed to him, the two additional clerks called for in the bill, for the performance of the supposed increased duties of the Patent Office, were rather unnecessary, when viewed in connexion with the other amendments proposed by the Committee on the

Judiciary. By these amendments, it was proposed to increase the fees for obtaining patents; and the reasons assigned for this increase of fees, were to exclude the immense number of useless inventions which were daily presented at the Patent Office. It appeared to him, [Mr. H.] that, if the reasoning of the committee were correct, a diminution of clerical duties in the office must follow as an inevitable consequence. He thought we got along very well under our present law, and was inclined to believe that the amendments would, instead of removing evils, be productive of many. The increasing of fee, he did not believe, would sift out the useful from the useless inventions. They depended upon experiment, and the valuable are as liable to be excluded as the worthless. He would mention the invention of the cotton gin, the nail casting machine, and propelling boats by steam, any one of which was of more advantage to the nation than would counterbalance all the evils intended to be removed by the amendments; yet all might have been lost to the country under these amendments. With respect to the clause relating to foreigners, he thought it in some measure a proper one. The committee had to encounter a great deal of labor in presenting their petitions, examining their claims, and their bills, and vast expense was incurred by the country; but (as we understood him) the fees exacted from them were too high. He thought that, instead of two hundred dollars, the fee might safely be reduced to one hundred dollars.

Mr. McKINLEY said, that great unanimity had prevailed in the committee with regard to the amount of the fees to be charged for patents. On that subject there had been no difficulty. The great difficulty had been so to frame the law as to prevent the issuing of patents for useless inventions. It had been at length settled that the increasing of the fees would have the effect of lessening the number of patents. The committee had had another object in view; and this was to increase the responsibility of the officers charged with the management of the business; for it had been found that many patents had issued where the fees had not been accounted for; and it was to provide against this that the first section had been framed. Mr. McK. thought there was no danger of any useful inventions being excluded from the public notice in consequence of the increase of fees to seventy dollars; that sum was too small to prevent any one from taking out a patent for any invention of sufficient importance to promise him any remuneration for his skill and labor. With regard to the proposed charge of two hundred dollars for a patent to a foreigner, he thought with the gentleman from South Carolina, that some distinction ought to be made between citizens and strangers, and that settling some definite principle on which they might be admitted to the privileges of our Patent Office, would be preferable to leaving their cases to separate legislation.

Mr. ROWAN thought the honorable gentleman from New Jersey [Mr. DICKERSON] had not given the subject that reflection to which its importance entitled it. He was of opinion that seventy-five dollars, the sum to which the fees were proposed to be increased, would not prevent the inventors of what are really useful from obtaining a patent; because they will always be able to purchase a patent if the invention be valuable. But the people of this country had been so frequently imposed on by their Eastern brethren, who travel over the country with their patented notions, which they sell to the honest and unsuspecting farmers. When they had not money, the patentees would dispose of their notions for notes or obligations; but, before the note or obligation becomes due, the imposition is found out—payment is refused—suit is entered, and the industrious farmer is dragged at a great expense and inconvenience from his business to the Federal court. He had seen many such cases himself. He mentioned a patent for distilling by steam, and another for a "bulk

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The Patent Office.

[SENATE.]

head," that were old and utterly useless, though they were sold, and the purchaser brought a great distance to the Federal court to defend himself against the imposition. He did not suppose that the great discoverers of the cotton gin, the steamboat, &c. could have been lost from the fee being raised to seventy-five dollars. But when the fee is only twenty or thirty dollars, every trifling notion is patented, to the injury of the people, and the patentee not unfrequently. He did not think that our countrymen required much legal encouragement to stimulate the spirit of improvement. Let any one go into the Patent Office, and he will find that the spirit is not very sluggish. It was prudent, to be sure, not to damp it by imposing an enormous tax. As it related to the tax on foreign patentees, the committee were influenced in placing it at two hundred dollars, from having understood that that fee was smaller than what is required by the laws of foreign nations. In reply to the idea advanced by the Senator from Maine, [Mr. HOWARD] that the increase of fees would decrease the duty of the office, and consequently so far remove the necessity for clerks, Mr. R. reminded the gentleman from Maine, that if his reasoning were correct, still the duties of the office have more than doubled, and hence the necessity for the additional clerks provided for by the bill. He had understood that the revenue derived from the office would support these clerks, and still leave a surplus to go into the treasury. Unless as a general measure, Mr. R. had no particular concern for this office; but as it was necessary and important to the country, he thought that the arrangement and provisions of the bill would have a salutary tendency.

Mr. DICKERSON observed, it was true, as stated by the gentleman from Kentucky, that he was not much acquainted with the subject. He did not before know that a bill of that nature had been before the Senate. His opinion still was, and he thought that a little reflection would bring the gentleman from Kentucky to the same conclusion, that there was no necessity of increasing the fees for patents. Any increase of fees could only be made for one or two objects—for purposes of revenue, or for the sake of diminishing the number of patents. Now, although he was perfectly willing to increase the number of clerks in the Patent Office, he never wished to see any revenue derived from it; and as to the idea of diminishing the issue of patents, he could not see how the increasing of the fees could possibly have that effect. Those who gave their time to the invention and improvement of machinery, could, either through the instrumentality of friends, or on the credit of a useful invention, raise money enough to pay for the patent; and those whose inventions were not useful, would be most apt, through want of skill, to set a high value on them; and procure, by some means or other, the price of a patent. But the gentleman from Kentucky talked of the number of Eastern notions, by means of which the people of his State had been defrauded. Now Mr. D. would only observe, that notions were not peculiar to the people of the East—they were to be found every where—as well in the North, South, and West, as in the East; and those who did not like Eastern notions, might turn the tables on them. Mr. DICKERSON would have no objection to any reasonable plan for diminishing the number of patents issuing from the Patent Office, for he believed as much folly was collected there as ever was collected together in any one place in the world; but he did not believe that any increase of fees would remedy the evil; it would only have the effect of laying a tax on genius, without producing any good. With regard to that part of the bill which charges two hundred dollars for the patent to foreigners, he was opposed to it, and moved to strike out "two hundred" and insert fifty dollars. Mr. FOSYTH said that he thought the provision respecting foreigners a very fair one—it was one of perfect reciprocity. He would suggest one idea to the chair-

man of the committee that presented the amendment relating to the admission of foreigners to the benefits of the patent law—it is this: when patents are granted under the existing laws, the patentees have the exclusive right to dispose of their rights, and, when they are sold, it is in our own country; but the privilege to foreigners, by the provisions of the bill, are such, that if they do not choose to sell in this country, we are deprived of the advantage of using them for fourteen years, while their own country may be enjoying the use of them. All know the jealousy that exists in other countries in relation to this subject, and the fear that we should become acquainted with the principles of their inventions.

Mr. HAYNE observed, that, as far as the committee had been able to ascertain, the regulations, or nearly similar, which prevailed here in relation to patent laws, prevailed in Europe. There was no possibility of regulating, by law, the sale of patented inventions; but he believed if any foreigner took out a patent and refused to sell, he would incur a forfeiture. A provision might be inserted in the bill, that the foreign patentee must sell; but he must also be allowed to fix his price. That difficulty was inseparable from the subject. It appeared to him, [Mr. H.] that the only security to be had, was in that strong sense of interest which would induce every man to sell out his invention speedily, for the purpose of realizing the expected profit.

Mr. CHAMBERS, in reply to the observations of the gentleman from Georgia, said, that if the citizen or subject of a foreign power were to obtain a patent in this country for an invention, in order to restrict its use to his own country, an American citizen might use it, subject to an action for damages in a court of law; and if a foreigner were to come here to obtain a patent for the purpose of prohibiting for using it, he was of the opinion that a court of justice would not award much damages for a violation of the law, when, in the country in which the patent was used, such violation did not interfere with its sale. Mr. C. was of the opinion that every dollar derived from the revenue of the Patent Office should be expended for the encouragement of the useful arts; or, in other words, that there should not be a dollar drawn from the proceeds of the office, after paying its expenses, to go into the United States' treasury. He was, therefore, opposed to the increase of patent fee, proposed by the bill. With respect to the provision for admitting foreigners to the benefits of the patent law, he approved of it. He believed that, according to the present mode of passing special bills for that purpose, the cost to the Government, in every instance, exceeded two hundred dollars, and the trouble and expense to the individual were also great and perplexing. He mentioned one case, where a gentleman had been a whole year waiting on Congress, to obtain a patent right for a useful and important invention. Yet, from the multiplicity of business before them, the bill could not be acted on; and the applicant, after having subjected himself to great expense and loss of time, was obliged to abandon his object until another session.

Mr. ROWAN observed, that, if the gentleman from New Jersey had bestowed any examination on the subject, he would, with his usual reflection, have seen the difficulties attendant upon permitting individuals to monopolize the sale of articles belonging to the common concerns of life, under the pretence of taking out a patent for them. His constituents were so simple as to believe that when any thing emanated from Washington, and having the sanction of high official authority, it established an undoubted right to the article specified. They, moreover, had such a horror of being dragged before the Federal courts, that they were too apt to give up, and suffer themselves to be defrauded, either by paying the whole, or by a compromise. Did not the gentleman see the evils resulting from individuals claiming the exclusive right to articles formed from the dictates of common sense, and of

common and daily use? There was nothing that the Eastern patent venders had not taken out patents for—from washing-machines to millinery; (he did not mean the fig-leaf, but improvements in the mode of cutting female dresses); the baking of bread, (he apprehended bread was used before the old people left the garden;) nothing had escaped them. With respect to the gentleman's arguments that the increase of fees would not diminish the number of patents, it might apply to marriages, though not to patents; for he believed those who married were not tempted into matrimony by the lowness of the fees, nor would those inclined to celibacy be kept out of it solely by any high fees that might be imposed. Let us [said Mr. ROWAN] offer sufficient encouragement to the obtaining of patents—but let us not believe that no impositions are practised, and, in consequence, refrain from imposing such restraints as will, in some degree, have the effect of preventing them.

Mr. NOBLE said, as to the marriage fees alluded to by the Senator from Kentucky, [Mr. ROWAN] he thought they did not suit his purpose. He was astonished that there was not another clause introduced in the bill, making provision for taking out patents for reform. These were to have been the days of regeneration, but he believed they were the days of degeneration. This Secretary of State of ours wants four thousand five hundred dollars for the Patent Office—two more clerks under his patronage. Would he go in person to the Patent Office? No, sir; he would not, though I believe him small enough to go into one of the rat traps there. He said he would vote against the bill and amendments; instead of increasing the tax to seven-tenths of five dollars, he would prefer reducing the present tax at least one-half. As regards the foreigners, he would act on that if it were important; but as to the four thousand five hundred dollars which were to be given for these changes, he had no idea of it.

Mr. HAYNE had only one word to say. He would have been much better satisfied if the gentleman from New Jersey [Mr. DICKERSON] had not made his motion, particularly as that gentleman had expressed himself as opposed to the admission of foreigners to the privileges of the patent law. If he were opposed to them, he ought not to facilitate the means of embracing it, which is the inevitable tendency of his amendment. He [Mr. H.] had great confidence in the inventive genius of his countrymen, and was inclined to think that we would gain more than we would lose by the provisions of the bill. The four thousand five hundred dollars which the gentleman from Indiana wished to withhold, [Mr. H. said] would be necessary to keep the office in order, preserve the models, records, &c.

Mr. DICKERSON said, that gentlemen were mistaken as to his motives. He was not opposed to granting patents to foreigners, but he was opposed to granting them as a matter of right. He wished the present practice to continue, and then such restrictions could be imposed on the issuing of a patent to a foreigner as the nature of the case required.

Mr. FORSYTH was not satisfied to adopt the amendment proposed to the bill, and wished farther time for reflection on it; he therefore moved to lay it on the table till to-morrow; which was agreed to.

#### THE INDIANS.

The Senate then resumed, as in Committee of the Whole, the bill to provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the river Mississippi.

Mr. FREILINGHUSEN, of New Jersey, said, that the proposed amendment prohibits the appropriation of any part of this fund towards secret presents for the chiefs or head men of the Indian nations. When it was introduced by the honorable Senator from Alabama, [Mr. McKINLEY] the objection urged was, that it would be re-

garded as a reflection upon the purity of the present administration; that so ingratious an imputation should be studiously avoided, especially at the commencement of a Presidential term. Then, sir, secret presents seemed to be regarded with universal execration. The amendment and the bill were laid on the table; and to my great surprise now, we hear the honorable Senator from Georgia attempting to justify the practice of presents made to chiefs, by the usage of the Government, for many years back, even to 1793; and we are charged with a squeamish fastidiousness of morals for venturing to question the propriety, or policy, or wisdom of the measure. Sir, we are even threatened with the indignation and scorn which those are sure to receive, who dare denounce a custom sustained and countenanced by great names. Sir, such terrors did not reach me; and no array of names shall deter me from pronouncing this odious practice of dealing with those feeble tribes, by means of such corrupting agencies, an abomination for which no vindication nor apology can be made. Sir, neither time nor names can change the character or the qualities of things. The great moral distinctions between virtue and vice, truth and error, are inherent and irreversible. And when my honorable friend left his precedents, and spoke as his feelings sprang up, warm and purely, his own fervid exhibitions of all the mischiefs that have resulted from such practices were the strongest arguments against the whole system of Indian negotiations.

Sir, he correctly stated that we deny to these tribes all competition in the sale of their lands; no State, no individual can approach them with terms. We, the Government alone, are to buy. We propose the quantity, the price, the mode of payment; and then what follows? We send the public purse along with our agents; and they are to select the chiefs who are most in the confidence of their people, and the tempting bribe is addressed to their selfish passions, and their consent is yielded to such debasing and corrupting influences. Sir, is it not time to pause and retrace our steps? There needs a stronger support for this humiliating custom than the ridicule of what the gentleman is pleased to denominate a sickly morality.

The honorable Senator from Georgia has insisted that the matter of difficulty between Government and the Cherokees is settled. That she has extended her laws over them; that they will go into operation in June next; that the Executive of the United States, whose duty and province it is to construe the act regulating Indian intercourse, has decided that he cannot interfere; and there, argues the gentleman, the matter ends, and the Cherokees must submit. Sir, I mean not on this collateral subject of amendment to be drawn into the discussion of the great questions of Indian rights and our national obligations. But I confess it was with astonishment that I listened to the disposition made of these interesting concerns by the gentleman. I had supposed, sir, that the conduct of Georgia in her legislation over the Cherokees was still a deplorable subject. The country feels it to be so. It has awakened a tone of feeling that thrills to the very heart of this republic. But the honorable Senator proclaims a triumph before even a contest has been had. He raises the notes of victory, while the conflict is still matter of expectation only.

Sir, we presume to deny to the President the constitutional power of adjusting and concluding the extent or the fulfilment of treaty obligations; and we differ altogether from his construction. We mean to contend, and hope to show, that Georgia is wrong; that by her legislation she has encroached the fields of the feeble and friendly, whom we, as a nation, are bound to protect. And, sir, we shall not in this discussion, and we hope not in our legislation in this hall, bow to any Executive rescript whatever. We shall revise the interpretations which the President in his late message has thought fit to present to Congress, of the 16-

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lations of Georgia and ourselves towards the Indians and each other. We cannot, in the discharge of high public duties, defer to Executive will, nor leave to him the common right inherent in this co-ordinate department of power, of ascertaining and deciding when and how far our treaties bind us, and when and under what circumstances the nation is absolved.

Sir, if we yield up this right, the struggles of the Revolution will have been in vain. There will be but the exchange of tyrants. I am very certain that our Chief Magistrate will not seriously assume such extravagant powers. We shall, at all times, protest against their exercise, and resist a despotism that would despoil the American Senate of some of its vital functions. Sir, this is the high vantage ground, where freemen meet to revive and discuss public duties and obligations; and we mean to do this fearlessly, uncontrolled by Executive fiat, and unwielded by the denunciations of any Senator of any State.

We hope that Congress will declare the nature of our duty to the Cherokees, and will effectually interpose the strong arm of our Government between their invaded rights and the pretensions of the State of Georgia. But should we fail here, we shall not, as has been intimated, advise resistance. If Congress abandon these, their dependant allies, no one of all the friends of Indian rights, who shall dare encounter the share of reproach that seems to be preparing for them, will, I trust, counsel the Cherokees to resist unto blood. If the United States, with their faith and honor pledged to these nations in scores, shall withdraw their protecting shield from around and above them; if the aegis, that in the days of her truth she raised, shall now be rudely and cruelly torn away, we shall refer the poor, driven, persecuted Indians over to the tender mercies of Georgia; and we hope that she, in the time of her triumph, will not forget the law of kindness.

The gentleman complains that prejudices have been excited on this subject, and that Georgia has been selected, without reason, and against all justice, as the peculiar object of unfounded reproaches. Sir, so far as this matter may now be presented in the consideration of Congress, I regard it as a pure, abstract question of political and civil right, on which I feel no prejudice, and desire only a temperate, calm, and full discussion. That public attention and interest have been particularly directed to the State represented by the honorable Senator, has arisen from our treaty relations with the Cherokees, and the strong grounds lately assumed by Georgia in her assertion of sovereign power over these people. This State cannot expect, sir, that the rights of property and self-government, by us solemnly guaranteed to the Cherokees, shall be invaded by any member of the Union, a party to such guaranty, and no inquiry or complaint made.

If the authorities of the United States shall maintain the rights of the Southern Indians against all State encroachments, I trust, sir, that the States who may have any interest in the question will submit; from Georgia, sir, I can anticipate no different result. She does not, I presume, pretend to infallibility, nor would she dispute but that she may have been mistaken in the interpretation of her rights; and a generous, high-minded people will, I hope, acquiesce in the determination of a tribunal that can have no other concern in this momentous question than to secure for it a patient hearing and a righteous decision.

Mr. MCKINLEY replied to Mr. FRELINGHUYSEN; after which, on motion of Mr. WHITE, The Senate adjourned.

FRIDAY, APRIL 23, 1830.

The Senate then resumed, as in Committee of the Whole, the bill to provide for an exchange of lands with

the Indians residing in any of the States or Territories, and for their removal west of the Mississippi.

Mr. SPRAGUE made some additional remarks on the subject, in reply to the observations of other gentlemen.

Mr. WHITE then commenced a reply to the gentlemen who had opposed the report and bill; and did not conclude before the usual hour for adjournment.

SATURDAY, APRIL 24, 1830.

The bill to provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the river Mississippi, was resumed in Committee of the Whole.

Mr. WHITE concluded his remarks in reply to the arguments of gentlemen in opposition to the bill; and

Mr. FRELINGHUYSEN made some observations in explanation of some parts of his former remarks, which he thought had been misapprehended by Mr. WHITE.

The question on Mr. F's amendment was divided, and first taken on adding to the bill the following proviso:

*Provided always*, That until the said tribes or nations shall choose to remove, as by this act is contemplated, they shall be protected in their present possessions, and in the enjoyment of all their rights of territory and government, as heretofore exercised and enjoyed, from all interruptions and encroachments.

The proviso was rejected.

The question was then taken on the other proviso, which is as follows:

*And provided also*, That, before any removal shall take place of any of the said tribes or nations, and before any exchange or exchanges of land be made as aforesaid, the rights of any such tribes or nations in the premises, shall be stipulated for, secured, and guaranteed, by treaty or treaties, as heretofore made.

This was also rejected.

Before taking the question on the above provision, Mr. BARTON rose and said, he voted for this amendment in Committee of the Whole, and should do so again, upon its own intrinsic merits, for it was intrinsically right or wrong, without regard to either the present administration or to the particular question in the South, in which Georgia felt a peculiar interest; yet both of these latter questions had been introduced into the debate upon this amendment.

Some of the friends of the administration [said Mr. B.] object to the amendment on the ground of its being unusual, and amounting to a reflection upon the present administration. So far from that being my object, the amendment was offered by a supporter of the administration, not as a reflection on the President, but upon the discovery of an actual case of such bribery of Indian chiefs, during the last summer, to sell the lands of their tribe, and after a rejection of the stipulation for the bribe in this Senate, with a view to prohibit, by law, the use of such means in future. We do not accuse the President of having countenanced the bribery; and it would be a feather in the cap of this administration, to introduce the elevated and honorable principle of the amendment into our contracts or treaties with the miserable remnants of the once powerful owners of the country, by declaring, by a law, to govern all our public agents, President and Commissioners, that neither force, nor fraud, nor direct, secret bribery, shall be resorted to in acquiring the lands of those helpless people, whose guardians we affect to be.

I hope the mere circumstance of the last administration having taken the high ground of rejecting, with disdain, an offer to use bribes in such negotiations, will not be sufficient reason to reject the amendment. This can not be visited upon any particular administration. We must be responsible as a nation for its existence; but let us not recede from the ground taken by the last administration,

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which emphatically repudiated the practice. And as to the exciting Georgia question, it has no proper connexion with this bill or amendment. This bill is to extinguish Indian title north of the Ohio, in Indiana, and does not touch the Georgia question at all; and presents a fair opportunity of putting down, by law, without prejudice to Georgia, a practice that has been improperly revived under the present administration, and we presume without the sanction of the President. Disguise this question as you may, it is substantially whether we will sanction by our votes the use of secret bribes to obtain cessions of Indian lands. And I am sorry the Senator from Alabama has abandoned the amendment that would have done so much honor to the administration of which he is a supporter. This is a Government of law, and the national honor is concerned to prohibit, by law, all our agents, whether they be Presidents or subordinates, from continuing so unfair and dishonorable a practice, which we admit has crept into our negotiations. Secret bribes to chiefs, without the knowledge or consent of the poor tribes, whose guardians we affect to be, to sell us the lands of the tribe, sullies the honor of the nation, and renders the contract void, if the Indiana had power to assert their rights.

The Senators from Tennessee, Louisiana, and Illinois, [Messrs. GRAUND, LIVINGSTON, and KANE] argue, however, that this amendment interferes with the treaty-making power of the President, given by the constitution. It is true the treaty-making power is given to the President, subject to the advice and consent of two-thirds of the Senate; and it is equally true that a great revolution has occurred during this session in this body, upon the subject of the unrestrained powers of the President. Formerly, the rage was to render the President a cypher—to dispute his right to accept an invitation in the recess of the Senate, to begin a negotiation to be afterwards submitted to the Senate for their advice and consent, as in the Panama mission. Now, a treaty may be held without an appropriation, even after a refusal to grant an appropriation. At this session the majority have carried their confidence in the President so far as to surrender the restraining power of the Senate over an abusive exercise of the power of removing unfit or delinquent officers, by converting the whole offices and emoluments of the country into mere bribes to purchase popularity, reward partisans, and punish opponents for votes and opinions; and have utterly refused to permit any inquiry into the causes of such removals; and have established in the palace a four years' secret despotism and inquisition, contrary to all the former opinions, votes, and proceedings of themselves under other administrations; thus screening the President from a public knowledge of the true causes of removing men too honest, and too proud of their rights, to buy peace and office by a surrender of their sacred right of opinion and election!

Formerly, the rage was to strip the Federal Government of its beneficial powers, dissolve and scatter it into the semi-anarchy then miscalled State rights; now, the Executive head is made an absolute despot for four years, while the other branches of the Government are prostrated in the dust, or their useful existence assailed. It is admitted that the treaty-making power belongs to the President and Senate by the constitution. And what is a treaty for Indian lands but a contract between the parties? And what is the President but the agent of the Union, in making such contract? Or is the President the nation? So, also, by the same constitutional authority, individuals may make a contract; and it is even provided, that no law shall be passed impairing the obligation of their contracts. But does that prevent a government from enacting laws to prevent agents or principals from using bribery and fraud as the means of cheating the weaker party out of his property? Laws against the use of force, fraud, and the bribery of agents, are enacted every day when needed;

and yet the right of free contracts between individuals is of as high constitutional authority as that of contracting for Indian lands. Then, if Indian treaties for lands be contracts of bargain and sale, as they are, force, fraud, or bribery vitiates the contract, and makes it void. So men, angels, and divinities would consider it. But the difficulty lies here: the Indians have not the physical power to assert their rights; nor have they, like Portugal, a powerful and warlike nation at hand to protect them, when we play false to them; nor any just common tribunal to decide the matter in their favor, when we, their boasted guardians, bribe their avaricious or needy chiefs to sell their lands, or force them to do so under the mouths of our cannon bearing upon them through the portholes of our western forts, by telling them of the irresistible power of their great father the President, and his warriors. And after a treaty for their lands shall be effected by force, fraud, or bribes, what serious chance has the poor Indian to come before this Senate and show all the facts and circumstances, so as to induce the Senate to reject the treaty? Unless, indeed, your President be the nation, himself, how can it infringe the constitutional power of the President and Senate to make bargains of purchase of Indian lands, for the nation to prohibit by law our agent or negotiator from employing such means to cheat the weaker party as would render the contract void? Who but the law-making power can prohibit a practice, which, so far from being a use of the power given by the constitution, is a gross and shameful abuse of it, unless, indeed, the President be above law? Unless the supremacy to all law be accorded to the President, as well as a freedom from all inquiry into the abusive exercise of his power of removal from office for cause, and from all restraint of the Senate, we have as much power to prohibit the use of bribes to him, as to any other agent or individual in the Union. So far from infringing the constitutional power, it would only guard it from the approach and contamination of bribes, as other contracts are and should be.

There is another high constitutional power secured by the same instrument—the great elective right of free choice of a President, as high and constitutional as the power to bargain for Indian lands. Would it infringe that right to guard it from the bribes of Executive patronage? If so, your famous six bills reported during the last administration, under pretence of guarding the country from that influence, are all unconstitutional. This minority is entitled to the credit of having revived these bills since the discussion on "Foot's resolution." They died at their birth in 1826, and have slumbered in their graves ever since, until this minority, by the friction and the fire of that debate, restored them to life, and presented them to their wondering fathers. They come too late in the session to save the country from the ravages of corrupt proscription and despotism; but they may be in good time to save the credit and consistency of their authors.

Suppose, as the case happens to be, that this administration should use all the offices and emoluments of the country, in their newly usurped power, as mere capital, to purchase popularity and votes, and reward partisans; and the removing powers of the President should be perverted from their public purposes to punish men for their opinions and votes; until the spirit of the nation should be so corrupted that we should see those loungers behind our seats, skulking about the city all the session, come from the extremities of the Union to press the administration to remove gentlemen from office, and to resume the work of reform, from which they were frightened until the late decision of the Senate to sustain them by refusing inquiry into the causes of removal, to make room to reward such creatures for the base prostitution of their votes (for influence they had none) at the last election, in hopes of office—would it be unconstitutional to guard the great elective franchise of the United States from such bribes?

APRIL 26, 1830.]

Impeachment of Judge Peck.

[SENATE.]

Look at those mercenary expectants behind our seats and in the gallery! One would be content with an Indian agency; another would be satisfied, for the present, with some land office, or the like; a third presses the removal of a postmaster, that he may be rewarded for guessing at the strong side, by being placed in a situation to purify the rays of mental light and the streams of national intelligence, by exercising a servile and corrupt system of espionage upon the correspondence of our citizens, under the late subservency to party discipline to which the General Post Office has been subjected.

The Senator from Illinois [Mr. KANS] not only places the President's mere agency in negotiating these contracts for Indian lands above the control of the laws of the land, but boldly attempts to justify the use of secret bribes by the milder name of secret presents, by telling us that they are not used to induce the chiefs to do wrong, but to induce obstinate chiefs to do right!

Such an argument would, if valid, destroy the capacity of the Indian tribe to make the contract. That is merely saying we, the strong party, are to be the judges when it is right for the weak party to sell their lands, and then to bribe their agents to do the right thing!

No, sir, it is no infringement of the constitutional power to buy Indian lands, to enter into private contracts, or to elect a Chief Magistrate, to guard them all by law from the contamination of bribes, either secret or public; but such a prohibition by the Legislature of the Union would redound to the honor of the administration that enacted it, and to the nation, for thus introducing into our intercourse with the Indians the elevated and honorable principle, not by varying Executive will, but by a permanent law.

Mr. SPRAGUE then moved to add a proviso in the following words:

*Provided always*, That until the said tribes or nations shall choose to remove, as by this act contemplated, they shall be protected in their present possessions, and in the enjoyment of all their rights of territory and government, as promised or guaranteed to them by treaties with the United States, according to the true intent and meaning of such treaties.

The amendment was negatived.

Mr. FRELINGHUYSEN next offered the following proviso:

*Provided always*, That nothing herein contained shall be so construed as to authorize the departure from, or non-observance of, any treaty, compact, agreement, or stipulation heretofore entered into, and now subsisting, between the United States and the Cherokee Indians.

This amendment was rejected.

On motion of Mr. MCKINLEY, the fourth section was amended, by adding thereto the words following:

And upon the payment of such valuation, the improvements so valued and paid for shall pass to the United States; and possession shall not afterwards be permitted to any of the same tribe.

A verbal amendment in the fourth section, proposed by Mr. SPRAGUE, having been agreed to,

Mr. SANFORD moved to add the following section:

*And be it further enacted*, That where the lands in any State are held by Indians, and such lands belong to the State, subject to the claim of the Indians, or the State or its grantees are entitled to purchase the Indian title, the President of the United States may give and assign to any such Indians any suitable district or portions of the lands described in the first section of this act, when any such Indians shall choose to remove to, and reside on, the western lands, so as to be assigned to them.

Mr. WOODBURY moved to add thereto the following:

*Provided*, That no part of the expense of extinguishing the titles, or paying for the improvements of the lands on the removal, or of the first year's residence of the In-

dians, referred to in this section, shall be borne by the United States.

This was accepted by Mr. SANFORD, as a modification of his motion; and the amendment was then rejected.

On motion by Mr. FORSYTH, the second section was amended, by adding thereto the following:

When the land claimed and occupied by the Indians is owned by the United States, or the United States are bound to the State within which it lies, to extinguish the Indian claim thereto.

On motion of Mr. WHITE, the blank in the eighth section was filled with five hundred thousand dollars, and the bill reported to the Senate with the amendments; which, having been concurred in,

Mr. FRELINGHUYSEN moved further to amend the bill, by adding the following proviso; which was rejected:

*Provided*, That before any exchange or removal shall take place, the President of the United States shall nominate, and, by and with the advice and consent of the Senate, appoint, three suitable persons, and by them cause the country to which it is proposed to remove the Indians to be fully explored, and a report made to the President, and by him to Congress, of the extent of good and arable lands that can be obtained, and of the proportion of woodland in such country, and of its adaptation to the objects of this bill, and to the wants and habits of the Indian nations.

The bill was then ordered to be engrossed for a third reading, by yeas and nays, as follows:

YEAS—Messrs. Adams, Barnard, Benton, Bibb, Brown, Dickerson, Dudley, Ellis, Forsyth, Grundy, Hayne, Hendricks, Iredell, Johnston, Kane, King, Livingston, McKinley, McLean, Noble, Rowan, Sanford, Smith, of South Carolina, Tazewell, Troup, Tyler, White, Woodbury—28.

NAYS—Messrs. Barton, Bell, Burnet, Chambers, Chase, Clayton, Foot, Frelinghuysen, Holmes, Knight, Marks, Naudain, Robbins, Roggles, Seymour, Silsbee, Sprague, Webster, Willey—19.

The Senate then adjourned.

MONDAY, APRIL 26, 1830.

#### IMPEACHMENT OF JUDGE PECK.

Messrs. BUCHANAN and STORER, members of the House of Representatives, with a message from that House, were announced; and, having taken the seats assigned them,

The PRESIDENT informed them that the Senate was ready to receive any communication they might have to make.

Mr. BUCHANAN then rose and said: We are commanded, in the name of the House of Representatives, and of all the people of the United States, to impeach James H. Peck, Judge of the District Court of Missouri, of high misdemeanors in office; and to acquaint the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same; and we do demand that the Senate take order for the appearance of the said James H. Peck, to answer to said impeachment.

Messrs. BUCHANAN and STORER having retired,

Mr. TAZEVELL rose and said, that in looking over similar cases, for the purpose of ascertaining what would be the proper course of proceeding, he discovered that messages, similar in most particulars to the one just received, had been presented to the Senate in three cases. The first was the case of John Blount, one of the members of this body; the next was that of John Pickens, Judge of the District Court of New Hampshire; and the third was that of Judge Chase. Upon each of these cases, there seemed to have been some anxious consideration, in order to adopt the course most proper to be pursued. Mr. T. would state in what the proceedings in

these cases differed. The case of Mr. Blount being the first of the kind that had ever occurred, presented so anomalous a practice that it never could be referred to as a precedent. The other two were consistent with the general principles of law and justice. From these it seems that it had been settled, that, when the House of Representatives informed the Senate that they were about to present articles of impeachment, a Select Committee was appointed to take the subject into consideration, and report what measures were proper to be taken. He would read, for the information of the Senate, the cases as they occurred.

[Mr. TAZEWELL then read from the Senate Journal as follows:]

"In the Senate of the United States, March 3d, 1803.

"A message was received from the House of Representatives, by Messrs. Nicholson and Randolph, two of the members of said House, in the words following:

"Mr. President, we are commanded in the name of the House of Representatives, and of all the people of the United States, to impeach John Pickering, Judge of the District Court of the district of New Hampshire, of high crimes and misdemeanors, and to acquaint the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same.

"We are further commanded to demand that the Senate take order for the appearance of the said John Pickering, to answer to the said impeachment.

"On motion,

"Ordered, That the message received this day from the House of Representatives, respecting the impeachment of John Pickering, Judge of a District Court, be referred to Messrs. Tracy, Clinton, and Nicholas, to consider and report thereon."

In the case of Judge Chase, the articles of impeachment were presented at the bar of the Senate by Messrs Randolph, Rodney, Nicholson, Early, Nelson, and Geo. W. Campbell, managers on the part of the House of Representatives. [Mr. TAZEWELL here read the proceedings, from which it appeared that the Senate had previously decided what forms should be observed in receiving the articles of impeachment, and that the managers, on appearing at the bar of the Senate, were prepared with and presented the articles.]

The case of Blount was not exactly similar to either of the cases he had cited. This was in the year 1797. [Mr. T. then read the proceedings of that case.] The idea [said Mr. T.] of calling upon an individual to enter into a recognizance to appear at no named time, at no given place, and to answer to charges the Lord knew what, (for no articles of impeachment had been made out,) was so manifestly contrary to justice, that the Senate itself seemed to have abandoned it, for the accused did not appear, and no further proceedings were had until the next session of Congress. Under all the circumstances, Mr. T. took it for granted that Blount's case would not be considered as a fit precedent, but that the proceedings in the cases of Pickering and Chase would be resorted to; and he therefore moved that the message of the House of Representatives be referred to a select committee, to consist of three Senators, to consider and report thereon.

Mr. TAZEWELL's motion having been carried,

Mr. BENTON asked to be excused from voting on the subject; and the question being taken, Mr. B. was excused.

The Senate then proceeded to ballot for a committee; and, on counting the ballots, it appeared that Messrs. TAZEWELL, BELL, and WEBSTER were chosen.

#### REMOVALS FROM OFFICE.

The resolution proposed some time ago by Mr. BARTON, calling upon the President of the United States to

inform the Senate of the reasons that induced him to remove James Carson, Register of the Land Office at Palmyra, in the State of Missouri, was called up.

Mr. GRUNDY asked for the yeas and nays on its passage.

Mr. MCKINLEY thought, as so much had been said and published on the other side of the question, that the resolution ought not to pass without a farther examination of the ground it had assumed, and the reasoning by which that ground was attempted to be maintained. If no one else would say any thing on the subject, he would notice it himself. As he understood the question presented in the resolution, it was one of power. It was contended that the President of the United States had no power to remove an officer without the consent of the Senate. If such a proposition can be maintained, then it appeared to him that the Executive power was not confided to the President, but to the Senate. This was not the distribution of power, as regulated by the constitution of the United States. By that instrument, as he understood it, the execution of the laws was reposed in the President. The duties of the Senate were legislative. The House of Representatives had as good authority to ask and demand of the President the reasons for performing the duties confided to him by the constitution, as the Senate. He would ask the gentleman who made this proposition, to point to the authority for calling upon the President to assign the reasons to remove or nominate. If by the constitution he be empowered to see the laws faithfully executed, as he thought it would not be questioned, he could not see how the Senate could claim or exercise the same power. It was an absurdity in terms to suppose that such coequal powers could exist; yet it was evident that the ground assumed in the resolution amounted to such a claim. If the Executive and Senatorial powers be co-equal, the President has the same right to demand of the Senate the reasons why they reject his nomination, that the Senate has to call upon him for the causes of removal; and he might say, that, until such reasons were assigned, he would make no further nominations, and throw the responsibility on the Senate.

But it is contended that the President is not responsible to any tribunal, but to the Senate; and that, if the Senate are not permitted to check him, there is no power any where else during his term of office to restrain his tyranny; and that he may remove from office without cause. He would ask, to what tribunal is the Senate amenable for their conduct during their term of service? They were both responsible to the same tribunal—the people. It seemed to him a strange state of things for the Senate to erect themselves into a tribunal, for such an investigation. The decision of the Supreme Court of the United States, in the case of Marbury and Madison, so far as a decision of that court could effect the constitutional power of the Executive, had put the whole question for ever to rest. By that decision, the power of removal was demonstrated to be exclusively in the discretionary power of the President; and if he abused it, he could only be punished by the people.

Mr. KNIGHT said, that when the resolution was first introduced, he had been at a loss to know what object could be attained by its adoption. If any legislative act could grow out of it, there might be some reason for its adoption; but if no legislation could follow, it seemed to him that it would be a perfect act of supererogation. He should be glad to be informed on this point. When the President sent nominations to the Senate, it might be very proper to call upon him for his reasons for the removal of a public officer, and to inquire why the Senate had been asked the second time to sanction an appointment to the same office.

Mr. KANE said, the Senate was certainly satisfied that it was unnecessary now to consume time in arguing a question that had so often been decided, and decided, too, by

APRIL 27, 28, 1830.]

Judge Peck.—Executive Powers of Removal.

[SENATE.]

yeas and nays. The question had been settled; and, with a view of putting an end to useless and unprofitable debate, he would move to lay the resolution on the table.

Mr. BARTON requested Mr. KANE to withdraw the motion, saying he wished to answer the question of the gentleman from Rhode Island; and Mr. KANE having consented to withdraw the motion, Mr. BARTON addressed the Senate at some length; and when he had concluded,

Mr. KANE renewed the motion to lay the resolution on the table.

This question was decided in the affirmative; yeas 22, nays 15.

TUESDAY, APRIL 27, 1830.

JUDGE PECK.

Mr. TAZEVELL, from the Select Committee appointed on the subject, made the following report, which was concurred in by the Senate:

Whereas the House of Representatives on the 26th of the present month, by two of their members, Messrs. BUCHANAN and STORRS, of New York, at the bar of the Senate, impeached James H. Peck, Judge of the District Court of the United States for the District of Missouri, of high misdemeanors in office, and acquainted the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same; and likewise demanded, that the Senate take order for the appearance of the said James H. Peck, to answer the said impeachment: Therefore,

*Resolved*, That the Senate will take proper order thereon, of which due notice shall be given to the House of Representatives.

And the committee further recommended to the Senate, that the Secretary of the Senate be directed to notify the House of Representatives of the foregoing resolution.

WEDNESDAY, APRIL 28, 1830.

THE EXECUTIVE POWERS.

The following resolutions, offered yesterday by Mr. HOLMES, were taken up for consideration.

*Resolved*, That the President of the United States, by the removal of officers, (which removal was not required for the faithful execution of the law,) and filling the vacancies thus created in the recess of the Senate, acts against the interest of the people, the rights of the States, and the spirit of the constitution.

*Resolved*, That it is the right of the Senate to inquire, and the duty of the President to inform them, why, and for what cause or causes, any officer has been removed in the recess.

*Resolved*, That the removals from office by the President since the last session of the Senate, seen, with few exceptions, to be without satisfactory reasons, against the public interest, the rights of the States, and the spirit of the constitution: Wherefore,

*Resolved*, That the President of the United States be respectfully requested to communicate to the Senate the number, names, and offices, of the officers removed by him since the last session of the Senate, with the reasons for each removal."

In support of these resolutions,

Mr. HOLMES rose and said, that it was, perhaps, fortunate for him that the Senator from Illinois [Mr. KANE] had snatched the resolution of the Senator from Missouri, [Mr. BARTON] out of his hands, and placed it beyond the reach of debate. And, [said Mr. H.] although it was no spark of liberty, and, at other periods, would have been called by a very different name, yet it has given me an opportunity to discuss the question on a more extended scale. I have been waiting for this opportunity (not for the edification of the Senate, but for the instructions of the public) to give my views of the power of the Presi-

dent to create vacancies and fill them in the recess of the Senate, and to illustrate my remarks by a brief historical sketch of the practice of the Government since the adoption of the constitution. Notwithstanding the able arguments of my friends from Delaware and Missouri [Messrs. CLAYTON and BARTON] and others who have touched upon this topic, still the facts, more in detail, are necessary for a full understanding of the subject. The people want more light, and, so far as my feeble taper will reflect it, they shall have it.

But, sir, I will come directly to the questions raised by the resolutions, and my position is this: That the President of the United States may, by removals in the recess of the Senate, abuse the power; that he has abused it; and that the Senate, a co-ordinate branch of the Executive, is the only effectual tribunal to restrain or correct him; and that, consequently, this is the one which was intended by the constitution.

Before I proceed to the discussion of this proposition, I will make two brief remarks. The first is, that though the constitution has given the appointing power to the President and Senate, and to the President alone to fill vacancies which "may happen in the recess," it says not one word about the removing power. Now, as there is no provision for this removing power, it would be fair to infer that it belonged to the appointing power, or that it was to be defined by law. No law has defined it, and it might seem to follow that every removal since the adoption of the constitution was illegal and unconstitutional. The framers and expounders of this constitution, before it was ratified by the States and the people, were of the opinion that the removing and appointing powers were co-ordinate. The practice under it, however, has been, that the right of removal was vested in the President alone.

The second remark is, that, except of Judiciary officers, the tenure of office is nowhere defined. The questions, therefore, which would naturally arise, are, can Congress define it by law, or is it vested in the discretion of the President and Senate, or the President alone? Is it inferrible that because the constitution has defined the tenure of a certain class of officers, that therefore it has placed all others at the will of the President? It would, in my view, be a far fetched conclusion.

But, sir, supposing that the power of removal, in the recess of the Senate, be vested by the constitution in the President, still the question recurs, cannot the Senate correct an abuse of this power? It would seem to me that there was no other adequate corrective. If the power is not here, where else are you to look for it?

Sir, it is not merely the loss of office, which has created such individual suffering, and which (as my friend from Missouri remarked) "makes the land pale;" it is not the distresses which I witness around me, that most afflicts me; it is the principle upon which this is attempted to be justified; it is the danger to the public interest, from new and inexperienced officers, to manage our complicated concerns, and, above all, the alarming doctrine of absolute Executive will. These are not only afflicting, but alarming. The States have hitherto looked to the Senate as their chief security. By the constitution, it was established for the very purpose of guarding against the popular branch of the Legislature, on the one hand, and the President, who, by his election, is chiefly a popular Executive, on the other. It was just as necessary that the Senate should hold an Executive as a Legislative check. Suppose some great political question should arise: suppose one party should wish to diminish, and even annihilate, the powers of the States, and transfer every thing to the General Government; and that, to accomplish the views of the popular branch and the popular President, all the nominations of Judicial and other officers should be made to the Senate, the guardian of State rights, from this party—would it then be contended that we could inquire no far-



ther but into the qualifications of the officer nominated?—that we could not look beyond his talents and integrity? Imagine, further, that we should be engaged in a disastrous war, and threatened with entire conquest, and that there was but one man—one Washington, who, as Commander-in-Chief of our armies, could probably save us, but the President should nominate another, qualified, to be sure, but not pre-eminently so, nor so equal to the crisis as the other; should we then be told we cannot look beyond the qualifications of the candidate? Sir, to test a principle, it is a fair illustration to imagine a crisis, and then apply to it the limited powers of the Senate, which are contended for.

I never expected to witness the time when a majority of the Senate should surrender its powers to the Executive chief, nor even when it should be slow to stand for its rights. What, sir, the Senate of the United States, the Representatives of twenty-four sovereignties, once the most august assemblage in the world, once the inflexible guardians of State rights against Federal encroachment, now yielding to the President almost the last vestige of its Executive power! What patriot, who observes "the signs of the times," but must deplore this obsequiousness and humiliation of the Senate of the United States?

Sir, I see in this, symptoms of monarchy more strong and palpable than those which disturbed the nerves of the Senator from Louisiana, [Mr. LIVINGSTON.] He has given us a vivid description of the first inauguration of the first President of the United States; and he then imagined that he saw, in the extravagant and enthusiastic adulation of the man, symptoms of a monarchical tendency. I, too, sir, think that extravagant adulation or adoration of men should not be encouraged, as it tends to detach our affections from our institutions, and to fix them upon those who contributed most to establish them. A perpetual, habitual praise of an individual has but too often converted the adorers into slaves, and the adored into a tyrant. But I suspect, that, in the case to which he alludes, he was (begging his pardon) a little fastidious, if not capricious. Washington had been too well tried, and was too firm a patriot, to be seduced by flatteries, adulations, or hosannas. And besides, sir, was there not an apology, if not a justification, for this pagantry? We had endured the distresses of the Revolutionary war; Washington had, to say the least, been the chief actor in that war, and had contributed more than any other to its successful termination. Peace came; but peace found us poor, distracted, and united only by "a rope of sand." Something was necessary to place us on an equality, and to unite our energies. A Federal constitution was to be formed; the object was accomplished, and principally by his agency. He was unanimously elected the first Chief Magistrate, to put the machine in motion, and to give the new Government an impetus, which should secure its successful operation. The people looked back upon the past; upon the distresses of the struggle, and the consequent anarchy; they looked forward with hopeful prophecy to the future, for an end of their toils, to prosperity, liberty, and happiness, which they have since enjoyed in full fruition. Was it then strange, that, with such a prospect before them, they should have indulged in an extravagance of joy, and have idolized the man who had done so much, and was destined, as they believed, to do so much more? Yet I am against idolizing any man. I have heard of a celebration of the last eighth of January, the anniversary of a single victory. The cases were very different; one had saved a city after a peace, and the other had conquered a peace, and saved his country. Here, too, was a spacious palace, a splendid dome. At one end was erected "a throne," and over it was "a canopy," which was surrounded by the ladies of the palace. This palace was filled to overflowing with youth, elegance, and beauty; they were engaged in the merry dance, when the word

was given, and all was hushed and still as death; the company separated; an avenue was formed; the trumpet sounded, and lo! "he comes, the conquering hero comes," supported and sustained by the grandes of the empire, and conducted up to the throne. He bowed graciously to the ladies of his court, mounted the steps, and was seated on "the throne."

Was the Senator from Louisiana present? Was he one of the dignitaries who conducted his majesty up? Sure I am, no one could better deserve the distinction; but if he was there, and a thought of the scene at New York had happened to cross his mind, what must have been his reflections. Then he was in the heyday of youth; the blood ran quick, and the pulse beat strong, and hope was ready to seize on fruition. Now, he had arrived, to say the least, to the meridian of life, when reason assumes the empire of the passions, and all our predictions tend to the gloomy side. Sir, he must have looked with indignation at the disgusting scene, and, with downcast eye and heavy heart, have turned his back, and, with slow and pensive step, have retired to his home, lamenting sincerely at this dismal and fatal symptom of the destruction of his country's liberty. I do not know that there was a Mark Anthony there, who "thrice did offer a kingly crown, which he did thrice refuse." No, that would have been premature. Then the Rubicon had not been passed; then the outposts had not been surrendered; then the Senate had not yielded up all its executive powers, and accorded to the President an unlimited and boundless discretion. After all this has been done, a crown is matter of course; it is but a symbol of the power surrendered; the seal and sign manual of the deed of surrender.

Sir, I would not look upon "the signs of the times" with a jaundiced eye; it is not my habit to despond. I would hope even against hope; but when the Senate gives way, where is the ground of hope? Once the American people regarded it as the bulwark of their liberties. It was the rock in the midst of the ocean, defying the storm. The tempest of executive power had burst in vain upon its brow, and the billows of popular fury had broken harmless at its base; but, alas! they now see, to their unutterable disappointment, that it was but a house built upon the sand, and the rains descended, and the winds blew, and the floods came, and beat upon that house, and it fell, and great was the fall thereof. Aye, great indeed, for it contained within it the ark of our liberties; and when the house fell, that ark was crushed to atoms. We, the representatives of the States—we, their watchmen upon their walls—we, the guardians of their sovereignty, have surrendered up all executive discretion to a single Executive Chief, who can create vacancies in offices, supply them at his will, and is responsible to no earthly tribunal.

Sir, it is not altogether sympathy for friends who are made the victims of this relentless proscription, which induces me to stand here to defend these resolutions; it is not merely the injuries and cruelties which we every where witness, and which, as my friend from Missouri (Mr. BARTON) has expressed it, "makes the land pale," which afflicts me most. I know that to see the honest, faithful, aged patriotic republican, persecuted and punished for opinion's sake, would extract a tear from the eye of the most obdurate. Yet I almost forgot their misery and pain in the all absorbing consideration of the interest and liberties of my country. It has been roundly asserted on this floor, aye, in the Senate of the United States, (and would that I could blot this last fact from my remembrance for ever,) that the President of the United States may, at his unlimited and illimitable discretion, remove officers in the recess, and appoint others to fill the vacancies, and that it is his right, and even his duty, to conceal his reasons and motives. This is his own doctrine: for this power is claimed for him by his personal and confidential friends. It has, moreover, been exercised to an extent unprece-

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dedicated in this or any other civilized country in modern times.

Sir, I regret that it has fallen to the lot of the humble individual who addresses you, to assist in exposing the fallacy of this humiliating and alarming doctrine.

Sir, the powers of this Senate, once surrendered to the President, can never be reclaimed; once gone, they are gone for ever. You will, probably, never find a President so very complainant, so very modest, as to ask you to take them back. Surely it is not to be expected from the present Chief Magistrate. If the President of the United States abuses this power of removal, as we know that this President has done, and most wantonly, where is the redress? Can Congress legislate to reach the case? In 1826, a bill, with an elaborate report, was presented by a select committee, to restrain executive patronage, which provided that whenever the President removed and appointed in the recess, it should be his duty, on his nomination to the Senate of the officer thus appointed, to communicate to them the reasons for the removal! The bill and report have, after slumbering for four years, been revived this session, and are now on your orders of the day. Whether it is intended to act upon this subject or not, it is very certain that this remedy can never reach the mischief. Suppose that this bill should pass both Houses of Congress, and you, the friends of the President, should, in a body, present it to him for his signature, what would probably be his reply? "Gentlemen, you have, over and over, again and again, determined that I had a right to remove and appoint in the recess, *ad libitum*, and upon my 'high responsibility.' I have you here before me 'in black and white.' You have repeatedly settled the point, that this was a business exclusively my own, and that you had no right to question my reasons or motives; and if you should, I was not bound to respond. Now, gentlemen, if I have this power, pray where did I get it? Surely not by legislation; for Congress has never given it by law. There is, then, but one answer to the question: I derive it from the constitution itself; and if it is a grant in the constitution, what right have you to take it from me by legislation? Your law is, therefore, unconstitutional. Take it back; and if two-thirds can be found to take this power from me, which a majority of you have repeatedly declared I now have by the constitution, do it, and I will appeal to the people; and we shall see what credit you will get for consistency." Now suppose he should make this concise but pungent argument, how would you answer him? I think it might puzzle the wisest to give an answer satisfactory to him.

But he might add: "Gentlemen, this is not all. Your bill and report were presented at an early period of the administration of my predecessor; it was permitted to sleep till this time; now, when I, at your own instance and request, have exercised the power of removal beyond all precedent, you offer me a law to restrain me. Whatever may be your motives, the public will draw but one inference from the transaction; they will say, this subject was not acted on under Mr. Adams's administration, because it was unnecessary; he never abused this power; there was no mischief; and therefore no need of a remedy. But the danger has now become so alarming, the distress and misery which I have created have produced such sensations, that I must be restrained by my own friends; if, therefore, I approve this law, I sign my own condemnation, my own death warrant. Take it back, and if two-thirds of both Houses will pass this vote of censure on me, let them do it." So we see, sir, that this remedy by legislation would be visionary; when a President conducted correctly, there would be no necessity for the law; and when, as in the case before us, he abused the power, his approval of the law would be an acknowledgment of the abuse; consequently the remedy by legislation is the merest vision.

What other remedy do grave Senators propose? Im-

peachment? Now, to name it provokes me to an involuntary smile—not a smile of approbation, but of a very different character. Impeachment! Convict a President of the United States by two-thirds of the Senate, for an exercise of a power in which a majority of the same Senate had repeatedly determined that he could do no wrong? Sir, such a proposition carries upon the very face of it its own condemnation. Besides, the Senate has no control over impeachments; it cannot impeach; it can only try. It stands here as the guardian of "State rights;" and is it probable that the House of Representatives, the popular branch, would ever impeach a President for violating these? Sir, the framers of this constitution were never so stupid as to entertain a thought that impeachment was the remedy for this abuse of executive power. Mr. Madison and others, to be sure, entertained an opinion that it was an impeachable offence. Mr. Hamilton was of the belief that the power of removal by the President did not exist at all. But I shall tremble for my country when the time shall come that the President of the United States shall be tried on an impeachment. It would be a perilous experiment, and testing the constitution in its weakest point. Nothing, perhaps, but absolute, palpable, overt treason could justify the attempt. The event would agitate the Government to its centre. It would be the shock of an earthquake. May I never live to see the time when a President of the United States shall be tried on an impeachment! However, sir, I never shall live to see it. So long as the executive patronage is thus profusely poured into both Houses of Congress, my life for it, no President will ever be impeached, much less convicted, let him do what he may. One-eighth of the last and this Senate, and a large number of the members of the other House, have been appointed to important offices, and this, too, against Gen. Jackson's own solemn pledge; and, after this, never tell me that the remedy for any abuse of power is impeachment.

But the Senator from Louisiana [Mr. LIVINGSTON] can feel no danger of executive patronage from appointments from the Senate; and his reason is, that a seat of a Senator is so exalted and so desirable, that no gift of the Executive could detach him from it. It might have been so once, and I wish to heaven it were so still. But I am a practical man; I take things as they are, and I consider one fact worth a hundred theories. We know full well—the truth stares us in the face—that there are many offices in the gift of the Executive, which Senators will gladly accept, because they have accepted them. This throws his theory to the winds. But as he has indulged in speculation, let me speculate too; and I think I can find strong reasons why Senators would become solicitous for executive offices. It would seem to me there were two classes that would desire them: The first is, the young and ambitious; and ambition, properly tempered and under reasonable restraint, is a virtue. The Senate is not a "stepping stone" to the highest offices in the gift of the republic; it is not "ambition's ladder," on which to climb to the two first honors. Since the first organization of the Government, I do not recollect a single candidate for President or Vice President (whether successful or not) taken from the Senate. There have been, and I trust there are now, men in the Senate, quite as well qualified for these offices as those officers are; but it seems to be the settled custom, that neither of them shall be taken from this body. How, then, are the aspirants here to reach the object of their ambition? By being made "promoters," or other heads of departments. This is the road to glory. The other class consists of those in advanced life, who have been long here, and are fatigued, and perhaps disgusted, with the toils and conflicts which have lately become but too common, and yet from long habit they would not wish to retire to private life, as the *omnes cum dignitate* would not exactly suit them. They would

be gratified with a comfortable office, sufficient to support them, and give them an employment which would keep the mind from rusting. Hence the facts and reasonings prove that Senators would be as likely to become office seekers as other men; and, as they are subject to like passions, they would be influenced by like considerations, and therefore might become the creatures of executive will. From all these considerations, it seems to me most manifest, that, to check this abuse of power by impeachment alone, would be a hopeless experiment.

But another remedy has been named—"public opinion." If the last would provoke a smile, this would provoke a laugh. Surrender to the President the power of removal and appointment in the recess, and at his will and pleasure, and then correct his abuses by public opinion! Sir, can gentlemen be serious in this? He has the right to withhold the evidence on which he acts; he is not obliged to disclose a single reason, but public opinion is to judge him! Yet all this while he is perverting and corrupting "public opinion." He can remove and appoint at pleasure; he has the army at his heels; he has the navy at his beck; he has the treasury at his control; during four years he holds the purse and the sword. Is this all? No; he has more—the post office and the press. He has a sentinel at every post office; he has a recruiting officer at every press. This, then is the way to check these abuses! During all this period of four years, official influence will be subduing our liberties and independence; the gangrene will have been spreading, the leprosy will have become broad and deep, and nothing but the interposition of Heaven can save us. Did our civil fathers, who gave us this constitution, deem it possible that the time would ever come, when any man should imagine that an Executive usurpation for four years could only be corrected at the end of the term? Yet this is the consolation which gentlemen would administer when they seem to admit, or cannot deny, the abuses of which we complain. Here I present, concisely and at one view, the only remedies of Executive usurpation—legislation, impeachment, and public opinion; each, or all, entirely inadequate, utterly visionary. This enables us to define a term lately introduced into our modern political code—"high responsibility." Now, as words are only intended to convey ideas, it will be well to ascertain the meaning of the term. The President can remove from office and appoint in the recess, and no one has a right to inquire the cause; and, if he does, the President is under no obligation to answer. He is responsible, but not obliged to respond to any earthly tribunal which has any right whatever to consider of the response; and this is "high responsibility!" "High responsibility," then, is unquestionable, unlimited, illimitable discretion; and unquestionable, unlimited, illimitable discretion is sovereign will, and sovereign will is absolute despotism; wherefore "high responsibility" is absolute despotism. Now, I think, sir, that this is reasoning syllogistically, or a fair conclusion from your premises. It hence follows fairly, if not irresistibly, that there is no other check upon this abuse of power but the Senate. Here the people and the States are to look, and here they have hitherto looked.

But, sir, each subordinate executive officer, also, is securely entrenched behind this high responsibility. At the request of a friend who had been very unceremoniously removed from the post office, I wrote a letter to the Postmaster General, to inquire the cause of his removal. This new fledged, or rather unfledged head of a recently created department, did not condescend to answer the inquiry of a Senator, and I received a note from one of his subordinates, which was in substance this: "I am directed by the Postmaster General to inform you that you are not permitted to know, sir." In the proud days of the republic, when the Senate was what it should be, the Postmaster General would, for such a reply, have

been summoned to the bar of this Senate to answer for a contempt. But it would now have been madness to have proposed it. We are the humble servants of these petty tyrants. They all act upon their "high responsibility." You will not allow us to ask the President why he is doing this? And if you yourselves know the causes, you refuse to inform us. Can it be doubted, that if you of the majority had satisfactory reasons, you would not withhold them from us. We invite you to join us in an inquiry of the President, why this extraordinary course has been pursued—why this general sweep has been made. If you know, tell us; give us the satisfactory information, and there is an end to the call. It may be that you do know the President's reasons for his removals, and that they will not bear the light. His friends, I am sure, have not the moral or political courage to avow, and justify to the world, that it is all a system of rewards and punishments; that honest and independent officers must be hurled out, however faithful, to give place to partisans, however worthless. But, sir, is it uncharitable for us to say that these removals are all a partisan, a personal affair? Whenever there is, or you think there is, a removal for good cause, you are ready enough to communicate it; you seize it with alacrity, and proffer it to us with a sort of triumph. But there is only now and then one of this description; most of the cases are yet involved in the deepest mystery. You know that nothing has been gained, but much lost, by this relentless proscription: for, as a general remark, the officers removed were unquestionably better than those who succeeded them. Now, if the President has removed hundreds of faithful and capable officers for political opinions, he has flagrantly abused his trust, and violated the constitution. If it is not so, give us the true constitutional reason, and we will be satisfied. But there is good ground to suspect that, if the President had any satisfactory reasons, his friends would never have attempted to shield him by the slavish doctrines we have heard advanced. I confess I was thunderstruck, that old fashioned republicans, "died in the wool," should attempt to enforce the principle of sovereign will and unlimited confidence. If the doctrines inculcated by the Senator from Louisiana are sound, there is not a monarch in Europe more absolute than the President of the United States. If no one can inquire, no one can judge; and if no one can judge, how can it be determined that the President has abused his power? How can the guilt be made manifest, and the abuse corrected, when the President has a right to keep all his reasons and motives for ever locked up in his royal bosom? Sir, in the name of that liberty so dear to man, and in the presence of my country and my God, I here enter my most solemn protest against these doctrines, as fit only for tyrants and slaves. But the Senator from Louisiana would humble us still further. The President may remove and appoint in the recess, and decline to nominate the officer thus appointed to the Senate at the next session, or, if the Senate rejects him in either case, as I understand, the temporary commission would not expire until the end of the Senate's session, and thereupon the President may appoint the officer again to fill the same vacancy, again happening in the recess. If the President could be sustained in this construction by a professed constitutional lawyer; if he could have a pretext so plausible as this, my life for it, he will assume the power, for it is characteristic of the man. What, then, would your Senate become? Less, if possible, than it had already become, not even the register of the royal decrees. The Senate reject the nomination of an officer who had been appointed in the recess! He holds, says the Senator, his temporary commission until the end of the session. As the commission and the session expire together, the commission did not expire in session; it consequently did in the recess. With unlimited, illimitable discretion, sovereign will, and a

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power to pass by the Senate entirely, and take the appointment of every officer into his own hands; and what more is necessary to constitute the despot? And the Senator tells us that the President, if we reject his nominations, will pass by the Senate, and appoint in the recess.

One gentleman will affect an alarm at doctrines or symptoms of a monarchical tendency; another apprehends a judicial tyranny, and that the Supreme Court will prostrate the liberties of the people; a third verily believes that Congress is usurping power, unknown to the constitution. Yet, thus tremblingly solicitous for the constitution and liberty, we can tamely surrender into the hands of a single individual every office, to be bestowed at his will and pleasure. Sir, is not this "straining at gnats and swallowing camels?" Let the President subdue the Senate, no matter how; let him at the commencement of his term remove, and fill every office with his own creatures; let the post office be his, the press be purchased in; and, all this done, let him at an early period of his administration announce himself as a candidate for re-election. You could no more resist him than if he had an army of half a million at his heels, devoted to his person, and ready to execute his will. Is this hypothetical, or is it matter of fact? Is it prophecy, or is it history? Sir, it is all done already. Compare the Senate as it is, with the Senate as it was. See every office secured, see the source and the channels of information corrupted, and see the President already announced a candidate for the next term. With all this corrupt and corrupting official influence to struggle against, the most sanguine friend of a free government must despair. At these prospects the face of the patriot will gather paleness. At the expiration of this four years, farewell, a last farewell, to the hopes of freemen.

Sir, some gentlemen seem to admit (very liberal) that an officer ought not to forfeit his office for exercising the elective franchise; but insist, that if he uses his official influence in an election for President, it is good ground to remove him. The reason, I suppose, is, that if the influence of office is brought to bear upon the people, it abridges or controls their elective rights. Now, if you can draw a distinction between the officer's personal and official influence, I will not object to your rule. But, then, you should carry it through—the whole—no partiality. But there is partiality. The agent for managing the Northeastern boundary question was appointed by Mr. Adams. He did use his official influence in the election, and very lavishly; but instead of a removal, he was promoted to one of the best offices at the President's disposal. To be sure, his influence was in favor of the successful candidate. But that should make no difference. If there is any reason in the rule—if it is a good rule, it should work both ways. I presume, however, that the rule in practice is to reward every officer for official influence in favor of the present incumbent, to punish every one for the same influence against him, and to presume his guilt without a shadow of proof.

Some insist that "rotation in office" is a republican maxim, and that this is the ground of these removals. Here your practice is utterly at war with your principles. Prove to me how, where, and in what "rotation" is your rule. I do not find the principle in this book. It is not there. It has never been practised since the adoption of the constitution, and it is not now practised. Rotation in office! General Harrison, minister to Colombia, was removed before it was ascertained that he had arrived at the place of his destination—rolled out before he was rolled in; and this is "rotation in office." Miserable! No, sir, your "rotation in office" is to roll out all who did not throw up their caps for the chieftain, and to roll in those who did. If he was your man, and as old as Methuselah, and had held his office from the commencement, he is no subject of your "rotation." But if he did not go the whole for Jackson, he was scarcely seated before he was unseat-

ed; scarcely "frocked" before he was "unfrocked." No, sir, there is some reason why "rotation" should be the principle in the State Governments, especially in the small States. The appointing power would be perfectly acquainted with the qualifications of the candidates, and there would be little danger in changing. But the framers of this constitution saw that this Federal Government would extend over an immense people and territory, and it would be next to impossible that the appointing power could be acquainted with the merits and qualifications of the candidates. The ability and fidelity of the officer in office would be better evidence than ten thousand recommendations in favor of the candidate who would supersede him. Here is a reason at once, plain and palpable, why "rotation" has not been practised under this constitution. Gentlemen seem to reason as if officers were made for the officers: not so; they were made for the people. The compensation should be adequate to the service, and no more; and then the longer a faithful officer is in, the better will his experience enable him to perform the duties. Such has been the understanding heretofore, but now every thing is subverted, and we already feel the deleterious effects.

Again, sir. The Senator from New Hampshire (Mr. Woodbury) would make us believe that these removals were to restore to "the republican party" the control. If he will look at the President's professions, and again at his practice, he will see nothing of that. In 1817, and at the commencement of Mr. Monroe's administration, General Jackson wrote him a letter of advice in regard to appointments to office. I believe I have it here, and I like to recur to it; it is well written, and I am disposed to give the President full credit for all his literature, as he does not now appear to be in a situation to improve it, especially if he relies for instruction upon some members of his "Cabinet." It will be recollected that this was written soon after the close of the late war, when party animosity had not subsided, when the lines were distinctly marked, and each party was smarting under the wounds inflicted by the other.

"Upon every selection, party and party feelings should be avoided. Now is the time to exterminate that monster, party spirit. By selecting characters most conspicuous for their probity, virtue, capacity, and firmness, without regard to party, you will go far to eradicate those feelings which, on former occasions, threw so many obstacles in the way of government, and perhaps have the pleasure and honor of uniting a people heretofore politically divided. The Chief Magistrate of a great and powerful nation should never indulge in party feelings. His conduct should be liberal and disinterested; always bearing in mind that he acts for the whole, and not a part of the community. By this course you will exalt the national character, and acquire for yourself a name as imperishable as the monumental marble. Consult no party in your choice—pursue the dictates of that unerring judgment which has so long and so often benefited our country, and rendered illustrious its rulers."

Here, sir, we have his unequivocal sentiments on this point. Be not the President of a party—party is a "bubble," "strangle the monster"—"consult no party in your choice," &c. Had this President practised upon his own principles, he would, indeed, have gained "a name as imperishable as monumental marble." "Be the President of the United States"—"act for the general good—for your country." Had he acted up to this, it would have been the brightest laurel which ever adorned his brow. His victory at New Orleans would have been nothing to it. He has acted up to it, so far as this—republicans have been excluded from office, who were not active supporters of his election, and federalists have been substituted, who were. Is any thing more necessary to prove that personal considerations govern exclusively? The inquiry is not, what has been your conduct towards your country, but

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what has it been towards me and my friends? Sir, we are forced to this conclusion; it is inevitable. But, if his friends will give us a different account; if they will present us other facts and reasons; if they will permit us to ask the President, respectfully, his causes, and they shall be good, or even reasonable, we will take all this back, and be satisfied.

What other principle can govern?

Are these removals on account of the restrictive or constructive doctrines of the officers removed and appointed? On roads and canals, or tariff? Prove to us that the President has done this upon principles like these, and if we are not satisfied with his reasons, we will admit the integrity of his motives. What his principles are upon these subjects is somewhat doubtful. If I understand his message, his tariff policy is a protection of manufactures to meet foreign competition. If I am right in this, he goes as far as heart could wish for the protection of "home industry." And so far as I have observed his course on "roads and canals," and other objects of "internal improvements," he has no constitutional scruples on the subject. But be these things as they may, it is most manifest that none of his removals and appointments have been made upon either of these grounds. I leave it to the Senators from New Hampshire and Louisiana to settle the point between them on which side of these questions the President is; which would be the most republican, and what bearing the removals and appointments were intended to have on these great national questions. Show us a single case where there is the least appearance of principle, and we will excuse it, whether the principle be right or wrong, if the President will tell us that he conscientiously believes it to be right. I have thus proved, as I think, (but of this the Senate and the public will judge,) that for the President to remove and appoint in the recess, to fill vacancies created by him, without causes assigned, is an abuse of power; that the President has thus abused his power, unless he gives us satisfactory reasons; and that it is the right and duty of the Senate to check such abuses, and to this end to call for the reasons; and that, until we have an explanation from the President, this conduct is against the spirit of the constitution. I shall now proceed to contrast other administrations with this, and will show that its course is as unprecedented as it is unpardonable.

It will be well for us, so far as we can, to examine the facts, and to exhibit a brief sketch of the practice of the Government, in regard to removals and appointments. The history, I admit, is very imperfect, as to the causes; but, from what I shall disclose, I am inclined to believe that the public will be astonished at the result. I know full well that this detail will be entirely uninteresting to the Senate. It is always tedious, and will be especially so at this late period of the session, when every one is worn out with debates. Still, it is not to the Senate exclusively to whom I address myself. At this crisis I have a much higher duty to perform. I consider our constitution and liberty in danger. I fear that the rights of this Senate have been surrendered. It is, therefore, due to me, and those who may come after me, to leave behind the reasons why I was not a party to this surrender, that my name may be redeemed from the reproach which, I fear, will inevitably follow. It may be matter of history, an "abstract and brief chronicle of the times," and it is possible that republicans of future days, if any there should be, might observe the rock on which we have been wrecked, and shun the danger. It is important to contrast what has been done with what is now doing; and to point the patriot to the causes which have produced such effects. "I shall nothing extenuate, nor set down aught in malice." The exhibit will astonish all, as the result of the research has astonished me. I have carefully examined the Executive Journals, and I believe I am correct. I have intended to give a fair and impartial narrative of facts; and,

if I have erred, it is the error of the head, and not of the heart.

The administration of Washington commenced on the 25th of May, 1789, and continued to the 3d of March, 1797, eight years. During that time, his removals were eleven. As this period is so remote, and there is no accurate account of the causes, it is not to be expected that I should give them. But I have, upon examination, found that one (a collector in New York) was removed, being a defaulter to the Government. From the notes which I shall subjoin, it is probable that those who were in active life in those days, will be able to recollect the reasons which led to the removals of the others. But it is not to be presumed that Washington ever removed upon party grounds. The duty of first organizing the Government devolved upon him, and, in this, he was no doubt deceived in the qualifications of some of the candidates. Yet, such was his accurate knowledge of men, that, after all, he was obliged to remove but eleven officers in eight years. This is a pretty good comment upon your doctrine of "rotation in office."

Mr. Adams's administration commenced on the 4th of March, 1797, and, during four years, his removals were eleven. Four of his appointments, upon removals, were annulled by his successor, Mr. Jefferson; and, I think, three of the four officers removed were restored. It was believed that Trench Cox, of Philadelphia, was removed by Mr. J. Adams, from the office of supervisor of the revenue, on party grounds; and this single act of supposed proscription produced an excitement through the whole country; so much so, that I am told even Virginia, who has never indulged at all in exacting a political test as a qualification for office, did, in this case, refuse to re-elect her Speaker of the Assembly, a Mr. Larkin Smith, on party grounds, to show her resentment, and to retaliate for the removal of Cox. But the cause of Mr. Adams's removal of Mr. Pickering, his Secretary of State, will be recollected by all. He differed with Mr. Adams on the policy of sending the second mission to France, persisted in his opposition to the measure; and as this pertinacity of his principal cabinet minister was not to be subdued, it was the duty of the President to remove him. Mr. Adams, I believe, was never blamed for that act, even by his enemies. The principal complaint was, that he had not removed him before. But if there have been instances during our history of proscription, or what may now appear such, these have been few, are only an exception to the rule, and can be no justification for the present course, which we so decidedly and emphatically condemn.

Mr. Jefferson's administration commenced on the 4th of March, 1801, and continued eight years. I know it has been insisted that his is a precedent on which the present administration might safely repose. I have examined it, and it is an act of duty as well as justice to the memory of that distinguished statesman, to redeem him from the parallel which is here attempted. The cases are so adverse that it is less difficult to perceive where they differ than where they agree. Indeed, there is no resemblance at all. "That was a great political revolution. The parties were divided upon principles, as they believed. Those in office were chiefly the supporters of the unsuccessful candidate. Mr. Jefferson, in his letter to the New Haven merchants, gives, as the reasons for removals, that it was right to produce something like equality. But that object accomplished, his only inquiry thereafter would be, 'Is he honest, is he capable, is he faithful to the constitution?' And, when an attempt was made to remove General Huntington, of the same State, on party grounds, he refused, declaring that he should be governed by no such considerations. And he has publicly denied that he ever removed an officer because he was a Federalist. Whether the facts will justify this declaration, I leave to his more intimate friends to determine. It will be recollected, more-

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over, that, at the time, none of those officers, except marshals, I believe, held their offices by a tenure limited by law. The instances were, therefore, few, where he could expect to restore an equilibrium, except by removal. "Few die, and none resign." Besides, it was believed that many offices had been created for the purpose of being filled by an expiring administration.

The judiciary act, giving to this expiring administration an appointment of sixteen judges of circuit courts, and with the promotions from district courts, &c. say thirty permanent officers, opposed to Mr. Jefferson and his policy, was deemed by him and his friends to be intended to throw an influence against his administration. It was believed that those courts were unnecessary, and the belief was strengthened by subsequent experience. This was not all. "The alien and sedition laws" had been passed and executed, as it was insisted, with unusual rigor. It was believed that these laws were unconstitutional. They were, to say the least, unpopular, and exceedingly odious. Consequently, the attorneys, the judges, and marshals, who prosecuted, decided, and executed them, became also odious. I have heard of great complaints against prosecutors for persecutions, judges for partiality, and marshals for packing juries, and vindictively executing the judgments of the courts. Some of these complaints might have been groundless; but, considering the madness of party, others were probably well founded. Now, in this state of things, and with all these inducements, it might be fairly presumed that more removals would be made at this than at any other period of our history. Mr. Jefferson and his friends saw, or thought they saw, a policy to strengthen and give weight and influence to the opposition, and to cast a millstone about the neck of his administration, which would sink it. But great complaints were made at these removals. Proscription and persecution were the cry every where; and we most of us believed that they were cruel and vindictive. And were I now to ask any Senator here, who has not examined the journals, what was the number of removals, during his eight years, few would place them at less than three hundred, fewer still at two, and none so low as one. I am sure they will be astonished when I inform them that, after diligent search, I have found but thirty-six! Sir, quite as much official patronage was thrown into the hands of President Jackson, by postponing the nominations of his predecessor to the fourth of March last, as Mr. Jefferson had, by removals, during his eight years. As much, did I say? Yes, more, by far! for, upon examination, I find that four of Mr. Jefferson's were of officers to fill vacancies created by his predecessor, which he himself had made; six were defaulters to the Government; and one was a removal of his own appointment. There were, moreover, one district attorney and seven marshals, and these were chiefly in those districts where the complaints were that the sedition law had been prosecuted most rigorously and vindictively. The district attorney and marshal of Vermont were removed. You all recollect that a member of Congress from that State [Mr. Lyon] had been prosecuted, tried, and punished there, for a libel, under this act. Complaints were loud and strong, that, in the prosecution, trial, and punishment, he was treated oppressively. The charges might be groundless, but they were believed to be true; and, since I have been a member of this Senate, this same Matthew Lyon has presented a petition here, claiming redress for the injuries which he suffered. Cooper, of Pennsylvania, suffered by a conviction under the same law, and he has a petition now pending here for relief. Callender, of Virginia, was also a convict; and, I believe there had been other trials and convictions, in New York and Maryland. Such was the public feeling in regard to these and other proceedings, that not only the ministerial officers of the courts, but the judges themselves, became exceedingly unpopular; so much so, that a justice

of the Supreme Court was impeached by the House of Representatives, and barely escaped a conviction of the Senate. So near did he come to it, that one of the managers of the House afterwards pronounced him "an acquitted felon." There was, no doubt, great exaggeration in all this. It is unnecessary now to believe or disbelieve the complaints; it is enough that such was the spirit of the times. We find that, of the seven marshals removed, there were these of Vermont, New York, Pennsylvania, Maryland, and Virginia. Now, at this late period, we can find that, of thirty-six removals, there was good cause for nineteen; and we have, consequently, a right to infer that there were reasons equally good for the rest.

Mr. Madison's administration commenced on the fourth of March, 1809; and during eight years his removals were five! Sir, it will be useless to stop to inquire into the causes. Five removals in eight years! it cannot be pretended that there was no party conflict during this period. Though his first election was not contested, yet his second was fiercely contested. It was during the last war, when all the angry passions were excited, and his rival [Mr. Clinton] received, if I do not much mistake, quite as strong a vote as Mr. Adams had at the last election.

Mr. Monroe commenced on the fourth of March, 1817; and during eight years his were nine. We have now arrived at a period when memory will supply the defect of records. Of these nine, two were consuls, who failed as merchants, and, therefore, forfeited their consular offices. Another, Auldjo, [consul] for insanity. This was a good cause, then. It is doubtful whether, under this administration, it would be any cause of removal, or, indeed, any impediment to appointment. The removal of the consul at Glasgow was demanded by the British Government, on account of quarrels in which he had been concerned. Another was recalled on the complaints of American citizens. A district attorney, of Florida, was removed for abandoning his office, and remaining among his friends in Maryland. David R. Mitchell was Creek agent. He was removed, and Crowell was appointed. We all recollect this case. Mitchell was charged with conniving at an illegal transportation of slaves. The charges were made to the President, Mitchell was notified, and all the evidence on both sides was referred by the President to the Attorney General. He reported the facts in the case, and on these the President removed him. Whether the decision was right or wrong, I know not; but sure I am, it was a fair exercise of Executive discretion. Of these nine removals, I have been able to give the causes in seven, and I leave it to our opponents to prove or infer that the other two were removed from political or party considerations.

Mr. Adams commenced on the fourth of March, 1823, and his removals were two! one, a citizen of Maine, and a personal and political friend of Mr. Adams, who was appointed a collector by Mr. Monroe, by the request of Mr. Adams. Charges were preferred against him, that he had some fifteen years before violated the embargo laws. The charges were pending when Mr. Adams came into office, and he ordered a commission to examine the case and report the facts. There was a full hearing; a report of the facts proved was made to the President, and on this the officer was removed. The other, a marshal of Louisiana, and I do not recollect the reasons of his removal; perhaps the Senators from that State can inform us. During all the preceding administrations, the whole number of removals amounted to seventy-three, less than an average of two in each year. I repeat, it is possible that a few may have escaped my examination; but I am sure that, if any, they must be very few. These facts furnish another comment on the doctrine of "rotation."

Allow me to make one remark. General Jackson did

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not (as Mr. Jefferson did) come into the Presidency with nearly all the official influence against him. Mr. Adams had no calculation of that sort, and never practised in that way. He was quite as likely to prefer his foe as his friend—the object appearing to be the public interest, regardless of himself.

When we shall again find a President acting upon such maxims, we may again hope; but “the signs of the times” are against us. If Mr. Adams, or his friends, had, during his four years, been contriving to throw weight and influence against the present dominant party, there might have been some apology for this proscription. But, we call upon you to point us to the case where Mr. Adams exhibited the least indication of partisan or personal attachment. The Secretary of the Treasury, his most powerful rival, was solicited to form one of his Cabinets; the Attorney General and Secretary of the Navy were retained, without regard to the part they had taken in the contest; and another rival for the Presidency was made Secretary of State, and his Secretaries of the Treasury and War had been decided and distinguished opposers of his election. To be sure, there was less of policy than magnanimity in this; but Mr. Adams’s rule of policy was the good of his country, by a faithful administration of its Government. He practised what General Jackson professed in his letter of advice to Mr. Monroe. Never was a more striking contrast, and never did contrast cast farther into disgrace and contempt than the last administration has cast this.

General Jackson, moreover, had no abuses to correct. No oppressive laws had been passed; no unnecessary offices had been created to sustain a declining party; no doctrines had been advanced and practised on, which created alarm to any one; no “reign of terror” was even pretended. There was no necessity of restoring an equilibrium; for when Jackson was inaugurated, his partisans had probably a full share of the offices.

Now, has there not always been an understanding, a sort of pledge, that, if the officer was faithful and capable, he should retain his office so long as he should remain so? When the office was accepted, he was well acquainted with the practice of the Government. The policy of forty years had taught him that honesty, capability, and fidelity to the constitution, were all that was necessary to secure his continuance. He, therefore, directed his whole talents to the duties. He became unqualified for every other employment. His habits and predilections were altogether official. He was rendered unfit for every thing else. Public confidence was, therefore, his only pride, for it was his only security.

Now, reverse this system; let it be the understanding that, in a change of administration, all the officers who have not favored the change are to be removed; and what is to be the effect upon the public welfare? It goes to the destruction of all confidence; and every one who holds his office by such a precarious tenure, will take care to provide for himself by defrauding the Treasury.

We now come to the removals made by the present administration; and, sir, I approach the subject more in sorrow than in anger. When I was last elected, I entertained no prejudices or enmities against the present Chief Magistrate. I had no personal or political quarrels to settle; no “private griefs” to assuage; I did not form my opinion of his character from those who had engaged in personal controversies with him, but who are now his zealous supporters. Notwithstanding their characters were high, and I might have been justified in believing their testimony, I concluded it might have been under high excitement, and I made the proper allowances. I had, moreover, no special partiality for the last incumbent. He was not my first preference; but I knew them both. I had witnessed the last administration, and though I saw, or thought I saw, something to dislike, I

saw much to approve; and when a President had done well for the first four years, I deemed it policy, as well as justice, to try him again, rather than venture upon a new experiment, and thus to keep the public mind in eternal excitement. I had served two years in this Senate with the present President, and though my personal partialities were all in his favor, it was my deliberate belief that he had not the qualifications for this exalted office; and I confess that nothing has since occurred to shake this belief. While my judgment compelled me to fear, my partialities induced me to hope. When I was in the other House, a distinguished member from Georgia, since a Senator, here, and now no more, introduced a resolution declaring that General Jackson, as commander of the army, had, in taking St. Mark’s and the Barrancas, violated the constitution of the United States; but my feeble powers were exerted against that resolution. Yet the whole delegation of Georgia, a majority of South Carolina, among whom was the ever to be lamented Lowndes, and a decided majority of the Virginia delegation, voted for it.

I do not speak this as a matter of reproach against those States, but as proof that I had nothing against the man, as many of his present worshippers had. And when I was last elected, and took my leave of the Legislature of Maine, I expressly told them that, although General Jackson was not the choice of the State, yet they must not expect me, as their Senator, to persist in a continued hostility to his measures; that I should condemn where I must, but approve where I could. I have done, and shall continue to do so; but this system of proscription, without and against all reason, I must and will condemn.

Let us now see what has been done, and is now doing. During forty years, and under six different Presidents, we can find but seventy-three removals, not averaging two in each year. Long as the period, and imperfect as the history, we have ascertained good causes for nearly half, and it is fair to infer that there were causes equally good for the removals of most of the rest. How is it now? In one short month, this Executive removed more than had been removed for the whole forty years; and in one short year, three times the number! The heads of Departments may be set down as removals: for, considering the example of the last administration, they would not have resigned, had they not been assured that they should be removed; and the conduct of the Senate in postponing nominations, was to them a hint broad enough. We will set down five. The removals in the Departments, of principals and subordinates, must be charged to the account of the President, for all this was done under his eye. These were forty-six. The nominations of Mr. Adams, postponed to the 4th of March last, and thus rejected, must be considered as the act of the Senate, by the advice and at the request of the President elect, to increase his patronage; and these were thirty-eight, making eighty-nine! A pretty good beginning. Now, it has been ascertained that the other removals, up to this time, have amounted to not less than one hundred and fifty; making, of removals by the President, and chiefly in the recess, two hundred and thirty-nine in the first year, more than three times the number removed by all former Presidents for forty years. But this is not all. By an official report from the Postmaster General, we learn that he had, at that time, removed four hundred and ninety-one of his deputies; and as he had probably not exaggerated, to say the least, and as we know the good work is going on, it is moderate to set these down at five hundred. It is within reasonable calculation, to put the clerks and other dependants on those offices, at five hundred more. Add to these, the subordinate officers of the customs removed, as officially reported, one hundred and fifty-one. Add to these, deputy collectors and clerks in the customs, deputy marshals, private secretaries of foreign ministers, clerks in

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land and in other offices, surveyors, and others, and it is within bounds to calculate six hundred more, making in the first year about two thousand! Now, why all this individual distress? for what purpose? Let us inquire, the people want light. If there was good cause, they will approve; but if not, they will condemn. Why are you dumb? The reasons—we ask the reasons. Speak. You are but the servants of the people; and speak in a language which they can understand, and they will judge you impartially. Why this dark silence? It was never so before. Has your President done what he is ashamed of? Come out manfully, and let him come out manfully, and tell us the causes; and if they are good, the people will be satisfied. But all this seems to have been done in utter contempt of the Senate. We were kept together from the 4th to the 18th March, an extra session beyond all precedent. The President proceeded with a snail's pace, and very little business was done. But our backs were scarcely turned, when the fires of persecution were kindled, and have ever since raged with relentless fury.

But the greatest outrage of all is, that the President has invaded our dominions, and actually removed, and in the recess too, an officer of the two Houses of Congress! Sir, the President had as good a right to remove the Secretary of the Senate as the Librarian. This Librarian is the library of Congress; the purchase of Mr. Jefferson's library was for the two Houses of Congress. The rules for governing it are to be made by the presiding officers of the two Houses. The law, to be sure, gives the power of appointment to the President; but so soon as he has exercised it, he is *functus officio* to all intents and purposes.

The President has no control over this library any more than one of our clerks, or any stranger. We permit him to take books under our regulations, as we do the Justices of the Supreme Court and other officers; but he cannot, any more than they, dictate a single word as to its management or control. Instead of his having the power to direct this officer in the performance of a single duty, it is directly the reverse; the Librarian has the right to direct him, and to punish him for a violation of its rules. If the power of removal is, in this case, consequent upon that of appointment, the President can impose on us an officer of the two Houses against the will of both. If he can remove at discretion, he can also refuse at his discretion. He might, consequently, return a Librarian utterly offensive to us, who mismanaged our property, disobeyed our directions, and set our rules at defiance. But, sir, this usurpation is further manifest, from the fact, that he can never judge when the officer becomes disqualified. He, either by himself or any of his subordinates, has no right whatever to inspect the library, or inquire how the duties have been performed. He can, therefore, never know when there is cause for removal. It, with him, would always be a haphazard business, quite as likely to be done wrong as right. The President did not, for he could not, remove for cause. He had, when this removal was made, been inaugurated but three months. Now, had he devoted all his time to examining the regulations of that library, he would not have learnt whether the Librarian had managed well or ill, even in three years. But, sir, we know that Mr. Watterston was not removed because he was unfaithful or incapable. We know he was both faithful and capable, and pre-eminently so. Not a murmur has been whispered against him. I appeal to the Joint Committees of the Library, who have, from time to time, superintended it, if this is not the fact.

But, sir, there is another reason which should have convinced the President that he was doing wrong, if he is capable of reasoning at all. The law required that the Librarian, who was to have the custody of such valuable property, should give bonds with sufficient sureties, to be approved by the President of the Senate and the Speaker

of the House. When this removal was made, there was no President of the Senate here, and no Speaker of the House in existence. This puts the flat negative upon the President's power to remove and fill in the recess. He could not possibly appoint this officer according to law. The whole was illegal; a responsible officer was thrust out by arbitrary power, and another man ordered to take our property into his custody, of no legal responsibility. But, sir, if he had the power to remove and appoint at his discretion an officer of our own, we should have thought that common courtesy would have demanded that he should have consulted us. But he did not; indeed, he could not; Congress was not in session; there was in fact no Congress in existence when the removal was made: for some States had not then elected their members. I then call upon gentlemen to give the reasons why, how, and by what authority, our Librarian has been removed!

But we were promised "reform," "retrenchment," a "correction of existing abuses," a "saving of the public money." The "Augrean stable" was to be cleansed. This was the cry out of doors, and echoed even from the halls of Congress. Many, I have no doubt, repeated the expression without understanding a word of its meaning or its application. I do not mean the Senators, for they no doubt are all very classic. And I would not now repeat the story, but to show that there is no analogy. Augreas, as you recollect, was some petty king of some petty province or city of Greece. What was its name? Elis, ay, that is it. It seems he had a stable which had always contained three thousand oxen, and it had never been cleansed out for three hundred years. Hercules undertook to cleanse it, (this was his fifth labor,) and he was to have, for his compensation, one-tenth of all the cattle—three hundred—a pretty good fee, equal, at least, to the salary which you are about to provide for the chief of your new "law department." Well, Hercules, by turning the current of the river through the stable, cleansed it in one single day, and then demanded his reward. Augreas refused to pay him, alleging that he had practised an artifice. In consequence, they made war. Hercules killed him, and gave his crown to his son; and here is the whole story. Now, where is the analogy? Had Hercules swept out the cattle only, it might have resembled your case. You have removed the whole herd, and replaced them by a much more numerous and scurvy set, and made the fifth ten times worse than it was before. So much for your "Augrean stable."

Now, sir, what has been gained by all this devastation, this prostration of all principle, this concentration of all Executive power in a single chief? Once, the people of the United States would never have made their rights and liberties a question of profit and loss. But, even making it a mere matter of calculation, I repeat the question, What have we gained? Draw your comparisons between the present and last year's expenditures, and with all the subtlety and cunning which belongs to the head of the treasury, and what do you make? The attempt to stifle the truth has been detected; and it is manifest, even to the eye of a superficial observer, that your expenditures are, and must be, necessarily more. The fact has been proved beyond controversy. But whether less or more, is not the question. The question is, Have the expenditures, be they what they may, been prudent or prodigal, more, or just as much, as the public exigencies require? If my agent, last year, expended one hundred thousand dollars, all for my benefit, I have no right to blame him; if he, this year, has expended less than half that sum, and has wasted in this expenditure one-half of this, it is a lame apology to recur to a comparison of the two years. We ask you, then, what was wasted in the last year of Mr. Adams's administration? Put your finger upon the single item. Do you retort the question? We are ready with the answer. In the removal and appointment of foreign



ministers in the recess of the Senate, forty thousand dollars have been drawn from the treasury against the law and the constitution, without any earthly benefit, and for no other ostensible purpose but to reward partisans, far less qualified than their predecessors. In the collecting of the revenue, that "searching operation," what have you gained? Fifty additional officers in this single department.

Sir, in the faithful execution of this duty, of collecting money and payment into the treasury to meet the exigencies of the Government, and discharge the national debt, the people have a deep interest. This duty requires not only perfect fidelity, but long experience. The complicated machinery of the system is not to be learnt in a day; it requires years. Now, if you make a general change here, even if you supply the place of those removed with the best men, it is morally certain that, from their want of experience, nothing but a miracle can save you from losses.

Take the case at New York, where more than one-third of your whole revenue is collected; all your principal and twenty-five of your subordinate officers displaced, and about the same number have been added. Here, besides the chief officers, you find fifty new ones, all without experience, to manage that vast concern, so important to the interests of the country. Will any one say, in sober earnest, that all this was for the public good? Under the arrangement and severe discipline of Mr. Thompson, every thing was done with perfect system—scarcely an error escaped—the Government was perfectly safe, and no one, but he who wished for an opportunity to violate the laws, had the least disposition to complain. Now, why is the whole system subverted? Why is this dangerous experiment attempted, when all was so well before? It is for no reason under heaven but to reward the minions of the present administration.

Sir, if your party had talents, and, as a general remark, I do not think they are overburthened, it is possible that a machine, so complicated as the Treasury Department, can be successfully managed with raw hands? Can mere "land lubbers" navigate the ship? I put this question to experienced statesmen, to Senators; and I ask them frankly, if, in all this, they can see any thing of public good?

What has been gained, I ask, in removing one thousand connected with the Post Office Department? Mr. McLean was no partisan, and certainly he had done nothing to throw the influence of his department into the hands of the late administration. What good motive could have induced this universal proscription? Every post office, whose emoluments are worth even less than ten dollars a year, if he has not huzzared for the chieftain, is hunted down as a ferocious wild beast; and every hole, every corner, is searched for this small game. All this, I suppose, is "retrenchment," and yet we learn that more officers must be provided, or this sapient chief of this new department cannot make the machine work. Now, this is not strange at all. The General Post Office is in utter confusion; every thing is in error, and "sixes and sevens;" the assistants and clerks have been running against each other, and have got into such confusion, that they do not know where to go or what to do, and very prudently conclude, therefore, to stand still and do nothing.

But this is not all; they are asking for money. Mr. McLean had made the post office support itself; and it has hitherto produced a surplus. In one year, we find that there is likely to be a deficit of one hundred thousand dollars. Now, how does this come to pass? This question is easily answered—it is removing the experienced and faithful, and placing in their stead those who cannot or will not fulfil their duties. It is reported, too, that contractors have been remunerated beyond their contracts. At any rate, we are reduced to this: we must add one hundred thousand dollars to the funds of this department, or

strike off some forty or fifty mail routes, and thus deprive the people in the scattered settlements of the means of information, or the machine must stop. This is another of the effects of this retrenching, reforming administration.

Two or three examples will serve to illustrate the conduct of this administration. Florida is a Territory, not ten years old. The President was its first Governor; and when he left the Government, it is to be presumed, the officers were satisfactory. At the last election, this Territory had no political influence whatever. It had no vote, nor could it command one any where else. Its preferences for one of the other candidates could, therefore, have no effect on the election. Yet we find that removals here have been made with the same relentless proscription as if it had been in its power to settle the contest. *Removals*—Navy Agent and Storekeeper, at Pensacola; Surveyor of live oak timber, and Agent for its preservation; Postmaster, at Pensacola, and Marshal, two Commanders of Revenue Cutters; Law Agent; Indian Agent; United States' Attorney, Collector, and Marshal, at Key West; Surveyor of Fernandina; Postmaster, at St. Augustine; and Collector, at Apalachicola—*sixteen*; and four other Executive appointments made since the fourth of March last, to supply vacancies created by his own removals! Now, what other motive could have induced all this, but that of rewarding hungry expectants, who could not be provided for any where else?

I will go now into an opposite extreme of the United States—into Maine. When we arrived here, at the commencement of this session, every United States' office, perhaps worth ten dollars, was in the hands of the friends of the administration, except two, those of the Marshal and the Collector of Passamaquoddy. These two have been since "reformed." I will give you but one other case. Of the thirty-seven District Attorneys, seventeen have been removed, and three were postponed by the Senate of the last Congress to the fourth of March; that is, rejected, and others appointed in their places, making twenty. Of the thirty-six Marshals, there have been fifteen removals, and, as I believe, several postponements; inasmuch that there are not now, perhaps, three of each of these offices held by men who were either neutral or in favor of Mr. Adams's re-election. I will here make a single remark, which will clearly illustrate this policy. President Jackson has made more than twice the number of removals, of his own appointments, in one year, than Mr. Adams did in four, of all the officers of the Government.\* In addition to these wonderful improvements, we find that some fifty or sixty editors of newspapers have, for their loyalty, been engaged to assist in this work of reform. Petty editors of country newspapers are made "Second Comptrollers" and "Fourth Auditors," and Amos Kendall wields the trident of Neptune, and holds in his hands the destinies of that navy which has triumphed in every sea, and unfurled "the star spangled banner" in the face of every maritime nation on earth. Sir, in this aspect of our affairs, it is time to be a little serious, and to ponder well. The press was intended to be, and once in reality was, the palladium of our liberties. It was the press of

\* The Collector at Key West, a son of the late Mr. Pinkney, a very faithful officer, was removed, and a Mr. Thornton was appointed in his place. It is ascertained that Mr. Pinkney collected the revenues there with one permanent and one occasional Inspector. The new Collector, with less revenue to collect, allowed four permanent Inspectors. The Marshal at Key West, Mr. Wilson, was removed, and a Mr. Dean appointed in his place. Money was advanced him by the Secretary of State, by what authority I do not know. He soon proved a defaulter, is removed, and the money is lost.

Caprio Harrison had a wife and seven children in this District, (Georgetown.) He was commander of a revenue cutter at Key West. When he repaired to that remote and unhealthy station, he left an order that his whole pay should be appropriated to the support of his family, and he himself to live on his rations alone. He was removed without the slightest cause that is known or even imagined, and a Mr. Devezac was appointed in his place. Such were his confirmed habits of intemperance, that President Jackson, from regard to decency, was, in a few weeks, obliged to remove him.

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the people. If the Government should have attempted to subsidize or usurp it, the cry would have been "hands off, touch not, handle not," it is ours. Editors are our watchmen, our sentinels on the outposts of liberty. When these can be seduced or bribed, the citadel is gone. It has been asked, is an editor to be excluded from office? I answer, yes, so long as he remains such, unless the people, whose servant he is, shall select him. If he would serve the Government, let him first abandon our service, but let him not desert, and acquire honors at our expense. Sir, it is my deliberate belief that there is now no way to restore the press to what it was, and what, in every free Government, it always should be, but by carrying the principle out.

But, be this as it may, certain it is, that rewarding the partisan editors of the successful chief with high offices, is effectually corrupting the press. After this example, what reliance is hereafter to be placed upon newspapers? Those rewarded are to sustain the Government, right or wrong. Those striving for a change must oppose it in every thing, pervert its measures, and abuse its motives. All editors, whose hopes depend upon the success of their respective candidates, will forget, in their zeal, their duty to the people, and no dependence can be placed on what they publish. Editors are but men, no purer than others; and, then, is not this the necessary result?

The specimens of reform, not yet noticed, are many, but will be passed over briefly. You proposed to raise the salaries of your district judges about fifty per cent., and this bill has passed the Senate. The House increased the compensation of the marshals for taking the census thirty-three per cent., and the Senate raised it to a hundred. You have a bill before you, reported by the Judiciary Committee, to establish "a Law Department," in obedience to the recommendation of the President in his message, with a salary for the Attorney General of six thousand dollars, and an assistant, clerks, and messengers, in the bargain. Additional officers are appointed to your revenue cutters to increase their emoluments, when they are only to perform the duties which belong to the custom house officers, notwithstanding you have increased their number at least fifty. All these things constitute "reform" and "retrenchment." Reform on, and retrench in this way, and very soon you will reform and retrench the people out of both their money and their liberty!

On another occasion, in my defence of New England, I recurred to this proscription which I have here exposed, and remarked that this administration had glutted its vengeance on the purest patriots on earth; that neither age, condition, sect, or sex had escaped. For this I have received a rebuke from the Senator from Louisiana, by which it appears that this language is too plain and too strong for the delicate sensibility of this very sensitive administration. Our friends have been swept off by hundreds, ay, thousands: we have not been permitted to know or even to ask for the cause, and now we are to be denied the poor consolation of complaining. It appears that I spoke in a tone that was not acceptable to that Senator. I regret exceedingly that the sound of my voice does not better harmonize with his refined taste. But he should recollect that our conditions are very different. He was "brought up at the feet of Gamaliel," received his education in the first city, and has since been improving it in the most polite and accomplished city in the Union. I am from the woods yonder, "a plain, blunt man, who speaks right on," and, perhaps, tell you only what you yourselves already know. I have no city airs, nor city management. I have no fashionable modulation of voice; no "attitude, nor stare, nor start, theatrical practised, practised at the glass."

But, sir, as to the substance. Is it not true that the Executive has glutted its vengeance upon the purest patriots on earth; that neither age, condition, sect, or sex has escaped? I shall speak plain—call things by their right

names. How? Must I sacrifice the rights of my constituents to a fastidious delicacy? Have I a right here to indulge in affectation? No, sir, in man or woman, but most in man, and, most of all, in man who assumes to sustain the people against their oppressors, I, from my soul, loathe all affectation. It is the object of my scorn—my implacable disgust. What! is man the only thing in God's creation that must appear in disguise? All nature else is ruled by unerring laws, penned by an unerring hand—the brutes even obey their god, and follow their destiny. Inanimate creation, those orbs which shine and sparkle around us, all concur to fulfil their great Creator's purpose. And shall man, the creature of an hour—man, whose "breath is in his nostrils," who to-day is, and to-morrow slumbering in his humble tomb, and mingling with his kindred dust—shall he alone put on airs, and "play his antic tricks before high heaven?" No—no. Let him speak as he thinks, and act undisguised—all else is rank hypocrisy and deceit.

Then, let us speak out, and speak the truth. The venerable Melville was the last of the "tea party"—the last of "the cocked hats." He was always a republican, from the destruction of the tea to the present moment, without "the shadow of turning." He has been proscribed. To be sure, he is not poor—he has, by his economy and fidelity, acquired a small pittance—has a little change in his pocket to bear his expenses on the small remnant of the road he has to pass, and from which "no traveller returns." To pay his toll at that gate which is very soon to be forever shut after him. But Elbridge Gerry—he was a republican from the first to the last. He was one of those fearless patriots, who took their lives in their hands, and signed your Declaration of Independence. He was one of the framers of this constitution, the basis on which we now stand. He had been successively minister to France, Governor of Massachusetts, Vice President of the United States, and President of the Senate, occupying the very chair which you, sir, fill with so much talent. He died here, and is slumbering yonder. He was poor and penniless, as every honest Revolutionary patriot necessarily was. He left a widow, three helpless daughters, and a son, his own "image and superscription" in every thing. The patriotic and kind hearted Monroe gave this son an office, to which he was every way qualified, upon the express and special condition that he should appropriate the avails to the support of his widowed mother and orphan sisters. The pledge was fulfilled to the letter. He even denied himself the ordinary consolations of domestic life, without which nine-tenths of a man's happiness is cut off. He was never a political partisan; but he is swept off with a relentless hand, and the venerable relic of that departed Revolutionary patriot, with her helpless daughters, is cast off, in the winter of her days, upon the cold charity of a cold and uncharitable world. Need I go farther, to prove that every age, condition, sect, and sex had become the victim of this relentless tyrant? Sir, let the Senator from Louisiana compare the expression with the facts, and answer the question himself, if every word I said is not justified? I take nothing back—it is all true—I have proved it all.

I again repeat the inquiry—What have you gained? The President, in his message, proposed certain important measures for the consideration of Congress. One was a modification of the Judiciary, dividing the courts into two equal parts, each to hold the sessions alternately, so that the majority of one-half might settle the constitutional law, and the majority of the other half might, at the next session, unsettle it. It is some consolation, that no lawyer in either House has had the courage, so far, to hazard his own reputation, as even to propose an inquiry into the expediency of adopting such an absurdity.

Another (the conceit probably of the arch-Secretary of State) was to dispense with the United States' Bank, and to substitute another, based upon the public revenues. The officers, I presume to be the creatures of the Execu-

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tive, and the management and facilities to suit his purpose, and conform to his will. A President, with unlimited discretion in removals and appointments, the army, navy, post office, the press, and this bank, at his control, has only to will it, and he is the tyrant. It is done, it is finished, and the liberties of the people are gone for ever. Thank Heaven, that scheme has got its quietus.

Another "reform" was, to establish a law department, the Attorney General its chief, with an assistant, and all the other paraphernalia. This is knocked down.

The Indians were to be removed from the limits of the States. This is uncertain.

A free trade with the West Indies, and other British provinces, was promised. This has ended, as every rational man believed it would, in smoke.

Then, what is the sum and substance of all you have done, but to remove good men from office, and put bad ones in their stead? Give us a solitary instance where there has been a single improvement in favor of the interests and liberties of the people, one principle in which your own party shall all agree, and I consent you take it for your text.

Sir, I might go on, and perhaps repeat cases to the Senate even as flagrant as these; but I have exhausted myself, and, no doubt, the patience of the Senate. I have omitted many things which I intended to say. It was my object to open the eyes of the people, that they might see their danger. This is a crisis in our affairs; it is a state of things unparalleled in our history. Look at the consequences. The distresses of the proscribed are comparatively a small matter. The public interest is put in jeopardy by displacing experience and fidelity, and substituting mere partisans, without regard to qualifications. But if these were all, I should not respond. The principles inculcated are most alarming; the right of the sovereign to do all this, "of his own mere motion," which is so obsequiously yielded, the unlimited, illimitable discretion so unquestionable; these are the "signs of the times" which induce the most gloomy forebodings. If this discretion were only surrendered to a discreet man, we might be safe for the present, though we should look out for the future. But, strange as it may seem, it is yielded to the last man to whom it ought to have been confided—one who has always gone to the utmost bounds of the constitution, and, in the opinions of very many, has often transgressed them. It is the time, above all others, when we should have kept a jealous eye upon the exercise of Executive power; and yet this very period is selected to surrender every thing. There seems a mysterious apathy, a sleepy carelessness, a lethargy, a paralysis, in the public mind. A dark and dead silence reigns in your Executive halls. Your chief sits in sullen mysterious reserve, entrenched behind "his high responsibility," issuing his fierce decrees, and immolating his victims with cold-blooded indifference, and we dare not ask him why? We, the Senate of the United States, are so fallen, that we cannot summon the firmness to whisper this single monosyllable in his royal ears. Is this a reality, or is it a dream? If what we now witness had been presented to my mind in the fantastic visions of the night, the dream would have awakened me, and I should have started from my pillow with horror.

Sir, I have done. I make no apology for detaining you thus. I have, so far as my feeble talents would permit, performed a duty which I owed to myself, my country, and my God.

Note.—It is proper to remark, that, in this contrast of the removals in this and the other administrations, I have confined myself to civil officers. When the speech was made in the Senate, it so stated, but is here inadvertently omitted.

Mr. GRUNDY then moved, without comment, to postpone indefinitely the further consideration of the resolutions; which motion was decided in the affirmative, 24 to 21.

THURSDAY, APRIL 29, 1836.

## PENSION LAWS.

On motion of Mr. FOOT, the bill from the House of Representatives "declaratory of the several acts to provide for certain persons engaged in the land and naval service of the United States in the Revolutionary war," was resumed, with the amendment of the Pension Committee.

Mr. FOOT explained at large the object of the bill as it has been proposed to be amended by the Committee.

Mr. HAYNE said, this was a bill similar in its character to that which was brought forward during the last session of Congress, and which was then known by the significant appellation of the Mammoth Pension bill. Under the specious pretext of paying a debt of national gratitude to the soldiers of the Revolution, it was calculated to empty the treasury, by squandering away the public treasure among a class of persons, many of whom, [said Mr. H.] I do verily believe, never served in the Revolution at all, and others only for such short periods as hardly to entitle them to praise. I will yield, sir, to no gentleman here, in a deep and abiding sense of gratitude for Revolutionary services. Brought up among Revolutionary men, I imbibed in my infancy, and have cherished through life, a profound reverence and affection for the whole race—feelings which will descend with me to the grave.

But, sir, when the attempt is made to thrust into the company of the war-worn veterans of the Revolution, a "mighty host," many of whom, probably, never even saw an enemy; when a door is to be opened wide enough to admit mere sunshine and holiday soldiers, the hangers on of the camp, men of straw, substitutes, who never enlisted until after the preliminaries of peace were signed; when, after having omitted to pay the debt of gratitude really due to the honest veterans who toiled through all the hardships and dangers of the great contest, you now propose to give the rewards earned by their blood, with so profuse a hand as to enable all who ever approached the camp to share them; I must be permitted to say, that neither my sense of justice, nor my devotion to Revolutionary men, will suffer me to lend my aid to the consummation of the injustice. Sir, I know that deep as have been the wounds inflicted by the chilling neglect experienced by many of these gallant officers of the army who fought your battles throughout the war of the Revolution; keenly as they have felt the injustice which delayed, until a recent period, to satisfy their just demands, founded upon contract, none of these things, nor all combined, have inflicted so deep a wound upon their feelings, as the admission, to all the honors and rewards of the Revolution, of persons who shared few of the hardships, and none of the perils, of the war. He who toiled through the heat of the day has found the evening spread out for those whom he knew not in the camp, or on the field of battle, and whom he never saw till he found them at the festive board provided by the gratitude of the country.

Sir, I am informed, from the highest authority, that, when the pension bill of 1818 was before Congress, providing for the "nine months men," a gallant veteran of the Revolution, then a member of the other House, was so indignant at its provisions, that he declared he considered the soldiers who had served throughout the war as dishonored by a law recognising, as equals, the class of persons who would come in under that bill; and such, I have reason to believe, was the general sense of all such men throughout the country.

It has been my pride and pleasure, on all proper occasions, to manifest my gratitude for the heroes of the Revolution, not merely by professions, but by the most unequivocal acts. Here and elsewhere, my efforts have not been wanting to manifest the sentiments by which I am animated. But, in refusing to support such a bill as this,

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I am conscious I am only doing that of which the veterans of the Revolution themselves, if they were here present, would cordially approve. In doing justice to the country, I am also doing justice to them.

In the further examination of this subject, I propose [said Mr. H.] to take a brief review of the pension system in this country, and to point out the new, extravagant, and alarming provisions which it is proposed, by this act, to introduce into that system.

The people of the United States, even before the Revolution, had imbibed a deep-rooted and settled opposition to the system of pensions.

In the country from which they had emigrated, they found it operating as a system of favoritism, by which those in authority made provision, at the public expense, for their friends and followers. In Great Britain, pensions have long been used as the ready means of providing for the "favored few," at the expense of the many. This system affords the most convenient means of appropriating the industry and capital of the laboring classes, for the support of those drones in society, the "*fruges nati consumere*," who occupy so large a space in all refined, civilized, and christian countries. Our ancestors had seen, and severely felt, the effects of such a system, which necessarily converts the great mass of the people into the "hewers of wood and drawers of water" for the privileged orders of society. When our Revolution commenced, therefore, a deep, settled, and salutary prejudice against pensions almost universally prevailed. On the recommendation of General Washington, however, Congress had found it necessary to provide that the officers of the regular army, who should continue to serve to the end of the war, should be entitled "to half pay for life." So strong, however, was the prejudice against pensions, that the officers entitled "to half pay for life," found it necessary so far to yield to public opinion as to accept of a "commutation," in lieu thereof, of five years' full pay, a debt which was not finally discharged, according to the true spirit of the contract, until about two years ago.

In 1806, provision was made by law for pensions to all persons disabled in the military service of the United States during the Revolution; and, in 1808, the United States assumed the payment of all the pensions granted by the States for disabilities incurred in the Revolution. And, from that time to 1818, the principle was settled, that all persons disabled in the course of military service should be provided for at the public expense, and the United States took upon themselves the payment of pensions to such persons, "whether they served in the land or sea service of the forces of the United States, or any particular State, in the regular corps, or the militia, or as volunteers." Here, then, was the American pension system established on a fast and sure foundation. The principle assumed was not merely gratitude for services rendered; for that principle must have embraced civil as well as military pensions, and is broad enough to admit all the abuses that have grown up under the pension system even of Great Britain. Our principle was, that pensions should be granted for disabilities incurred in military service—a measure deemed necessary to hold out those inducements to gallantry and deeds of daring which have been found necessary in all other countries, and which we have, perhaps, no right to suppose can be safely dispensed with in ours.

Here, then, we find, that, up to the year 1818, the principle of our pension system was disability, a wise and safe principle, limited in its extent, and almost incapable of abuse.

In 1818, however, the Representatives of the people, in Congress assembled, seem to have been seized with a sudden fit of gratitude for Revolutionary services; an act was accordingly passed, which provided for pensioning all who served in the army of the Revolution "for the term of nine months, or longer, at any period of the war,"

and "who, by reason of reduced circumstances, shall stand in need of assistance from their country for support." [See act of 18th March, 1818.] Here, it will be seen that the principle which limits pensions to disabilities incurred in the service is abandoned, and length of service and poverty are made the conditions on which pensions are hereafter to depend. The history of that bill, as I have heard it from the lips of those who were actors in the political scenes of that day, is not a little curious. All agreed that the operation of the bill was to be confined to those who had, during the Revolution, given up their private pursuits, and devoted themselves exclusively to military service. No one imagined, for a moment, that any person who had rendered casual services merely; men who had only shared, in common with all the other citizens of the country, the dangers and sacrifices of the times, were to be the objects of public bounty. The original proposition, therefore, was to confine the provisions of the bill to those who had served in the regular army, either during the war, or for a term of three years, and who stood in need of assistance from their country for support. But, sir, in the progress of that bill, it was discovered that, in a certain quarter of the Union, a number of soldiers had been enlisted for a term of only nine months, and, to cover their case, "three years" was stricken out, and "nine months" inserted. Sir, no one foresaw the consequences of that measure. It was supposed that even this provision would include only a few hundred men. The whole charge upon the treasury was estimated at one hundred and sixty thousand dollars. And, seduced by this expectation, and by the popular cry of "Justice to the old soldiers," Congress were persuaded to pass a bill which they were assured could not make any very considerable addition to the pension list, which would be lessened from year to year, and would soon cease to exist. And what, sir, was the result? What a lesson does it read to legislators! How forcibly does it admonish us to weigh well the provisions of this bill, before we undertake to enlarge or extend the pension law of 1818. I have applied to the Pension Office for information on this subject, and hold in my hand the official report of the officer at the head of that department. In giving the result, I shall not aim at minute accuracy.

The number of applicants for pensions, under the act of 1818, considerably exceeded thirty thousand! a number greater than that of General Washington's army, at any period of the war; exceeding the whole number of soldiers that could be supposed to be alive in 1818. Notwithstanding the "rigid rules" laid down by the Department of War, it was found impossible to exclude the applicants. Upwards of eighteen thousand were admitted and placed on the pension roll, one-third of whom, at least, (as it afterwards appeared) had no claim to be there. The claims of upwards of twelve thousand of the applicants were found, even at the first examination, to be entirely groundless, and were accordingly rejected. The money required to pay the pensions was found to be, not one hundred and sixty thousand dollars, as had been estimated, but between two and three millions. The very first year, Congress had to appropriate for pensions, under the act of 1818, one million eight hundred and forty-seven thousand nine hundred dollars; and the next year, two million seven hundred and sixty-six thousand four hundred and forty dollars, which, with the appropriations for invalid pensions, made the whole amount appropriated in that year for pensions, three million one hundred and eight thousand three hundred and three dollars. And no one can tell to what extent these appropriations would have been carried, if Congress had not interposed to correct the evil. The whole country had become alarmed. No one doubted that an immense number of persons were receiving pensions, who had no claim to them whatever. Men who had never served at all, or for very short pe-

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riods; men who had given away their property to their children, or conveyed it in trust for their own benefit; in short, every one who was old enough to have served in the Revolution, found little difficulty (notwithstanding the rigid rules of the War Department, of which we now hear so much complaint) in getting themselves placed upon the pension list.

To rescue the country from this enormous evil, the act of 1st May, 1820, was passed, which, without changing the terms and conditions on which pensions were to be granted, (still requiring service "for a term of nine months," and "indigent circumstances,") yet provided guards against frauds, by requiring every applicant to submit "a schedule of his property," and to take the necessary "oaths," &c. Sir, under the provisions of this act, intended only to prevent frauds, upwards of six thousand persons were stricken from the pension roll. Two thousand three hundred and eighty-nine never even presented a schedule, or made an application under this act; and the Treasury was thus relieved from a charge of a million of dollars per annum.

Now, sir, with the experience afforded by this case, one would really suppose that the very last thing that any statesman would propose would be still further to enlarge and extend the provisions of the act of 1818, again to unlock the Treasury, which was wisely closed by the act of 1820, and subject it to a charge similar in character, and probably much greater in amount, than was imposed by that law, and to open a wide door to all the evils, aye, and much greater evils than were experienced by the country under the operation of that act.

I will put it to the chairman of the committee who reported this bill: Is he satisfied of the wisdom and justice of the act of 1818? The gentleman says, "it ought never to have been passed." Well, sir, while the gentleman acknowledges that that act was impolitic and unjust, and "ought never to have been passed," how can he advocate this bill, which enlarges and extends every objectionable feature of the former law?

Sir, if we have already taken a rash and unadvised step in this business, it is better for us to go back, or at least to stop where we are; but assuredly we ought not to advance and press forward in error, regardless of consequences.

I come now to the examination of the character of the proposed measure. We have before us two bills: the first has already passed the House of Representatives; the second is proposed as an amendment, by the Committee of Pensions of the Senate.\* They both purport to be acts merely declaratory of the acts of 1818 and 1820, and they are supported on the avowed ground that they are not in-

tended to change the pension system, but merely to correct some misconstructions of those acts on the part of the officers of the War Department.

If, sir, I shall be able to show that there have been no such "misconstructions," and that there exists no necessity whatever for any "declaratory act," will I not have a right to expect that gentlemen who now support this bill will at once abandon it? I know, sir, the expectation would be vain; for the truth cannot be disguised, that it is the real object of this bill greatly to enlarge and extend the pension system, by the introduction of new, and, as I believe, most alarming provisions. This is no declaratory act. The acts of 1818 and 1820 provide that pensions shall be granted to persons who served in the regular army of the revolution, on two conditions: 1st, That they should have served for a term of nine months or longer, at any period of the war; 2d, That, by reason of reduced circumstances, they shall be in need of assistance from their country for support." Now, sir, what are the "misconstructions" which make a declaratory act now necessary.

It is alleged,

First, That "the term of nine months service" has been required by the Secretary of War to be a "continuous service;" and it is proposed to provide that an applicant for a pension "shall be deemed to have served for the term of nine months, if he shall have served nine months under one or several enlistments, whether continuous or not."

And it is alleged,

Secondly, That, in examining the "circumstances" of applicants for pensions, no fixed amount of property has been considered as conclusive of "indigent circumstances," but the character, habits, place of residence, family, &c. &c. have all been taken into account; and it is now proposed by the bill from the House of Representatives, to provide that a man "shall be deemed and taken to be unable to support himself without the assistance of his country, if the whole amount of his property, exclusive of household furniture, &c. shall not exceed the sum of one thousand dollars, all debts from him justly due and owing being first deducted." By way of guarding against frauds, it is added, "that the applicant shall not be required to show what his circumstances or condition in life were, or what property he was possessed of at any time prior to the passage of this act;" the plain interpretation of which is, that, if any man, before this act receives the sanction of the President, shall give away his estate to his children, he shall, notwithstanding, have his pension.

Now, in what respect has the act of 1818 been "misconstrued?" How far are the bills before us "declaratory?" It is alleged that service for a "term of nine months" does not imply nine months continuously. But I apprehend they can only relate to continuous service under one enlistment. A term is a technical phrase, and, when applied to judicial or military service, always relates to an unbroken period of time. The term of a court, we all know, has this significance; and, in military language, the "term of service" relates to the period of a soldier's continuous service under one enlistment. That it was so used in the law, is obvious. The truth is, this provision was inserted for the avowed purpose of covering a certain class of troops, known to have served under an enlistment for nine months. And the words "a term of nine months, at any period during the war," can admit of no other construction. If it had been intended to embrace mere casual service, under various engagements, amounting in the whole to nine months, the expression would have been, "who served for nine months during the war," or (as proposed in this bill) "whether continuous or not."

So far, therefore, as this bill relates to "the term of service," it is not "declaratory" of the old law, but substitutes a new, and, as I think, a dangerous rule, for that

\* The bill from the House of Representatives proposed,

1st, "That the applicant for a pension shall be deemed and taken to be unable to support himself without the assistance of his country, if the whole amount of his property, exclusive of his household furniture, wearing apparel, the tools of his trade, and farming utensils, shall not exceed the sum of one thousand dollars, all debts from him justly due and owing being therefrom first deducted," &c.

2dly, "That, whenever the granting of such application shall depend upon the term of service, such applicant shall be deemed and taken to have served for the term of nine months or longer, if his continuous service was nine months or longer, notwithstanding his enlistment may have been for a shorter time than nine months, and notwithstanding he may, during any portion of his said term, have been taken and detained in captivity."

3dly, "That the regular troops of the several States, &c. shall be deemed and taken to have been on the continental establishment, but nothing herein contained shall be construed to include in said class of State troops the militia of the several States."

The amendments proposed by the committee of the Senate embraced, in substance, the following provisions:

1st, "That the applicant shall be deemed and taken to be unable to support himself without the assistance of his country, if the value of his property contained in the schedule now required by law shall not exceed the sum of one thousand dollars."

2d, "That, whenever the granting of such application shall depend upon the term of service, &c. such person shall be deemed to have served for the term of nine months or longer, if he shall have served nine months or longer in the continental establishment, at any period during the war, whether continuous or not," &c.

3d, "That the State troops shall be entitled to pensions, as proposed in the bill from the House of Representatives."

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prescribed by the former law, as construed and uniformly acted upon by the Department of War.

Let us next inquire into the probable effect of the proposed provision. Who are the persons now excluded from the benefits of the existing law? They are those who, during the whole course of a war of seven years, (a bloody and arduous contest, brought to the door of every man,) served in all only nine months, and that, too, at various periods.

Now, let it be recollected that the law relates only to enlisted soldiers of the regular army; let it also be remembered that enlistments, until after the preliminaries of peace were signed, were for fixed periods, of greater or less duration some (as in the case of the Maryland line) enlisted "during the war," others for a "term of three years," and almost all of the rest for "the term of nine months." If I am not greatly misinformed, it was after the fighting had ceased—after the capture of Cornwallis (which took place in October, '81)—after the preliminaries of peace were signed, (in November, '82,) that enlistments were entered into for "nine months or less." The gentleman says, there were some enlistments made at an earlier period for eight months, and that many of these men continued in service under a new engagement, after the expiration of their first term. I wish the gentleman had favored us with a statement of the number of such enlistments; I am assured they were not numerous, and that a provision so framed as to cover such cases would operate but on a few individuals. But if the object is merely to provide a remedy for those cases of special hardship, let provision be made for persons who enlisted for eight months, and entered into "new engagements at the expiration of their term." Provide, if you please, "for persons who were taken prisoners, or who were confined in prison ships," (cases on which gentlemen so strongly rely,) if they are not already provided for under the act of 1818. No one will complain of provisions intended to apply to special cases of peculiar hardship. But, instead of making such provisions, attempts are made for breaking down all the barriers against fraud. These bills propose to throw open the door of the treasury, so as to permit all who choose to do so, to enter, and help themselves at pleasure.

Sir, I deny the policy or justice of the act of 1818. It departs entirely from every sound principle applicable to pensions, and has provided for that large class of persons whose services were in no respect more valuable than those of the great body of the people. Who were the "nine months men," admitted under the act of 1818? They were chiefly those who entered the service after the capture of Cornwallis. A large proportion of them served only between the date of the provisional article of peace, in November, 1782, and the adoption of the definitive articles, in September, 1783.

From what I can learn, a large majority of those who were admitted to pensions under the act of 1818 never saw any service, except during the two years which elapsed between the capture of Cornwallis and the establishment of peace. I have been unable to obtain any detailed information on this point. But I am told that the average ages of these eighteen thousand pensioners, at the date of their application, proved that they could only have served towards the close of the war. Of this vast number, but little more than three thousand claimed to have served through the war; so that it is unquestionable, that the bounty of the Government, under the act of 1818, has been chiefly extended to those who never abandoned their private pursuits, who did not devote themselves exclusively to military service, and who, therefore, were not embraced within any sound and safe principle applicable to pensions in a republican government.

But if such was the true character, and such the operation of that act, what will be the effect of this bill? Will

the law require "a term of service of nine months or longer," although persons might be admitted who had rendered no efficient service, yet you had some security against abuse, by requiring specific proof of a continuous service under one enlistment, with the power, in most cases, of referring to the original muster rolls, and thereby detecting all attempts at imposition. Now, however, that the most casual service, and for the shortest periods, is to be taken into the account, who can fail to perceive how much the chances of imposition will be multiplied? It soon must be had to oral testimony. And what more uncertain than the memory of man, as to the duration of another's service half a century ago? Who is there that ever served a month in the army, or who was even a follower of the camp, that will not be able to adduce certificates to show that he served for just so long a time as he may choose to lay claim to.

But, sir, there is a stronger objection to this measure even, than its liability to abuse. It is, that it rests on no sound principle applicable to military pensions. If there be any principle recognised and fully established in this country, it is, that pensions must be confined to those who were separated, by the nature of their service, from the great mass of the community, and who devoted themselves exclusively to military duties. It is a palpable absurdity to talk of giving pensions to all the people. Those who, in the course of the Revolution, performed, only in common with the rest of their countrymen, the military service required of every citizen, stand upon an equal footing. He alone, who, in the strictest sense, put off the citizen and became a soldier, and who, in abandoning the pursuits, relinquished also the habits of private life, can have any just claim to be provided for at the public expense. I speak not now of physical disabilities incurred in the public service, this class of cases having been amply provided for under the acts of 1806 and 1808. But, with regard to claims depending entirely upon length of service, if we once depart from the rule I have laid down, and declare that mere casual service for short periods, and at long intervals, shall entitle a man to a pension, you cannot stop short of pensioning all who rendered any service whatever in the course of the Revolution. All the State troops will be embraced within this principle; and this bill, accordingly, proposes to provide for them. The militia will come next; for what true hearted whig was there in all America, who did not, in the course of the seven years' war, render, from time to time, services equal in the whole to the period of "nine months?" I think I may very confidently assert, that there was not, in the State of South Carolina, one genuine patriot of 76 capable of bearing arms, who did not, in the course of the Revolution, spend more than nine months in the camp; and I should be glad to be informed on what principle they can be excluded, if these nine months men are to be embraced? But I shall be told the militia will all in due season be provided for, a proposition to that effect having already been submitted in the other House. It comes, then, to this, that all are to be pensioned who rendered military service of any description during the war. But were not services equally valuable rendered by men in civil stations? All these must of course be included; and it will finally come to this, that pensions must be provided for every one who lived at the period of the Revolution; you cannot stop short of that, if the principle embraced in the bill is to be sanctioned. So much for "the term of service."

The next provision of the bill relates to "the circumstances in life" of the persons to be pensioned. The rule on this subject prescribed by the acts of '18 and '20, and hitherto considered as the very foundation of the pension system, was, that the pensioners should be "in such indigent circumstances as to stand in need of assistance from their country for support." I should have supposed that no one could for a moment doubt the policy, the propri-

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ety, nay, the absolute necessity, of this rule. No country which has ever passed through a bloody revolution, could possibly undertake to distribute rewards for every service. In bestowing military pensions, they are constrained to act on the principle of merely providing for those who, being unable to support themselves, are necessarily thrown upon public or private charity. Military pensions constitute an honorable provision for old soldiers of broken fortunes. But what is the proposition now before us? Why, sir, the pension system is no longer to be confined to persons in reduced circumstances. The bill from the other House expressly declares that every man shall be "deemed and taken" to be in indigent circumstances, and unable to support himself, who shall not be worth more than one thousand dollars clear of debt. Now, can any thing be more absurd than such a provision! A man may be in possession of an estate worth half a million of dollars; he may have a clear income from such an estate (or from professional pursuits) of twenty or thirty thousand dollars a year; and yet, if his debts exceed the estimated value of his estate, the law declares he shall be "deemed and taken to be unable to support himself." Sir, I give all due praise to the committee of the Senate for their judicious recommendation that this monstrous provision should be stricken out; but I must be permitted to add, that I should have been better pleased if they had reformed the section altogether. I perceive they have retained the provision which fixes one thousand dollars as an arbitrary standard to determine a man's circumstances in life. Nothing, it seems to me, can be conceived more unequal or unjust than to measure men's circumstances in life by such a rule. Of two men possessed of the same amount of property, one may be in easy circumstances, while the other will be poor indeed. A man enjoying a green old age on a farm in the Western country, with an industrious family around him, would be as independent as any man alive; while the inhabitant of one of our Atlantic cities, with an equal amount of property invested in land or in stock, would not be able to procure his daily bread. One man may be entirely disabled, from age or infirmity, from earning his subsistence, or he may have a helpless family depending upon him for support; another may be in the enjoyment of a large professional income, or he may be surrounded by dutiful children in affluent circumstances. Will any one pretend that these men would stand in equal need of "assistance from their country for support?" I confess I am unable to discover a single argument in favor of the arbitrary rule laid down by the committee, unless, indeed, it be desirable to increase the number of pensioners: that it will produce that effect, no one can doubt. The truth is, that, in looking into the circumstances of pensioners, the officers who have been successively at the head of the War Department have found it absolutely necessary (to keep the pension system within any thing like reasonable bounds) to resort to rigid rules. Under the administration of Mr. Calhoun, but one person was admitted whose fortune exceeded three hundred and fifty dollars, and the great majority fell below two hundred and fifty dollars; and yet the treasury was nearly emptied by the multitude which poured in under the act of 1818. Under Mr. Barbour, none were admitted whose fortune exceeded three hundred dollars. General Porter, a short time before he went out of office, undertook to admit persons whose fortune did not exceed nine hundred and sixty dollars. The consequence was, the addition of several hundred names to the pension list within a few months; the appropriations failed; and one of the very first acts of General Jackson's administration was to rescind the order made by General Porter, and to bring back the system to the old standard.

But, sir, there are higher considerations connected with this question than any I have yet urged. I consider this bill as a branch of a great system, calculated and intended to create and perpetuate a permanent charge upon

the treasury, with a view to delay the payment of the public debt, and to postpone, indefinitely, the claims of the people for a reduction of taxes, when the debt shall be finally extinguished. It is an important link in the chain by which the American system party hope to bind the people, now and for ever, to the payment of the enormous duties deemed necessary for the protection of domestic manufactures. It is obvious to every one, that a great crisis in the affairs of this country is at hand. The national debt, which now creates a charge upon the treasury of twelve millions of dollars per annum, is melting away, under the operation of our "sinking fund," which, if not diverted from its course, will, in less than four years, totally extinguish it. One-half, therefore, of the whole amount of the revenue now collected through the custom house will no longer be wanted for national purposes; and the great question will be presented to the American people, whether they will submit to be taxed to the amount of twelve millions a year, merely for the purpose of enabling the manufacturers to fill their pockets at the expense of all other classes in the community, or for the still more preposterous purpose of paying back the taxes so collected to the people from whom they were taken.

The manufacturers know full well that such a question, whenever presented to the justice and good sense of the people, can receive but one answer. The duties will be reduced; and any party that sets itself in opposition to such a measure, will be swept away by the breath of popular indignation, like chaff before the wind. Seeing and believing this, all those who have an interest in the promotion of the restrictive system—all who derive a profit from the present unjust and unequal distribution of the public revenue, have been for the last two years anxiously looking about them, and are constantly contriving schemes for scattering abroad the public funds with a profuse hand. They are striving, above all things, to create heavy permanent charges upon the treasury, as an apology for high duties. The point aimed at is, to create demands upon the treasury, equal, at least, to the whole amount now annually absorbed by the public debt. The great effort will be, to accomplish this fully in the course of the ensuing four years; so that, when the debt shall be paid, the whole twenty-four millions of dollars now collected under our present unjust, unequal, and oppressive impost laws, may still be found necessary to meet the demands upon the treasury created by law.

It is impossible, sir, it seems to me, for any man to look around him, and see what is going on in both Houses of Congress, without perceiving that this is a fixed and settled policy, to which the attention of the party to which I have alluded is constantly and steadily directed. We witness the astonishing spectacle, in a free, popular Government, of constant and persevering efforts to increase the public expenditures; to spend money merely for the sake of having it expended; and we find the representatives of the people devising and contriving innumerable schemes to rivet upon them a system of taxation, which, both in its character and amount, is almost without a parallel in history. All the popular topics of the day are eagerly seized upon, and pressed into the service. Under the pretext of promoting the internal improvement of the country, gigantic schemes are brought forward, and the aid of the Government obtained for them to enormous amounts. The execution of all the plans of internal improvement proposed even during the present session of Congress, would absorb the whole amount now annually applied to the public debt. But the advocates of this system are unwilling to rely on one class of measures only. We have schemes for colonization, education, distribution of surplus revenue, and many others, all admirably calculated to promote the great end—the absorption of the public revenue. But, sir, of all the measures devised for

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this purpose, this grand pension system, got up last year, and revived during the present session, is by far the most specious, the most ingeniously contrived, and the best calculated for the accomplishment of the object. Here gentlemen are supplied with a fine topic for declamation. "Gratitude for Revolutionary services!" "the claims of the poor soldiers!"—these are the popular topics which it is imagined will carry away the feelings of the people, and reconcile them to a measure which must unquestionably establish a permanent charge upon the treasury to an enormous amount, and thereby furnish a plausible excuse for keeping up the system of high duties.

To prove that such is the true character of this bill, I will appeal to its liberal and most extraordinary provisions; its entire departure from all sound principles applicable to pensions; and, above all, to the time when, and the circumstances under which, it has been brought forward. These are, to my mind, entirely conclusive. When I show that the pensioners who will be embraced within the provisions of this bill, have no stronger claims to pensions than all the citizens of the country who rendered service in the Revolution, the answer is at hand. It is intended, in due season, to extend the system to them also. When I urge the experience of the country under the act of 1818, as conclusive, to show the unjust operation of the system, and the enormous charge created by it on the public treasury, I am told that though that act "ought never to have passed," yet this bill is necessary to carry out and extend its principles. But there is one fact which speaks volumes on this subject. How comes it, that this spirit of gratitude for Revolutionary services should have slumbered for fifty years? How has it happened that it has never been discovered until now, that the men who are to be embraced within the provisions of this bill are entitled to the bounty of their country? Why is it, that, without a single petition praying for such an addition to the pension system as this bill proposes, we should be seized with such a sudden and inveterate fit of gratitude to the old soldiers, that we seemed determined to seize them by force, and, taking no denial, to insist on their receiving our bounty, whether they will or no? Sir, the reason is obvious. The period for the final extinction of the public debt is at hand. Colonization has not yet been sanctioned; internal improvement advances too slowly; the distribution of the revenue meets but small favor; the existence of a surplus must, by some means or other, be prevented; and this must be accomplished without any reduction of duties. The friends of the system have therefore gone forth upon the highways, and "all are hidden to the feast."

There is another great object collateral to this, and having, I do verily believe, an important bearing on this measure. Sir, it is not to be denied that this country is divided into two great parts, the paying and the receiving States, or, as they have been sometimes called, "the Plantation States" and "the Tariff States;" the former paying by far the greater portion of the duties which supply the treasury, and the latter receiving nearly the whole amount expended by the Federal Government. The present system operates so as to lay the taxes chiefly on one portion of the country, and to expend them on another; and while, therefore, it is the interest of the former to diminish the expenditures, and to lessen the taxes, it is manifestly the policy of the latter to increase both.

I do not know that a more striking illustration of the unequal action of this Government can be adduced, than is furnished by the operation of the pension system. Sir, no one can doubt that the sacrifices and services, during the Revolution, of the Southern were in no respect inferior to those of the Northern States. In proportion to the extent of her population, South Carolina fought as hard and as long as any State in this Union, and suffered, perhaps, more. But when pensions came to be distributed, how did the account stand? I have before me official state-

ments showing the whole number of invalid and Revolutionary pensioners in every State of the Union, and also the whole amount of money appropriated for the payment of these pensioners from the beginning of the Government to this time. These statements exhibit the following results:

Whole amount of appropriations for pensions under act of 1818,	\$14,174,274 50
All other pensioners, from the beginning of the Government,	6,361,396 03
	\$20,535,670 53
Making, in all, upwards of twenty millions of dollars.	
The whole number of names now on the pension roll of invalid pensioners, is	3,794
Revolutionary pensioners,	12,201
	15,995

Say, in round numbers, sixteen thousand. Of these, about twelve thousand reside in the ten States north of Maryland, and four thousand in the fourteen Southern and Western States. The number of pensioners in Connecticut exceeds those in Virginia—and Rhode Island nearly equals South Carolina and Georgia. Assuming these data as the basis of our calculations, it would appear that, of the twenty millions paid to pensioners, about fifteen millions have gone North, and only five millions have been expended in the South and West, and that three millions out of every four hereafter to be applied to pensions, will be expended north of the Potomac. Sir, although we know that the Revolutionary services of the North did not surpass those of the South, we never complained of this inequality in the expenditure, so long as the pension system was confined to the proper objects of national bounty. But when it degenerates into a mere scheme for the distribution of the public money, we have a right to complain of the gross inequality of the system. I will not say that it is the object of this bill to make a distribution of the public revenue among the people on unjust and unequal principles, but I will say that this will unquestionably be its effect.\*

I know, sir, that these are unpleasant topics of discussion; but the truth must be told; and, whether acceptable or not, it is my duty, standing here as one of the

\* OFFICIAL STATEMENT OF PENSIONS.—A Statement showing the number of Pensioners on the rolls of the different agencies of the United States.

AGENCIES.	No. of Invalid Pensioners.	No. of Revolutionary Pensioners.
Maine	182	1,017
New Hampshire	183	731
Massachusetts	337	1,457
Connecticut	199	734
Rhode Island	13	171
Vermont	170	969
New York	1,014	5,828
New Jersey	66	392
Pennsylvania	338	721
Delaware	14	14
Maryland	234	153
Virginia	311	648
North Carolina	69	309
South Carolina	58	117
Georgia	32	78
Kentucky	186	423
East Tennessee	43	138
West Tennessee	101	125
Ohio	181	903
Louisiana	27	0
Indiana	75	137
Alabama	58	99
Missouri	37	12
Michigan	55	7
Illinois	90	99
Mississippi	8	10
Pittsburg Agency	181	330
District of Columbia	40	33
	3,794	12,201



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representatives of a portion of the country oppressed and afflicted by unequal contributions and unequal expenditures, to expose the true character of the system, and to strive against it to the uttermost. Sir, I would, if I could, rouse the whole country to a due sense of its enormity. I would invoke gentlemen to put down that gross inequality in the benefits and burthens of this Government, which, if not corrected, will, in the end, impair the attachment of the people in the Union itself. I allude to this subject now, not for the purpose of spreading discontent, but to strike at the root of evil, by pointing out its enormity, and calling upon honorable gentlemen, as they love their country, to apply the remedy.

If the revenues of the United States were collected by direct taxation, or even by assessment upon the States, we should have some security against extravagant expenditures. If every portion of the country contributed its equal share to the national Treasury, we should not hear of so many propositions to squander millions upon local objects; we should not find gentlemen disposed to vote away the money of their constituents with as much indifference as if it could be created by a mere act of volition, and was not the fruit of the labor of their hands. It is the fact (well known and understood, at least in one quarter of the country) that the Southern States pay by far the greater portion of the taxes, while they receive hardly any part of the expenditures, which leads to that lavish distribution of the public treasure, which, we are told, has now become "the established policy of this country." The parents of the American System are unequal taxation and unequal appropriations; to them it owes its being; and without their sustaining influence it would be destined, after dragging out a brief and precarious existence, to "perish miserably."

I am sensible that this is not the appropriate occasion to enter at large into this deeply interesting question. I must reserve that task for another and more suitable opportunity. I must be permitted, however, to say, that I believe it to be susceptible of the clearest proof, that the plantation or anti-tariff States, containing, in round numbers, four millions of inhabitants, (only one-third of the whole population of the United States,) contribute, directly or indirectly, about two-thirds of the revenue, while the tariff States (containing eight millions of inhabitants) pay about one-third of the taxes. Sir, this opinion is founded chiefly upon the fact, that the Southern States furnish two-thirds of the whole amount of the domestic exports of the United States, thereby furnishing the articles of exchange for two-thirds of all the importations from foreign countries. Nearly the whole revenue of the country, equal, in round numbers, to twenty-four millions of dollars per annum, is levied in duties on these foreign goods. Now, if we consume the goods received in exchange for our cotton, rice, and tobacco, no one would deny that we must pay two-thirds of the taxes; and if we do not consume them, then, I would ask, how does it happen that our Northern brethren are enabled to consume the fruits of our labor and capital? Two-thirds of these foreign goods of right belong to us; and if we get, as is alleged, but one-third, and our Northern brethren obtain the remainder, surely we must be entitled to some remuneration. "Well, [say gentlemen] we pay you for these goods in Northern manufactures." True, sir; and it is the very burthen of our complaints, that we are compelled to receive, in return for our cotton, rice, and tobacco, shipped to Europe, either foreign goods, burthened with duties of from forty to a hundred per cent., or domestic manufactures protected by these duties, and charged with a price sufficient to indemnify the Northern manufacturers for all the duties paid on the articles of their consumption. However true, therefore, it may be in general, that "the consumer pays the duty," it is only true when a man is considered simply in his character as a consumer; but

when he acts in the double capacity of consumer and manufacturer, under a system of laws which, at the same time that it taxes him on his consumption, enables him to re-charge the amount of the tax in the price of his manufacture, (which his customers are compelled to buy at the enhanced cost,) it is obvious that he may relieve himself entirely from the tax, by throwing it upon others. If, under a law which taxes a man one dollar, he receives two, it is clear that, instead of being burthened with a tax, he would receive a bounty. Under the actual operation of the American System, I do not think there would be any material difference between a tax upon exports or upon imports. I believe they would both fall substantially upon the producers of the articles exported, these being the only medium of exchange for our imports. That the tariff States, as such, under the operation of the tariff laws, are fully indemnified for the duties paid by them on foreign goods, is conclusively proved by the fact that they zealously support the "American System," and are perpetually crying out for more taxes. But how are the Northern States to relieve themselves from the operation of this system? There are no persons to whom they can transfer the amount of duties imposed upon them. They have no protection in foreign markets for their cotton, and are compelled to receive either the taxed or the protected article at the enhanced price secured to them by the tariff laws. The system, therefore, operates exclusively to the disadvantage of the exporting States, while the manufacturing States are indemnified for their burthens, by reaping all the benefits of the system.

But, as unequal as this system of taxation must be, the distribution of the money, after it is collected, is still more unequal. I have supposed that the plantation States pay nearly two-thirds of the taxes, (sixteen millions of dollars,) and the tariff States only one-third, (eight millions of dollars.) Of this amount of twenty-four millions of dollars, I am unable to discover that more than two or three millions go South, including every object of expenditure, pensions, fortifications, internal improvements, civil list, national debt, and every thing else to which the public money is applied, leaving upwards of twenty millions of dollars for distribution in the tariff States. The operation of the American System, therefore, in both of its branches, is plainly this, to impose an enormous burthen almost exclusively upon one portion of the community, and to expend the money drawn from their industry on a different portion of the community; in one word, to tax the South sixteen millions of dollars a year, in order to distribute twelve millions of dollars among our brethren; to lay our industry under contribution to an amount little short of the whole profits of our labor, in order to make profitable the pursuits of others. But, sir, I will not press this unpleasant topic farther. Before I leave it entirely, however, I must be suffered to remark, that, though the system of indirect taxation must, under all circumstances, operate unequally and most injuriously upon the exporting States, still the South has never objected to that system, while it was confined to the legitimate purpose of raising revenue for the necessary expenses of Government, whether in peace or in war. They will contribute to their last farthing, when the honor of the country is to be defended. They have not complained of the liberal appropriations for fortifications, for the army or navy, for the civil list, or for foreign intercourse. On all objects confessedly national, they are willing that the public money shall be expended any where; and they have never been found among those who would cramp the energies of any of our national establishments by an envious or illiberal parsimony. But they do object, in the strongest terms, to this system of indirect taxation, when converted into the means of levying contributions upon them for the benefit of others. They solemnly protest against the imposition of taxes for objects not properly belonging to

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the jurisdiction of the Federal Government, for the promotion of manufactures, of internal improvements; or the distribution of money either among individuals or States. Believing firmly and conscientiously that we contribute more than our fair proportion of the taxes, and knowing that we receive hardly any part of the immense amounts annually expended by the Federal Government, we feel that it is our right and our duty to be on the watch to detect and expose every scheme calculated to extend unnecessarily the national expenditures. This pension bill, as it is one of the most imposing in its character, is certainly one of the most dangerous of all the schemes ever devised to perpetuate this system. I have asked for a statement of the annual charge upon the treasury which it will create. I have received no answer, except having my attention called to the letter from the officer at the head of the Pension Office, in which he says that a thousand persons will probably be added to the pension roll under the first section of the bill; about five hundred under the last section; and as to the third section, (by far the most comprehensive of the whole,) he has no data by which to make any estimate. Here, then, we have one thousand five hundred pensioners, with an annual charge of one hundred and fifty thousand dollars. In another letter from the same officer, (quoted by the Senator from Maryland,) he speaks of two thousand as the probable number; which would swell the amount to two hundred thousand dollars. But under the third section, which we are told cannot be estimated, we may be assured that the amount will be at least equal to both of the other classes; and this would enlarge the amount to near half a million. But these are estimates merely. Now, in 1818, it was estimated that one hundred and sixty thousand dollars would cover all the pensions to be granted under that law; yet they were found to amount to between two and three millions of dollars. Who can tell whether the result may not be the same on the present occasion? At all events, it is certain that we are now about to commence a new system, which will not, and which cannot, stop short of creating a permanent charge of many millions upon the treasury. The introduction of the State troops will prepare the way for the militia. The abolition of the restrictions which have hitherto confined the pension system to "indigent circumstances," and "a fixed term of continuous service under one enlistment," will, and necessarily must, extend the system to all who served at any time during the Revolution. Civil pensions will follow next; and he must be wilfully blind who does not perceive that this system is capable of being easily enlarged, so as to create, in the course of the ensuing four years, a charge upon the treasury of from ten to twelve millions annually; of which amount, (judging from past experience,) nine or ten millions will go to the North, and two or three to the South and West. In such a scheme, the first step is all; once taken, it can never be retraced; and if it be taken now, by the passage of this bill, I shall give up the hope of living to see the day when any material reduction shall take place in the enormous amount of indirect taxation with which the people of the United States are now burthened, and under the weight of which the whole South is fast sinking into ruin. It will be in vain that the national debt shall be paid, (if, indeed, gentlemen intend to suffer it to be paid); its extinguishment will bring no relief from our calamities. We must go on for ever in the same course which we have been pursuing for several years past, making vain efforts, by increased exertion and a more rigorous economy, to meet the constantly increasing demands of those who will never be satisfied while their gains shall be unequal to their desires, or we shall have any thing left to give. One other suggestion, [said Mr. H.] and I shall leave this bill to its fate. I take the liberty of asking gentlemen known to be friendly to the present administration, how they can consent to lend their aid to measures which have a

direct tendency to involve, nay, which must inevitably involve, the administration in the most serious embarrassments, and possibly deprive them of public confidence. General Jackson came into power as the advocate of economy, retrenchment, and reform. The people were taught to believe that he would not only rectify all the abuses of the Government, but that he would bring back the administration to the simplicity of the days of Thomas Jefferson; that he would pay the public debt, reduce the taxes, and diminish the expenditures; and no one who knows the President can doubt for a moment that such were his views, and such are now his intentions. And yet, sir, with a decided administration majority in both Houses of Congress, we find his friends lending their support to a system of appropriations more extravagant than has ever before been witnessed under this Government. I have taken some pains in looking into this matter, and now assert, that appropriations to a greater amount have already been made by the present than by any former Congress; and if the measures now before both Houses, with every prospect of success, shall prevail, the expenditures of the present year will exceed, by two or three millions, those of any year since the war. The Senator from Maine [Mr. HOLMES] tells us, "the people will not judge of General Jackson's administration by such a test," and adds, "that General Jackson ought not to be held responsible for expenditures made under acts of Congress." But, sir, will the opposition out of the House hold this language? or shall we not find their presences, from one end of the Union to the other, holding up in strong contrast the promise and the performance of the party, whose watchwords have been "economy and reform?" Let gentlemen say what they will, my life upon it, the people will never be satisfied with any excuses that can be offered for expenditures during the first year of General Jackson's administration exceeding any year of his predecessor's; and if such a state of things shall be brought about by the friends of the administration in Congress, on them will rest the responsibility for the consequences. Let me tell gentlemen that, if this administration shall not fulfill, in some degree, the high expectations of the people in this respect, it cannot retain public confidence; and I will add, that it is as certain as the progress of time itself, that the course pursued here, in relation to internal improvements, rivers, harbors, lighthouses, and pensions, if not arrested, will inevitably prostrate any administration that stands charged with measures that must inevitably delay the payment of the debt, and establish charges upon the treasury, which will greatly aggravate the burthens of the people, and leave us without a hope for the future.

Mr. CHAMBERS and Mr. HOLMES replied in support of the bill.

Mr. TYLER said that he would very briefly state to the Senate his objections to the bill. Little was left for him to say after the able argument which had been urged against the measure, by his friend from South Carolina, [Mr. HAYNE.] Every act of legislation should stand upon some general principle, and should embrace all who fell justly within that principle. This had been the case with most of the pension laws which had heretofore been passed. The invalid pension law extended to those who had sustained injury in the public service, which had contributed to incapacitate them from labor. This principle was just, since it applied as well to the man who had lost a leg, as to the one who had lost an arm. So with other pension bills. No one had proper cause to complain of the operation of the law, since the moment misfortune placed him within its influence, he felt its benefits. The revolutionary pension act of 1818 was, to a certain extent, founded in justice. The principle then was, inability on the part of the soldier to support himself without the assistance of the country. Each applicant for the governmental bounty,

was called on to make oath to his inability. All who were thus incapacitated to earn their daily bread, fell under its provisions, with a limitation which he had considered unjust—to the nine months continental troops. Thus excluding from its benefits all the State troops and militia, without regard to the fact that they too had, in many instances, served for a longer period than nine months, and that their services had been as truly valuable as the services of the continentals. Here justice had halted, not to say that injustice had commenced. The gallant corps of Marion and of Sumpter, to mention none others, had great cause to complain. They had stood forth for the country, in its hour of greatest peril and deepest gloom. Strangers to every comfort, their tent was the canopy of heaven, and their encampment the morass. Theirs was a pure and unalloyed patriotism, stimulated by no prospect of reward either in land or money. Their idol was their country—their only wish, its emancipation. But still the principle of the law was well ascertained and easily to be understood. That principle was necessity—great pecuniary on the part of the soldier. It rested upon charity. He was unable to see any just principle in the bill before the Senate. What was the condition on which the claim to the pension was proposed to be placed? The possession of property not exceeding one thousand dollars in value. Now where was the justice of this limitation? Why not extend it further? If a man have but so much over the one thousand dollars as would turn the scale in a degree however slight, he was to be excluded. This served to show that the bill was placed on improper ground. It was proposed to let go the principle of charity on which former laws had rested, and to assume an arbitrary landmark. Apply it to real life, and how would it work? One man, worth property amounting in value to one thousand dollars, is much more independent than another with a property of one thousand five hundred dollars. One might have no family, while the other might be surrounded with a numerous offspring. He had said that the bill proposed to give up the principle of charity in the Government, and necessity in the soldier. Could any Senator doubt it? Look throughout the Union, and this doubt would be dispelled. It might well be questioned whether more than half the citizens of the United States possessed estates of greater value than one thousand dollars; and yet they were independent; they had their fifty acres of land, and were surrounded by comforts. We were then to manifest our munificence, not our charity. Why then stop at the limits marked out by the bill? Why not embrace all who send in the resolution, without regard to their condition in life? He desired not to be misunderstood. He should not advocate the bill if it was thus modified. He was showing the unjust operation of that now before the Senate. The Government had no right to be munificent at the expense of the people, nor was there any proper occasion for it.

He had another objection to the bill, which was with him all-controlling. He took a view of it, which he was satisfied had not been taken by the committee. He was satisfied that the committee would recommend no measure which they believed to be corrupting in its tendency. And yet he considered this bill as obnoxious to that objection. By the acts of 1818 and 1820, the applicant was required to swear that he was in indigent circumstances, and required the assistance of his country for his support. Heretofore, many who were, fortunately for them, in possession of property much less in value than one thousand dollars, had abstained from taking this oath. They could not reconcile the oath to their consciences. Now, what are we called on to do? We are required to say to these men, "lay aside your scruples—swear that you stand in need of the assistance of your country for support, whatever may be your opinion upon that subject, and although, in truth, all your neighbors know that you possess the

means of living in comfort, yet Congress tells you otherwise, and you must, therefore, swear, in direct opposition to your own honest conviction." Was there ever held out to men a greater temptation to perjury? We actually offer a bounty for false swearing!

But the gentleman from Maine [Mr. HOLMES] informs us that this measure is recommended by the President; and expresses surprise that he should be found enlisted in its support, while the Senator from South Carolina stands in his behalf opposed to the administration. Mr. T. in the first place, denied that the odium of this measure rested with the President. True, he had recommended some further provision for the Revolutionary soldier, in his message; but had the committee of either House consulted him as to the provisions of this bill? How then could this be called a measure of the administration? Whilst he did not recognise the finger of the President in this particular measure, he would say to the Senator from Maine, that he had but one light to guide his footsteps, and that was the light of his own judgment. He was alone responsible to those whom he represented here, and to none other; and while he was prepared to give to the administration a fair support, yet, when he believed it in error, his duty to the country would require of him a candid expression of his opinions.

Mr. CHASE followed in support of the bill; when, about four o'clock,

The Senate adjourned.

FRIDAY, APRIL 30, 1830.

#### LAW DEPARTMENT.

On motion by Mr. ROWAN, the bill to re-organize the establishment of the Attorney General, and erect it into an Executive Department, was resumed in Committee of the Whole, with the amendment reported to it by the Judiciary Committee, which provides

For the establishment of an Executive Department, to be called the Law Department, and the Attorney General, for the time being, to be its chief officer, at a salary of six thousand dollars;

For the transfer thereto of the duties required by law from the "Agent of the Treasury," &c.

Mr. FORSYTH moved an amendment, excluding the Attorney General from the exercise of private practice; which was rejected.

A long debate took place on the proposed substitute of the Judiciary Committee, in which Messrs. ROWAN, HAYNE, JOHNSTON, SANFORD, and FRELINGHUYSEN, advocated it, and Messrs. BELL, FOOT, CHAMBERS, WEBSTER, and WOODBURY, opposed it and the original bill.

On the question to agree to the amendment of the committee, Mr. HOLMES asked for a division, and the question was accordingly taken on striking out of the original bill all after the enacting clause, and decided in the affirmative.

The question was then taken on inserting the substitute reported by the Judiciary Committee, and decided in the affirmative by yeas and nays, 24 to 22.

Mr. FOOT then moved the following as an additional section:

And be it further enacted, That the offices of Second Comptroller and Second Auditor be, and are hereby, abolished, and the duties now performed by the Second Comptroller shall be performed by the First Comptroller, and the duties now required by law to be performed by the Second Auditor shall be transferred to the Third Auditor.

Mr. WEBSTER then moved that the bill and proposed amendment be laid upon the table; which was decided in the affirmative by yeas and nays, 29 to 17.

Mr. W. then gave notice that he would on Monday next ask leave to bring in a bill to establish the office of Solicitor of the Treasury.

MAY 3, 1830.]

Pension Laws.—Judge Peck.

[SENATE.]

## PENSION LAWS.

The Senate then resumed the unfinished business of yesterday on the bill from the House of Representatives, "declaratory of the several acts to provide for certain persons engaged in the land and naval service of the United States in the Revolutionary war," with the amendment reported thereto by the Committee on Pensions.

Mr. FORSYTH moved that the bill and amendment be indefinitely postponed; which was decided in the affirmative, by yeas and nays, 25 to 20, as follows:

YEAS—Messrs. Adams, Barton, Benton, Bibb, Brown, Burnet, Clayton, Ellis, Forsyth, Grundy, Hayne, Iredell, Johnston, Kane, King, Livingston, McKinley, McLean, Noble, Rowan, Smith, of South Carolina, Tazewell, Troup, Tyler, White—25.

NAYS—Messrs. Barnard, Chambers, Chase, Dickerson, Dudley, Foot, Frelinghuysen, Hendricks, Knight, Marks, Naudain, Robbins, Ruggles, Sanford, Seymour, Silsbee, Sprague, Webster, Wiley, Woodbury—20.

MONDAY, MAY 3, 1830.

Mr. WEBSTER, on leave, brought in a bill to provide for the appointment of a Solicitor of the Treasury; which was read, passed to a second reading, and ordered to be printed.

## JUDGE PECK.

A message having been received from the House of Representatives, notifying that they had appointed Mr. BUCHANAN, of Pennsylvania, Mr. STORRS, of New York, Mr. McDEVIS, of South Carolina, Mr. SPENCER, of New York, and Mr. WICKLIFFE, of Kentucky, managers to conduct the impeachment of James H. Peck, Judge of the District Court of the United States for the District of Missouri;

On motion by Mr. TAZEVELL, it was Resolved, That, at twelve o'clock to-morrow, the Senate will resolve itself into a Court of Impeachment, at which time the following oath or affirmation shall be administered by the Secretary to the President of the Senate, and by him to each member of the Senate, viz.

"I solemnly swear (or affirm, as the case may be) that, in all things appertaining to the trial of the impeachment of James H. Peck, Judge of the District Court of the United States for the District of Missouri, I will do impartial justice, according to law."

Which Court of Impeachment being thus formed, will, at the time aforesaid, receive the managers appointed by the House of Representatives, to exhibit articles of impeachment, in the name of themselves and of all the people of the United States, against James H. Peck, Judge of the District Court of the United States for the District of Missouri, pursuant to notice given to the Senate this day by the House of Representatives, that they had appointed managers for the purposes aforesaid; and that the Secretary of the Senate lay this resolution before the House of Representatives.

Resolved, That after the Managers of the Impeachment shall be introduced to the bar of the Senate, and shall have signified that they are ready to exhibit articles of impeachment against James H. Peck, the President of the Senate shall direct the Sergeant-at-Arms to make proclamation, who shall, after making proclamation, repeat the following words: "All persons are commanded to keep silence, on pain of imprisonment, while the grand inquest of the nation is exhibiting to the Senate of the United States articles of impeachment against James H. Peck, Judge of the District Court of the United States for the District of Missouri." After which, the articles shall be exhibited, and the President of the Senate shall inform the managers that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives.

On motion by Mr. BENTON, the Senate resumed, as in Committee of the Whole, the amended bill to graduate the

price of the public lands, to make provision for actual settlers, and to cede the refuse, upon equitable terms and for meritorious objects, to the States in which they lie.

Mr. BENTON requested that the Secretary of the Senate should read the memorial of the General Assembly of Missouri, praying its passage; which was done. Mr. B. then explained the different sections of the bill. He said that the bill applied, not to the mass or whole body of the public lands, but to that part only which had been offered at one dollar and twenty-five cents per acre, and could not find a purchaser at that price. The quantity of these unsold and refuse lands he stated at about seventy millions of acres, and read extracts from the reports of the registers and receivers of the land offices, to show their quality and average value, and the length of time which they had been in market. These reports showed a large proportion of these unsold lands to be unfit for cultivation, and fixed their average prices at twelve or fifteen cents per acre in some districts, and in others as high as sixty or seventy cents. They showed that most of these lands had been a long time in market, many of them fifteen, twenty, or thirty years under the laws of the United States; and, in the countries acquired by the Louisiana and Florida treaties, they had been picked and culled for half a century, and, in some instances, a whole century, before they came into the hands of the United States. This was the character and value of the land to which the bill applied; and the idea was altogether erroneous which gave it a wider scope, and made it applicable to the whole body of the public lands. The terms on which the bill proposed to dispose of this unsold and refuse parcel of land, was the next point to be considered; and on this head, [Mr. B. said,] there were two sets of provisions contained in two different sections, and applicable to two descriptions of purchasers. The first set of provisions was open to all purchasers, and offered the lands at annual periodical reductions of price, beginning at one dollar per acre, and falling twenty-five cents in the acre, at the end of each year, until the price fell to twenty-five cents. The second set of provisions, contained in the second section, was intended for the benefit of actual settlers, and gave them a preference over general purchasers. The preference was secured by offering to the actual settler the privilege of buying the land at twenty-five cents less in the acre, at each successive gradation of price. Thus, when the price to the general purchaser was one dollar per acre, it would be seventy-five cents to the settler; when seventy-five to the former, it would be fifty to the latter; when fifty to one, it would be twenty-five to the other; and when twenty-five cents to the general purchaser, it was only five cents to the actual settler; a provision which was intended to operate as a donation in favor of poor people. There were two other sections which might be considered as subsidiary to the others, and merely intended to give more full and complete effect to their intention; one of them contained a provision for gratuitous donations in favor of poor families, without the payment of any price; the other was intended to secure those who had taken permits as tenants at will to the United States, under the act of 1807, or who might not take such permits, a preference over all other settlers or occupants, in purchasing the land on which they were settled. Having stated the principles and provisions of the bill, Mr. B. went on to show that the prices fixed in the different sections were just and reasonable; that they were calculated to accelerate the sales, and to obtain a fair and full price for the land. He said that the two sections established a competition between purchasers, which would prevent any one from waiting for the land to fall below its just value. When it was at one dollar, the general purchaser could not wait for it to fall to seventy-five cents or fifty cents per acre, because the actual settler would have the preference at twenty-five cents less in the

acre at each reduction, and would intercept the purchase. The competition would be keen and decisive throughout, the settler always having the advantage, both in point of price and of time. With the settlers themselves, who had made improvements, and considered the land as their home, they would be glad to take the land at its fair value, whenever it fell to it, and would be more apt to buy it at a rate above than below its value, in order to save their labor and their home. There was one point of view, [Mr. B. said,] which ought to be decisive in favor of these reductions of price; it was this: that every tract to which this bill was applicable, was a tract of inferior value, consisting of a few acres only fit for cultivation, the rest worthless and sterile; and if one dollar twenty-five cents all round is for ever demanded for these broken spots, where the bad land is five or ten times greater in quantity than the good, it would bring the good land to five or ten dollars an acre, instead of the minimum price, which is now demanded. He illustrated this idea, by saying that all the surveys were run out at right angles; that the lines paid no respect to the quality of the soil; that a quarter section would sometimes have a patch of twenty or thirty acres of good land in one corner, and the rest good for nothing; or it would lie across a creek, or a branch, where there would be a narrow bottom of rich ground, and the ends of the quarter section stretching into sterile hills and ridges.

Mr. B. adverted to the price of lands in the State of Maine, where the Legislature of the State fixed the prices, and adapted the price to the quality, and made that price, even at its highest minimum, as low as the lowest, and sometimes lower than the last minimum which the graduation bill proposed. To show this, he read the following advertisement for the sale of lands in Maine, in the year 1828.

#### THE ADVERTISEMENT.

**Timber Lands.**—The minimum prices at which the following townships and tracts of land may be sold, having, under the advice and direction of the Governor and Council, been fixed and determined upon, they will be offered for sale at public auction, at a price per acre not less than that set against each township or tract, on the terms and conditions provided by the sixth and seventh sections of the act entitled "An act to promote the sale and settlement of Public Lands," as follows:

Township No. 1, range 1, Titcomb's survey, containing 22,900 acres, 20 cents per acre.

Township No. 7, range 2, Titcomb's survey, containing 30,000 acres, 20 cents per acre.

Township No. 3, range 4, Norris and McMillan's survey, containing 23,163½ acres, 20 cents per acre.

Township No. 4, range 5, Norris's survey, containing 23,040 acres, 25 cents per acre.

Township No. 2, range 9, Norris's survey, containing 23,040 acres, 25 cents per acre.

Township No. 3, range 14, Norris's survey, containing 19,787 acres, 25 cents per acre.

Tract A 2, in ranges 13 and 14, Norris's survey, containing 17,920 acres, 25 cents per acre.

Tract X, range 14, Norris's survey, containing 5,778 acres, 25 cents per acre.

These lands are considered to be valuable for timber, and will be reconnoitered, and divided into parts of townships and tracts. No larger tract than a township of six miles square, nor a less quantity than would be contained in one mile square, can be sold to one individual or company. When a township or tract may be divided and sold in separate lots, the minimum price of each part will be regulated according to its relative value to the whole township or tract.

The terms of payment required by law, are one-fourth part of the purchase money at the time of sale, and the residue to be secured by notes of the purchaser, with

good sureties, payable in three equal annual instalments with interest annually.

DANIEL ROSE, Land Agent.

Augusta, July 21, 1828.

Having read the advertisement, Mr. B. commented upon the advantage which the State of Maine had over the other new States, in being the mistress and sole disposer of her own public lands. Her own Legislature fixed the terms, and fixed them equitably; and put it into the power of every citizen to become a freeholder. Missouri would be glad to do the same, but her public lands were at the disposal of Congress, and he could only quote the example of Maine as one worthy for Congress to follow. But he said the advertisement he had read was only one out of thousands which had been put forth; that he had been told of others which fixed the minimum prices as low as ten and five cents an acre; and that Massachusetts, who owned half the public lands in Maine, also sold them at the same low and easy terms. Mr. B. said that he would quote Maine for another purpose—for the purpose of showing the groundless folly of being alarmed about speculators. There were no speculators in Maine; he had heard of but one large purchaser there, and he was injured by the purchase. It was a Mr. Bingham, who had bought two and a half millions of acres from Massachusetts, at ten cents an acre, and, from all reports, would rejoice to get rid of his bargain, (or rather his heirs would,) and get back the principal without interest, or interest without principal. Nothing in the graduation bill descended so low as these prices in Maine, yet the Maine lands were all fresh and unpicked, and sold upon a credit of one, two, and three years. Such were the advantages which the State of Maine derived from the prudence of Massachusetts, in withholding her public lands from the Federal Government. But justice was justice. Equity was the same under a federal or the State Government; and, therefore, the example of Maine and Massachusetts, in selling their lands at prices adapted to their quality, and on terms so moderate as to put it into the power of every citizen to become a freeholder, might well be quoted in this chamber, and held up as presenting an example which the Congress ought to follow.

Mr. B. said, there was another piece of information, necessary to enlighten the decision of the Senate, which he had taken pains to procure, and to procure in an authentic and unquestionable form, that the great fact which it presented might come before the Senate with the full weight of certain and undeniable truth; it was the great number of non-freeholders in the new States and Territories. His travels and personal observation had convinced him that this number was great, incredibly great, and that nothing but an accurate and official statement could produce a conviction of the fact. He had, therefore, taken measures to obtain this accurate statement; he had moved a resolution in the Senate two years ago, to obtain from the marshals in the new States and Territories a return of the number of the free taxable inhabitants who are not freeholders, as exhibited by the tax lists; the return had been made to the Department of State, and communicated to the Senate, printed by its order, and forms a document in the session of 1828-'29. He would read the table of recapitulation, which showed the number of these non-freeholders.

#### THE TABLE.

Abstracts from the returns of free taxable inhabitants, who are not freeholders; made to the Department of State, by the Marshals of Ohio, Indiana, Illinois, Missouri, Alabama, Mississippi, Louisiana, Florida, and Michigan, in compliance with the resolution of the Senate of the United States, of April 25th, 1828.

1. Ohio,	-	-	56,286
2. Indiana	-	-	13,485
3. Illinois	-	-	9,220
4. Missouri	-	-	10,118

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Judge Peck.

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5. Alabama	-	-	39,368
6. Mississippi	-	-	5,505
7. Louisiana	-	-	3,466
8. Florida	-	-	1,906
9. Michigan	-	-	985
10. Arkansas, (no return.)	-	-	

Having read the document, and shown the number of non-freeholders in each of these States and Territories, Mr. B. stated that the aggregate exceeded one hundred and forty thousand; and ventured to affirm that the like spectacle was not to be seen elsewhere upon the face of the earth; that there was not another country under the wide canopy of heaven, in which a government having more land than it could sell, or even give away to cultivators, would deprive so large a portion of its citizens of homes for themselves and families, by holding up refuse and inferior land for a price five times and ten times above its value. This was the exact case with the Federal Government. It held about seventy millions of acres of refuse lands in the States and Territories, where these one hundred and forty thousand non-freeholders live, and yet would not let them have an acre of it at its value! Mr. B. did not speak of the new lands which the Government possessed, and which would come hereafter into market; they amounted to hundreds of millions of acres, and would still continue to be sold at one dollar and twenty-five cents per acre; he spoke of the refuse lands only, those which had been offered at one dollar and twenty-five cents, and can find no purchaser; those which are the remains of all the sales which have taken place since the commencement of the land sales, and many of which had been previously picked and culled under foreign Governments, as in Missouri, Arkansas, Louisiana, Florida, and a part of Mississippi, Illinois, and Michigan, before the United States acquired them. These were the lands of which he spoke, and for which he claimed a reduction of price. It was on these that the one hundred and forty thousand non-freeholders were chiefly settled, and where they were losing their time between hope and fear—hoping that the Government will reduce the price, to enable them to purchase, and fearing to make any beneficial or valuable improvement, lest it should excite the avarice of some unprincipled speculator to enter the land over their heads, for the sake of the improvement which had been put upon it. It was a mistake to suppose that this large body of non-freeholders were idle and vicious people; and that it was their vice and idleness which kept them too poor to buy land at one dollar and twenty-five cents per acre. Mr. B. said that he knew better; he knew this class of people well; he had travelled among them, slept in their houses, ate at their tables, and knew them to be the best of citizens; men who did not think of living upon the public, but upon their own labor; whose object was to cultivate the earth, and to defend it; who were industrious farmers at home, and brave soldiers in time of war; who were hospitable, brave, and honest, and merited the esteem of all good men, as well as the favor and protection of the Government. How then, it might be demanded, did it happen that these persons were not able to buy land at one dollar and twenty-five cents per acre? Mr. B. would answer that inquiry with the precision and triumph of truth. In the first place, it is a difficult undertaking for a poor man, in a new country, where there is but little money, and few objects which will command it, to accumulate as much money as would buy a half-quarter section of land at that price. It would require one hundred dollars to make the purchase; and the greatest proportion of poor people, in new countries, never see the day when they have that sum on hand. They marry early; their daily labor is necessary to support their families; they have little to spare for market, and the proceeds of that little are absorbed in the purchase of salt and iron, in the payment of taxes, in small expenses when they go abroad, in the blacksmith's

bill, sometimes in physicians' bills, or lawyers' fees, and in the various contingencies of fraud and accident and misfortune, to which the life of man is subject. This is a reason, a true and natural one, why so many people, without any fault of their own, are unable to accumulate the sum, to them an immense one, of one hundred dollars, to buy a piece of federal land. But it is not the only reason why they do not buy. There is another and most decisive reason why they should not if they could. It is this: That these refuse lands upon which they live are not worth one dollar and twenty-five cents per acre, and they ought not to give that sum for it, even if they had thousands! Look at the reports of the registers and receivers. See the quality and value of these lands as returned by them. The greater part returned as unfit for cultivation; the rest chiefly as second or third rate, averaging twelve and a half cents, fifteen cents, eight cents, twenty cents, five cents, three and a half cents, in most instances, per acre; and seldom rising as high as fifty, sixty, or seventy-five cents. The fact is, that these refuse tracts are mixed with good and bad, the greater part bad, often not more than twenty or thirty acres fit for cultivation, the rest fit for nothing; and it would be absurd, iniquitous, and cruel to the poor, to whom these little tracts are useful, to demand the same price all round, as if every acre was first rate. These refuse tracts are not worth the present minimum price. They are not worth what the first choices were, and it is a folly to ask it, as much so as it would be in a butcher to ask the same price for the shanks and necks and offal of his beef, as he demanded for the hind quarter. Individuals adapt the prices of the land they offer for sale, to its quality and actual value. All the States did the same when they had land to sell. Massachusetts and Maine are now doing the same. And it is out of the question for this Federal Government, which has become the great landholder of the West, and pays no taxes upon its hundreds of millions of acres, to have but one price for all qualities; to demand the same for first rate, second rate, third rate, and no rate at all; to demand the same for a quarter section of broken, hilly ground, half barren, part rock, part swamp, part sterile ridges, without a spring or well, which is demanded for a quarter section of rich, level land, well watered and timbered, and every acre fit for the plough. This is the case at present; this is the present mode of conducting land sales by the Federal Government; but it is an unjust mode, it is condemned by the common consent and universal practice of all mankind. It cannot be defended. No man can stand up and say it is right. Justice to the new States and Territories, and the interest of the federal treasury, requires it to be altered—requires the price to be adapted to the quality of this refuse land; and the bill which is now before the Senate is intended to accomplish that just and equitable object.

Mr. B. recurred to the early prices which had been proposed for the public lands, and showed that able statesmen had fixed lower prices than the graduation bill contained. He quoted General Hamilton's reports, when Secretary of the Treasury, the first of which fixed twenty cents, and the next one fifteen cents per acre, as the average value of the public lands. He quoted also the report of the first committee of the House of Representatives under the organization of the present form of Government, which recommended thirty cents per acre; and argued that it would have been better for the United States that these low prices should have been fixed when proposed near forty years ago, as the sales of the lands would have been rapid, and the proceeds of them promptly received and applied to the extinguishment of the public debt. Every sixteen years, he said, the price of the land was lost in the payment of interest on the public debt. The whole capital was sunk in every period of sixteen years, and the lands would have gone as far towards the

payment of the debt at thirty cents an acre sixteen years ago, as at sixty cents now; and so in future. Mr. B. also adverted to the price fixed on the public lands by the ordinance of the old Congress in 1788, which was one dollar per acre, and to the vote then given by the States of New York, New Jersey, Maryland, and South Carolina, to reduce that price to sixty-six and two-thirds cents; and then contended, that if the price of one dollar per acre (and which, in the opinion of so many other States, ought to have been but little more than half that sum) was the original price when the lands were fresh and unpecked, it ought to be reduced at least as low as the graduation bill proposed to reduce it, after all the good tracts had been sold out, and nothing but broken and refuse tracts remained behind.

With respect to the donation clause, which the bill contained, Mr. B. advocated it at length, and with many facts and arguments. He stated that it was the policy of Mr. Jefferson, at the first acquisition of Louisiana, to make donations to actual settlers, for the purpose of populating the country and defending it. He had proposed that a donation of a quarter section should be made to the first thirty thousand settlers that should go to the country; and considered their services, in settling and defending the country, in subduing the wilderness, and spreading the blessings of civilization, as the most meritorious price which they could pay for the land.

Mr. B. considered the settlement of the country, and the cultivation of its soil, as the true wealth of the Union; the mere price of the land, received into the treasury, was a trifle compared to it. The whole amount of money received for the sale of public lands, was thirty-four millions of dollars; from which there was to be deducted the heavy expenses of surveying and selling it; while the amount received during the same time, from the cultivation of the land, in the shape of duties collected from the imports which were bought with the cotton, tobacco, rice, grain, provisions, and other articles, raised on the soil, and exported, amounted to five hundred and twenty millions of dollars. Such was the difference between the sale and the cultivation of the soil, but not all the difference; for the price of the land sold could be received but once, while the collection of duties from the produce of the land was perpetual and eternal. As long as crops are raised, duties can be collected. The greater the crops, the greater the revenue. And it certainly would be wise policy, in a mere money-raising point of view, for the United States to make a donation of a quarter section of land to every family that would settle and cultivate it. Instead of that, our citizens are not allowed to purchase at a fair price; they are not allowed to buy land at its first value; one hundred and forty thousand free taxable inhabitants are without land, in the new States and Territories abounding with vacant land. They are sighing for the waste land which lies around them; realizing the fabulous picture of the man who perished for a drink of water, while standing in water up to his chin. Nor was it these one hundred and forty thousand only that wanted to purchase, but almost every farmer in the new States and Territories. The whole of these, as their means and families increase, want more land. They wish to add to the size of their farms, either for the purpose of extending their fields, or securing wood, or keeping open an outlet, or keeping off an intrusive neighbor, or making pasture, or providing settlements for children. For some of these various purposes, almost every farmer and landholder, now in the West, would be desirous to make new purchases, and would make them, if the price of the land was adapted to its value. As it is, they take the public timber gratis, injuring the land, and paying no price to the Federal Government, nor any tax to the State Government. But this is not their fault, but the fault of the Government, which demands a price above the value, and which no man ought to give,

or will give. Let the price be suited to the quality, and the sales will be rapid where they are now stagnant. Farmers will buy the land which they now use gratis; and, instead of waiting for it to fall to the lowest minimum, they will be careful to buy as soon as it falls to its true value, lest some other person should buy before them, and either hold the land to their annoyance and injury, or make them pay an advanced price for it. This would be the operation of the bill. One hundred and forty thousand occupants would be raised to the condition of freeholders; several hundred thousand farmers would buy additional tracts; the receipts into the public treasury would be doubled; the State taxes would be increased; the exports would be augmented; the revenue collected from imports would be augmented in the same proportion; and every interest, federal, State, and individual, would be promoted and confirmed.

Mr. B. said that he had spoken so often on this subject, that he was afraid of being tiresome to the Senate. This fear restrained him from following up the subject. He earnestly wished that every Senator could see the question in the light he did; could have the benefit of his own observation; and he would feel safe as to the result. In place of that personal knowledge, he must refer them to the voice of the members who came from the West, to the numerous memorials from the State Legislatures, which prayed for the passage of this bill; and to the reports of the registers and receivers, which showed the average value of the land to be less than the graduated prices which the bill proposed for it. The bill was a favorite one with him; but he was not blindly wedded to it. He liked it because he thought it was good; he preferred it because he thought it was best; but he was not madly enamored of it because it was his own. He was for the good of the people; he was for doing what was the best for the country; and if any member of the Senate could produce a better plan, he would gladly embrace it. One thing he was particularly anxious about; and that was, that this bill should be tried upon its own merits, and passed or rejected accordingly; that it should not be postponed for the final policy which might govern the disposition of the public lands after the payment of the public debt; but acted upon now, and with a view to the single and equitable object which the bill presented—that of reducing the price of the refuse land, which will not sell for one dollar twenty-five cents per acre, and making equitable provision for actual settlers and cultivators.

Mr. BARTON next rose. He said that he did not intend to enter into this debate; but, as no other member seemed disposed to take part in it, he would take this opportunity to put himself right before his constituents, with respect to an accusation contained in the postscript to a former speech upon this subject, [Mr. BAXTON's speech upon the Graduation bill, May 16th, 1826,] which had been circulated throughout Missouri. As the postscript had not been spoken on this floor, he had no opportunity to refute the charge contained in it at the time; but would now call upon the Senators from Virginia and Louisiana [Messrs. TAKEWELL and JOHNSTON] to testify in his behalf as to its truth. Mr. B. said, the speech of 1826, alluded to, was made on the 16th of May, at the close of the session, when the Senate was much pressed with business, and concluded with an express declaration of the mover of the bill that he did not intend to ask for a decision upon it at that session. Under these circumstances, and no member showing any disposition to say any thing upon the subject, [Mr. B. said] he moved to lay the bill on the table, which was unanimously assented to as a matter of course; and the Senate proceeded to the great mass of business before it. Mr. B. said, the part of the postscript to which he now called the attention of the Senator from Virginia, was the following; in which the author [Mr. BAXTON] says—

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Controversies between States.

[SENATE.]

"After the delivery of this speech, a motion was made by one of the opponents of the bill, to lay it on the table; which motion, not admitting of debate, prevented many Senators, who were favorable to the main object of the bill, from declaring their sentiments. Among these was Mr. TAKEWELL, of Virginia, one of the most distinguished men in America, and whose sentiments, as a Senator from the State which was the greatest donor of the Western lands, are entitled to peculiar respect, and must have uncommon weight. Disappointed in his expectation of having an opportunity to declare his sentiments on the bill to graduate the price of the public lands, Mr. TAKEWELL afterwards deposited upon the table of the Senate the following resolution:

"Resolved, That it is expedient for the United States to cede and surrender to the several States within whose limits the same may be situated, all the right, title, and interest of the United States to any land lying and being within the boundaries of such States, respectively, upon such terms and conditions as may be consistent with the due observance of the public faith, and with the general interest of the United States."

After reading to the Senate the foregoing extract from the postscript, and the resolution, Mr. B. called on Mr. TAKEWELL, in his place, to say whether he had been prevented from delivering his sentiments on the graduation bill, by him, and driven to offer the resolution as an expression of those sentiments, as stated in the postscript, or not; and offered to send the postscript and resolution to the Senator from Virginia.

Mr. TAKEWELL rose, and said it was unnecessary to send them, for he remembered the resolution perfectly well; and that, in offering it, he was not influenced by any movement of the Senator from Missouri. [Mr. BARTON] nor had his movement any connexion with the motion of the Senator to lay the graduation bill on the table; that he had entertained the design to offer such a proposition for some time before the debate alluded to, and had drawn up the resolution and shown it to several members before offering it; and that he had no intention to take any part in the debate on the graduation bill, that had been referred to in the postscript.

Mr. BARTON again rose, and read the following from the postscript to Mr. BARTON's speech:

"Mr. JOHNSTON, of Louisiana, who had, in like manner, been disappointed, submitted a resolution to obtain from the General Land Office, by the commencement of the next session, a report upon the qualities and value of the public lands in Louisiana and Mississippi, preparatory to the discussion of the bill to graduate the price of the public lands, at the next session."

Having read the extract, Mr. BARTON called on Mr. JOHNSTON, of Louisiana, in his place, to say whether he had been prevented from delivering his sentiments on the occasion mentioned in the postscript, or disappointed, as represented by the motion to lay on the table.

Mr. JOHNSTON said, in substance, that he did speak, at one session, on the graduation bill, which was probably the session after the one referred to. He did not remember to have been prevented at any time, and he was sure the motion to lay the bill on the table was not with a view to prevent his speaking; and that his resolution had in view to obtain a description of the lands in Louisiana, with a view to obtain a cession of them to the State, or to graduate the price to the quality at a subsequent session.

[The bill was then ordered to lie on the table.]

#### CONTROVERSIES BETWEEN STATES.

The bill reported to the Senate, "prescribing the modes of commencing, prosecuting, and deciding controversies between States," being next under consideration, the Chairman of the Judiciary Committee [Mr. ROWAN] made a motion for its indefinite postponement.

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Against this motion Mr. ROBBINS spoke to the following effect:

This bill provides the process for enabling the Supreme Court to decide controversies between State and State, but does not provide any process for enforcing the decision. This omission, while it relieves the bill from exception, will not impair its efficacy. The question of right being settled by the Supreme Court, the bill leaves it to the voluntary justice of the State found to be in the wrong to make restitution of the right which had been withheld; presuming coercion to be unnecessary.

For my part, I cannot imagine any reasonable ground on which the adoption of such a law can be resisted. For, as no force is to be employed, no coercion to be resorted to, it cannot endanger the peace of the Union; it need not even disturb the fraternity of the contending States; and yet it will be sufficient to vindicate the national justice, and to redeem the pledge given to the several States when they adopted the constitution, and, by the constitution, that they should obtain this justice under its authority.

Besides, the law is limited to a period of five years; and if on trial it is found to be inconvenient, of which there is no probability, no possibility indeed, the inconvenience will be but temporary. It is to be but an experiment; an experiment which promises beneficial results, and these very important, and which may be made without the risk, so far as can be foreseen, of one possible evil.

In the course of five years, every subsisting controversy of the kind in question, may be, and probably will be, prosecuted and closed, and the continuance of the law become unnecessary. The constitution will then stand acquitted of its obligation to the States complaining of wrong and claiming redress, of its obligation to afford them that redress, and probably its power need never again be exerted.

The objection to this law, if any, should come, I think, from the complaining States, as being a law that may not be effectual to its end, as it provides no means for the enforcement of the decree when made. But it is these complaining States who apply for the law. They say, give us this law, and we are content; we ask for no other, we wish no better. For they are confident it will be effectual to its end; that no State in this Union will consent to stand under the opprobrium of withholding that justice which has been decreed against her, in favor of a sister State, by the Supreme Court of the nation, under the authority of the constitution. That very State pride, which opposes itself to this bill, is their warrant for this confidence; for that pride never would brook, for a moment, the reproach of persisting in a wrong, pronounced by the constitutional voice of the nation to be a wrong, and which the State itself could no longer say was not a wrong. Besides, they have for this confidence the warrant of all past experience; both our own, and that of every other confederacy which ever has existed. The provision for settling controversies among the federal members by the authority of the federal power has been common to them all. Indeed, it would be preposterous to think of forming a federal constitution without such a provision. For one of the chief ends of forming a confederacy is, to preserve peace among its members; and this is one of the obvious and necessary means of preserving peace. In every instance of a confederated government, that ever has existed, except our own under the present constitution, that provision has been organized, and made effectual to its end; but in no instance has it ever been found necessary to execute by force the decree of the constituted tribunal. The decree alone has always been found sufficient to execute itself. The decree is itself the execution; has all the force of an execution; and, like the decrees of the Exchequer against the



King of England, carries itself into execution. Such is the testimony of all experience upon the subject.

To notice this matter historically, but briefly, however, very briefly:

The Amphictionic council was the Supreme Court of Greece, and decided the civil controversies between the sovereignties which composed that celebrated confederacy; and though those controversies were frequently litigated before, and decided by, that august tribunal, yet history mentions no instance in which the decree was resisted, or in which force was found necessary to its execution, though that tribunal might arm itself with the whole force of the confederacy for this purpose.

In the Germanic confederacy, the decrees of the Aulic Council and Imperial Chamber, (which was, and I believe still is, the Supreme Court as to all civil controversies of that confederacy)—these decrees might be enforced by the ban of the empire. But when was that ban ever employed to enforce the decree in such controversies? We read of none.

In the Swiss confederacy, civil controversies between the cantons is settled by arbitration; and though the federal arm may be employed to enforce the award, it never is employed, because it never has been found necessary to employ it.

The same may be said of the United Netherlands. Under a similar provision, their civil controversies between their States are settled, and are peaceably settled; and though force may be employed to enforce the decree, it never is employed, because it never has been found necessary to employ it.

In our first, commonly called our old confederation, we had the same provision; and that provision was organized by the old Congress; and though the court appointed for this national object—(which was to be appointed, and was appointed, occasionally, and for the case as it occurred, upon application to Congress)—though the court was clothed with no power to enforce its decree, and though no means were provided to enforce it, yet the decree went silently into complete effect. Witness the decree in the case of the controversy between the States of Connecticut and Pennsylvania, and some others, if I rightly recollect.

There is no reason, then, to doubt, as it appears to me, the efficiency of such a law as the bill proposes, to the great object of the constitution, though it only provides the process for enabling the Supreme Court to settle the question of right, and does not provide any process for enforcing the decrees which they may pronounce.

Now consider—and I call particularly upon those States to consider, who have no present and direct interest in this question—that these controversies are so many sources of discord between the States who have this present and direct interest, which this remedy will quietly and expeditiously extinguish, and without which these sources of discord must remain eternal as the constitution itself, ranking in the bosom of the suffering States, and ranking the more because remediless, and because the keen sense of injustice is to be aggravated to them by the keener sense of hopeless despair. When they adopted the constitution, they surrendered that prerogative of a sovereign State which made them their own judges of their own rights, and their own vindicators of their own rights; and they made the surrender on the pledge, in that constitution, and by that constitution, that those rights should be vindicated by the federal authority. And are they now to be told, and by the Federal Government, too, that this was a piece of mockery played off upon them? that they are bound, but that the Federal Government is not bound? and that the pledge given is not to be redeemed? So it would seem, by the recommendation of the committee who reported the bill; for they recommend its indefinite postponement, which, in other words,

is to say that this provision of the constitution ought never to be executed. For they do not say, and will not say, that any thing in the present time forbids it, which will not equally forbid it in all future time. And, if this recommendation is followed, this body also say this provision ought never to be executed.

Now let the Senate consider that this provision of the constitution is not a discretionary trust in the hands of the Government, to be executed or not executed at their discretion, but that the trust is imperative. The constitution says, "the judicial power shall extend to controversies between two or more States." That is the injunction of the constitution upon the Government, its functionary and trustee. To refuse to execute this provision, then, is to disobey this injunction; and you do refuse its execution, if you refuse the process necessary to the execution. For the Supreme Court have no power to provide it; the States have no power to provide it: the common law does not provide it, for the common law knows nothing of a suit by a State against a State, in a confederacy, before the common tribunal of that confederacy; it has, therefore, no forms for such a case. Without an authorized process, the Supreme Court cannot entertain jurisdiction of a suit by a State against a State; and Congress alone can provide it.

Suppose you had the power to obliterate this provision from the constitution, would you propose to do it? or, if proposed, would you consent to do it? Such a proposition, I am confident, would not find a patron in this House, nor a defender in this nation. And yet, if you do refuse to execute this provision, and on the principle that it ought never to be executed, it is blotted out from the constitution; for there is no difference between its remaining a dead letter for ever in the constitution, and its being blotted out for ever from the constitution. Now, where will gentlemen find a justification for destroying a trust put into their hands for execution, and that enjoined by the deed of trust under which they act? I know not; let gentlemen tell me where, if they can.

I beg gentlemen to consider, too, that this provision is not one of doubtful meaning, nor of doubtful intention: on the contrary, it is so direct and explicit that it can neither be misunderstood nor misinterpreted: no commentary can elucidate, no glossary can obscure it: for the plain short scripture is—"The judicial power shall extend to controversies between two or more States." And the intention of the parties is just as manifest as the meaning of the words. It was important to the States having or to have these controversies, to have them settled. It was the intention of the United States, therefore, that they should be settled; and it was the understanding of these States that they would be settled under this provision.

We all mean to be faithful to the constitution; our trust imposes it as an obligation, to which we have superadded the obligation of an oath. Now I ask whether resisting the execution of a provision in the constitution, intended to be executed by one party, and understood and accepted by the other as intended to be executed, is being faithful to the constitution? I put that to the conscience of the Senate.

Again, let me beg gentlemen to consider that this provision is, in fact, a stipulation made by the United States with these States, that they should have these controversies settled by the adjudication of the Supreme Court; a stipulation offered on one side, and accepted on the other, and solemnly ratified by both. Now one of the parties, the party for whom, and with whom, the stipulation is made, calls upon the other to perform this stipulation; he produces his title deed; he reads the covenant in the deed; it is explicit, it is undeniable; he claims its fulfillment; he invokes the faith pledged for its fulfillment. Now I ask you, gentlemen—you, the Senate of the United States—you, the depository of this pledged faith, and the

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functionary to discharge its obligation, whether this invocation shall be made to you, and made in vain.

If it could be said that no State controversies were now subsisting, it might be said that the execution of this constitutional trust was not now necessary. But this cannot be said. A number of these controversies do subsist, and have long subsisted, and must for ever subsist, without this remedy to determine them. I speak advisedly as to one in particular. The State, one of whose Representatives I have the honor to be in this body, contends that a portion of her territory and jurisdiction, and the resources involved therein, amounting nearly to one-tenth of that territory, is now occupied (she does not say is now usurped, for that she leaves for the competent tribunal to say) by a neighboring State. Long, and long, and long, have they endeavored to settle this controversy by negotiation, but all their efforts have proved fruitless; and always will and must prove fruitless. Finding negotiation hopeless, Rhode Island proposed to settle the controversy by arbitration. She was desirous that some distinguished civilian or civilians should be called in to settle for us what we could not settle for ourselves; but our neighbor declined the proposition. We then proposed an amicable suit to the Supreme Court of the United States, waiving, by agreement, all forms of process, and submitting only the abstract question of right to that tribunal. This, too, was refused. So her case, without this or some similar law, is without remedy, and without hope. If this, too, be refused by Congress, she must submit to her fate; hard as it is, she must submit. But she will think, for so it will be, that the faith of the constitution, pledged to her by the constitution, and trusting to which she accepted the constitution, has been forfeited, and that her confidence in that pledge has been a delusion.

The Senate then adjourned.

THURSDAY, MAY 4, 1830.

#### THE IMPEACHMENT.

On motion by Mr. TAZEWELL, the Senate resolved itself into a High Court of Impeachment, for the trial of James H. Peck, District Judge of Missouri; and the oath prescribed having been administered to the Vice President, and by him to the forty-five Senators following, viz.

Messrs. Adams, Barnard, Barton, Bell, Bibb, Brown, Burnet, Chase, Clayton, Dickerson, Dudley, Ellis, Foot, Forsyth, Prelinghuysen, Grundy, Hayne, Hendricks, Holmes, Iredell, Johnston, Kane, King, Knight, Livingston, McKinley, McLean, Marks, Naudain, Noble, Robbins, Rowan, Ruggles, Sanford, Seymour, Silsbee, Smith, of South Carolina, Sprague, Tazewell, Troup, Tyler, Webster, White, Willey, Woodbury—

The Managers appointed by the House of Representatives then appeared at the bar of the Senate; and, having been conducted and seated within the bar, and the usual proclamation to keep silence having been made by the Sergeant-at-Arms, Mr. HENRMAN, of Pennsylvania, their Chairman, rose, and read the following article of impeachment, which had been agreed to by the House of Representatives, against James H. Peck, District Judge of the United States for the District of Missouri:

Article exhibited by the House of Representatives of the United States, in the name of themselves, and of all the people of the United States, against James H. Peck, Judge of the District Court of the United States for the District of Missouri, in maintenance and support of their impeachment against him for high misdemeanors in office.

#### ARTICLE.

That the said James H. Peck, Judge of the District Court of the United States for the District of Missouri, at a term of the said court, holden at St. Louis, in the State

of Missouri, on the fourth Monday in December, one thousand eight hundred and twenty-five, did, under and by virtue of the power and authority vested in the said court, by the act of the Congress of the United States, entitled "An act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims," approved on the twenty-sixth day of May, one thousand eight hundred and twenty-four, render a final decree of the said court in favor of the United States, and against the validity of the claim of the petitioners, in a certain matter or cause depending in the said court, under the said act, and before that time prosecuted in the said court, before the said Judge, by Julie Souldard, widow of Antoine Souldard, and James G. Souldard, Henry G. Souldard, Eliza Souldard, and Benjamin A. Souldard, children and heirs at law of the said Antoine Souldard, petitioners against the United States, praying for the confirmation of their claim, under the said act, to certain lands situated in the said State of Missouri; and the said court did, thereafter, on the thirtieth day of December, in the said year, adjourn to sit again on the third Monday in April, one thousand eight hundred and twenty-six.

And the said petitioners did, and at the December term of the said court, holden by and before the said James H. Peck, Judge as aforesaid, in due form of law, under the said act, appeal against the United States from the judgment and decree so made and entered in the said matter, to the Supreme Court of the United States; of which appeal, so made and taken in the said District Court, had then and there full notice. And the said James H. Peck, after the said matter or cause had so been duly appealed to the Supreme Court of the United States, and on or about the thirtieth day of March, one thousand eight hundred and twenty-six, did cause to be published, in a certain public newspaper, printed at the city of St. Louis, called "The Missouri Republican," a certain communication, prepared by the said James H. Peck, purporting to be the opinion of the said James H. Peck, as Judge of the said court, in the matter or cause aforesaid, and purporting to set forth the reasons of the said James H. Peck, as such Judge, for the said decree; and that Luke Edward Lawless, a citizen of the United States, and an attorney and counsellor at law in the said District Court, and who had been of counsel for the petitioners in the said court, in the matter aforesaid, did, thereafter, and on or about the eighth day of April, one thousand eight hundred and twenty-six, cause to be published in a certain other newspaper, printed at the city of St. Louis, called "The Missouri Advocate and St. Louis Enquirer," a certain article signed "A Citizen," and purporting to contain an exposition of certain errors of doctrine and fact alleged to be contained in the opinion of the said James H. Peck, as before that time so published, which publication by the said Luke Edward Lawless was to the effect following, viz.

"To the Editor:

"Sir: I have read, with the attention which the subject deserves, the opinion of Judge Peck on the claim of the widow and heirs of Antoine Souldard, published in the Republican of the thirtieth ultimo. I observe that, although the Judge has thought proper to decide against the claim, he leaves the grounds of his decree open for further discussion.

"Availing myself, therefore, of this permission, and considering the opinion so published to be a fair subject of examination to every citizen who feels himself interested in, or aggrieved by, its operation, I beg leave to point the attention of the public to some of the principal errors which I think I have discovered in it. In doing so, I shall confine myself to little more than an enumeration of those errors, without entering into any demonstration or developed reasoning on the subject. This

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would require more space than a newspaper allows, and, besides, is not, as regards most of the points, absolutely necessary.

"Judge Peck, in this opinion, seems to me to have erred in the following assumptions, as well of fact as of doctrine:

"1. That, by the ordinance of 1754, a sub-delegate was prohibited from making a grant in consideration of services rendered or to be rendered.

"2d. That a sub-delegate in Louisiana was not a sub-delegate, as contemplated by the said ordinance.

"3d. That O'Reily's regulations, made in February, 1770, can be considered as demonstrative of the extent of the granting power of either the governor general or the sub-delegates, under the royal order of August, 1790.

"4th. That the royal order of August, 1770, (as recited or referred to in the preamble to the regulations of Morales, of July, 1799) related exclusively to the governor general.

"5th. That the word 'mercedes,' in the ordinance of 1754, which, in the Spanish language, means 'gifts,' can be narrowed, by any thing in that ordinance, or in any other law, to the idea of a grant to an Indian, or a reward to an informer, and much less to a mere sale for money.

"6th. That O'Reily's regulations were in their terms applicable, or ever were in fact applied to, or published in, Upper Louisiana.

"7th. That the regulations of O'Reily have any bearing on the grant to Antoine Souldard, or that such a grant was contemplated by them.

"8th. That the limitation to a square league, of grants to new settlers in Opelousas, Attakapas, and Natchitoches, (in 8th article of O'Reily's regulations) prohibits a larger grant in Upper Louisiana.

"9th. That the regulations of the governor general, Gayoso, dated 9th September, 1797, entitled 'Instructions to be observed for the admission of new settlers,' prohibit, in future, a grant for services, or have the effect of annulling that to Antoine Souldard, which was made in 1796, and not located or surveyed until February, 1804.

"10th. That the complete titles made by Gayoso are not to be referred to as affording the construction made by Gayoso himself, of his own regulations.

"11th. That, although the regulations of Morales were not promulgated as law in Upper Louisiana, the grantee in the principal case was bound by them, inasmuch as he had notice, or must be presumed, 'from the official station which he held,' to have had notice, of their terms.

"12th. That the regulations of Morales 'exclude all belief that any law existed under which a confirmation of the title in question could have been claimed.'

"13th. That the complete titles (produced to the court) made by the governor general, or the intendant general, though based on incomplete titles, not conformable to the regulations of O'Reily, Gayoso, or Morales, afford no inference in favor of the power of the lieutenant governor, from whom these incomplete titles emanated, and must be considered as anomalous exercises of power in favor of individual grantees.

"14th. That the language of Morales himself, in the complete titles issued by him, on concessions made by the lieutenant governor of Upper Louisiana, anterior to the date of his regulations, ought not to be referred to as furnishing the construction which he, Morales, put on his own regulations.

"15th. That the uniform practice of the sub-delegates, or lieutenant governor of Upper Louisiana, from the first establishment of that province to the 10th March, 1804, is to be disregarded as proof of law, usage, or custom, therein.

"16th. That the historical fact, that nineteen-twentieths of the titles to lands in Upper Louisiana were not only incomplete, but not conformable to the regulations of O'Reily, Gayoso, or Morales, at the date of the cession to the United States, affords no inference in favor of the general legality of those titles.

"17th. That the fact, that incomplete concessions, whether floating or located, were, previous to the cession, treated and considered by the Government and population of Louisiana as property, saleable, transferable, and the subject of inheritance and distribution *ab intestato*, furnishes no inference in favor of those titles, or to their claim to the protection of the treaty of cession, or of the law of nations.

"18th. That the laws of Congress heretofore passed in favor of incomplete titles, furnish no argument or protecting principle in favor of those titles of a precisely similar character, which remain unconfirmed.

"In addition to the above, a number of other errors, consequential on those indicated, might be stated. The Judge's doctrine as to the forfeiture which he contends is inflicted by Morales's regulations, seems to me to be peculiarly pregnant with grievous consequences. I shall, however, not tire the reader with any further enumeration, and shall detain him only to observe, by way of conclusion, that the Judge's recollection of the argument of the counsel for the petitioner, as delivered at the bar, differs materially from what I can remember, who also heard it. In justice to the counsel, I beg to observe, that all that I have now submitted to the public, has been suggested by that argument as spoken, and by the printed report of it, which is even now before me.

#### "A CITIZEN."

And the said James H. Peck, Judge as aforesaid, unmindful of the solemn duties of his station, and that he held the same, by the constitution of the United States, during good behavior only, with intention wrongfully and unjustly to oppress, imprison, and otherwise injure the said Luke Edward Lawless, under color of law, did, thereafter, at a term of the said District Court of the United States for the District of Missouri, begun and held at the city of St. Louis, in the State of Missouri, on the third Monday in April, one thousand eight hundred and twenty-six, arbitrarily, oppressively, and unjustly, and under the further color and pretence that the said Luke Edward Lawless was answerable to the said court for the said publication signed "A Citizen," as for a contempt thereof, institute, in the said court, before him, the said James H. Peck, Judge as aforesaid, certain proceedings against the said Luke Edward Lawless, in a summary way, by attachment issued for that purpose by the order of the said James H. Peck, as such Judge, against the person of the said Luke Edward Lawless, touching the said pretended contempt, under and by virtue of which said attachment the said Luke Edward Lawless was, on the twenty-first day of April, one thousand eight hundred and twenty-six, arrested, imprisoned, and brought into the said court, before the said Judge, in the custody of the Marshal of the said State; and the said James H. Peck, Judge as aforesaid, did, afterwards, on the same day, under the color and pretences aforesaid, and with the intent aforesaid, in the said court, then and there, unjustly, oppressively, and arbitrarily, order and adjudge that the said Luke Edward Lawless, for the cause aforesaid, should be committed to prison for the period of twenty-four hours, and that he should be suspended from practicing as an attorney or counsellor at law in the said District Court for the period of eighteen calendar months from that day, and did then and there further cause the said unjust and oppressive sentence to be carried into execution; and the said Luke Edward Lawless was, under color of the said sentence, and by the order of the said James H. Peck, Judge as aforesaid, thereupon suspended from practicing as such

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attorney or counsellor in the said court for the period aforesaid, and immediately committed to the common prison in the said city of St. Louis, to the great disparagement of public justice, the abuse of judicial authority, and to the subversion of the liberties of the people of the United States.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting, at any time hereafter, any further articles, or other accusations or impeachment, against the said James H. Peck, and also of replying to his answers which he shall make unto the article herein preferred against him, and of offering proof to the same, and every part thereof, and to all and every other articles, accusation, or impeachment, which shall be exhibited by them as the case shall require, do demand that the said James H. Peck may be put to answer the misdemeanors herein charged against him, and that such proceedings, examinations, trials, and judgments, may be thereupon had and given, as may be agreeable to law and justice.

THE VICE PRESIDENT informed the managers that the Senate would take proper order thereon, of which the House of Representatives should have due notice; and they then withdrew.

On motion by Mr. TAZEWELL, it was

*Resolved*, That the Secretary be directed to issue a summons, in the usual form, to James H. Peck, Judge of the District Court of the United States for the District of Missouri, to answer a certain article of impeachment exhibited against him by the House of Representatives on this day; that the said summons be returnable here on Tuesday next the eleventh instant, and be served by the Sergeant-at-Arms, or some person to be deputed by him, at least three days before the return day thereof; and that the Secretary communicate this resolution to the House of Representatives.

On motion by Mr. TAZEWELL,

The court then adjourned to Tuesday next at 12 o'clock.

WEDNESDAY, MAY 5, 1830.

#### THE GRADUATION BILL.

Mr. BENTON called up the bill to graduate the price of the public lands, to make provision for actual settlers, and to cede the refuse lands, upon equitable terms, and for meritorious objects, to the States in which they lie.

Mr. HAYNE said, that viewing this bill as an attempt to relieve the new States from the injurious effects of a system which keeps out of market, and consequently unsettled, all the public lands worth less than one dollar twenty-five cents per acre, he was perfectly willing to give it his support; so far at least as that object was embraced. It has been represented (and, in support of that representation, the reports of the registers and receivers of all the land offices in the United States had been referred to) that vast quantities of those lands have been liable to entry at the minimum prices for a great number of years, and have not been taken up, in consequence of their being worth less than the prices limited by law. This arose not so much from the inferior quality of the whole of the unsold lands, as the small proportion of good land in the tracts offered for sale. Nothing can be more just and proper [said Mr. H.] than that land found not to be worth the prices limited, should be sold for less. This, indeed, is the course which every private proprietor would pursue, and which the United States must pursue, unless this description of lands is to remain for ever unsold. He had no objection, therefore, to making a reasonable reduction in the price of these lands, as proposed, especially as the bill will embrace no lands that have not been for some time in market, liable to entry at one dollar and twenty-five cents; and which have not been taken up at that price.

It appeared to him, however, that, to accomplish this object, it was not necessary to provide for the gradual reduction, year after year, down to twenty-five cents per acre; and he would submit it to the friends of the bill, whether it would not make it more generally acceptable, and more consistent with the object of making early sales of these lands, to stop for the present at one dollar, or at least at seventy-five cents, making a distinction of twenty-five cents in favor of actual settlers. Let the experiment be tried of this reduction, and let us see how the system works before we go further. The object is to sell the land at a fair price, to fix a just and reasonable valuation, and to know whether one dollar or seventy-five cents is the proper amount; the experiment must be fairly tried. To try the sense of the Senate on this point, he should more to amend the bill by striking out the two latter resolutions, so as to fix the amounts at which the lands were to be offered for sale at one dollar and seventy-five cents, and twenty-five cents less to actual settlers. I would also [said Mr. H.] strike out the section which provides for donations to the States, five years hence, of the unsold lands, for the purpose of education and internal improvement. Without entering into the questions presented by a proposition to make donations for such subjects, it would be sufficient, for the present, to say, that a section of this kind was wholly unnecessary, and would present serious difficulties in the way of many gentlemen who might otherwise support the bill.

Mr. H. concluded, by moving to strike out the sixth section, providing for donations to the States, and, also, the tenth and eleventh lines, providing for a reduction, in two years, to fifty cents, and to twenty-five cents the year afterwards; which motions were agreed to without objection.

Mr. BENTON said, it was undoubtedly true, as stated by the Senator from South Carolina, [Mr. HAYNE] that the clauses proposed to be struck out could not operate for several years, even if retained and passed; and it was highly probable, as suggested by him, that the rejection of these clauses may secure the passage of the others, which are of more immediate necessity, and will answer all the purposes of the bill for the present. Mr. B. therefore, would not oppose any objection to striking them out, seeing that the intention was friendly to the main object of the bill, and a part of the purposes of introducing them had been accomplished. One object of the graduation bill was to exhibit a plan for the full, complete, and final disposition of the public lands; and, to answer this purpose, it was necessary to draw the bill in all its details; but it would be sufficient, and answer every purpose to the purchasers of the public lands, to have the different reductions of price made at different times.

Mr. WOODBURY observed, that he had waited for such amendments to be adopted in the bill as would enable him, consistently with his notions of the constitution and the equal interests of the old States in the public lands, to vote for a measure so much desired by the new States as the present bill. But as such amendments had not yet been made, he should take the liberty to submit two or three for the consideration of the Senate. He would not enter now, at large, into his views about the public lands, or the policy of the proposed measure. Those views, as to the former, had been fully given on a former occasion, during this session. He would first move to strike out the whole of the fourth section; not that he could cherish a single feeling of unkindness to the objects of its bounty, but because he did not believe in our constitutional power to make mere donations of the domain of the Union to individuals, however indigent or meritorious. The reason for this opinion it was unnecessary to repeat.

[The motion was then put, and carried.]

Mr. WOODBURY next moved to strike out the second sum, named as a graduation price in the first section.

This, he said, would leave the rate at which these lands should be sold to ordinary purchasers one dollar per acre.

Considering the circumstances, that all the lands within the purview of this bill had already been offered at public auction, and had failed to bring one dollar and twenty-five cents per acre, and that many of them, for many years, had since been held ready for entry at private sale, without finding purchasers who were willing even to pick and purchase any of them at one dollar and twenty-five cents per acre, he deemed it a fair presumption, that one dollar and twenty-five cents per acre exceeded their just value. He was, therefore, willing to reduce the price of this kind of lands to one dollar. Such a reduction would be useful to the Union at large, by rendering a speedy sale probable, and thus increasing the revenue; while, at the same time, it would be exercising only a rightful liberality to the capitalists, or to the enterprising yeomanry of the country, West or East, North or South, who might wish to settle their sons on these lands, but who ought not to be required to pay for them more than a fair price.

He further remarked, in the discussion on this motion, that much misapprehension seemed to exist abroad, if not in this body, about the real value of the lands to be affected by this bill. Although the quantity was large, yet it consisted not of our whole public domain, nor of all that had been surveyed, nor even of one-half that had been surveyed and not sold, but merely of the refuse of our sales ever since the organization of the Government. A patch here, and a morass there; a mountain in one place, and a barren in another; and these fragments scattered over six or seven States of the Union, and, up to this time, refused to be purchased by any one at the present price.

Besides these circumstances to indicate that their average value was less than one dollar and twenty-five cents per acre, he had before him reports from the different land districts made in 1827-'28, by which it appeared that of the whole eighty millions of acres of these unsaleable and detached parcels, less than one million in the Southwestern States was first rate land, and less than five millions in the Northwestern States; that of the residue, about one-half, or nearly forty millions of acres, was considered unfit for cultivation. The average value in all the Southwestern States was under twenty-five cents per acre; and, in all the Northwestern States, it equalled a dollar in only four districts, and was less than seventy-five cents in all but six districts. In many of those districts in the Northwest, where it was most valuable, this land had been offered for sale from six to twenty years and upwards; and for a less time, from two to ten years, at the Southwest, where its value was less, and when no probability existed that much of what was left would ever be sold as high as one dollar per acre.

But considerable portions of this description of land in the Northwest, he believed, could be sold at one dollar per acre, and, at least, that it was worth the experiment to offer it for purchasers at a dollar before we reduced the price to seventy-five cents. He did not, however, hesitate to say, that he would hereafter agree to seventy-five cents, or even a lower sum, when all the lands worth over those sums had been disposed of. All he wanted was to act justly by the old States, in not taking from them any of the lands under their just value, and, at the same time, to act justly by the purchasers, whether in the new or old States, by not exacting exorbitant prices, and not thus driving them from purchasing here at all, into Mexico, Canada, or elsewhere. He would, therefore, fix the reduced price at first to one dollar, and not go lower till the lands worth one dollar had been sold.

He was against a graduation of seventy-five cents the second year for another reason. No body could wink out of sight, that, if this graduation was retained, the lands worth a dollar would not probably be purchased till the second year, as they could then be had for seventy-five

cents. Twenty-five per cent. gain, for a single year's delay, would be a temptation not easily resisted.

While he was willing to fix the price at the true value of the best lands unsold, he was influenced by a still further consideration from going below that, either by graduation or at the first starting post. He thought it impolitic to hold out any extraordinary inducement for new settlers to purchase second, third, or fourth rate lands, by reducing the price below the actual value of those best fitted for cultivation. When poorer lands, in particular districts, accommodated old settlers, it might be proper to allow them to be sold at a fair price; but it was much better, as a general rule, in political economy, both in a public view, and in reference to the durable interests of new settlers, that labor should be expended on first rate soils, while we have such soils, rather than on those of an inferior quality.

For this, as well as other reasons, which had been referred to, on former occasions by himself, and by other gentlemen to-day, he was willing, likewise, to relieve the present actual settlers. They had, by our present system, been driven to cultivate poor land, in order that they might not be in danger of expulsion from it. This land they might keep at a reduced price, proportioned to its reduced value; and to prevent this course, in some degree, hereafter, he would allow the future purchasers for actual settlement to enter at first a quarter section of the best lands yet unsold, and within the purview of the bill, at seventy-five cents per acre. Coming from any quarter of the Union, in search of a freehold and of subsistence, they would expend their hard toil on better soils, and the treasury, by getting the pay at once, instead of waiting for years without principal or interest, would realize a larger sum than to permit them, as is now the practice, to enter their lands, at some future period, at the present minimum price.

He had the misfortune to differ with his colleague in relation to the proper policy due to these actual settlers. But he consoled himself with the reflection that his own views were more in conformity with the previous and liberal policy of our Government on this subject; and while it worked no inequality or injustice to the old States as joint proprietors of the land, it tended to the happiness, and improvement, and security of many with whom most of us were connected by the strongest ties of society. But he thought fifty cents per acre was too low a price for even the actual settlers, if they selected, as they now ought to, the best lands included in the bill. He wished to keep up a due proportion between the purchasers to sell again or to speculate, and an actual settler, and should, therefore, move to strike that graduation from the bill if the present motion prevailed. That would leave twenty-five cents difference, which was all he could think just.

The motion prevailed.

He afterwards moved to strike out the second graduation as to actual settlers, and to alter the phraseology in other parts, to conform to the amendments already made; which motion succeeded.

Mr. BENTON was himself under the deep and full conviction that the bill would do best with this clause retained; but he could not dissemble that it came under the same course of reasoning which applied to the motion to strike out the two lower prices. The Senator from Alabama (Mr. McKINLEY) was correct in his opinion of the difference of the operation of the act in the two great divisions of the West. The face of the country was essentially different in the Northwest and Southwest. In the former, the great body of the land was intermediate in its quality, between best and worst; the principal part of it was mixed with good and bad, constituting what is called second rate; and for this section of the West the price of one dollar to non-settlers, and seventy-five cents to actual settlers, would find a great deal of land to open-

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rate on, and for which it would be a fair price. But not so in the Southwest. There the land was chiefly divided into two qualities, best and worst, river bottoms of great fertility, or pine woods of extreme sterility; the good, worth more than a dollar, and already sold; and the bad scarcely worth any thing. In such a country there would be but little land for the one dollar clause to operate on. Still, if the motion prevailed, and the seventy-five cents clause was struck out of the first section, the same price was intended to be left untouched in the second section for the benefit of actual settlers. This would still do well; for the mass of the purchasers are now actual settlers; and all these will be able to get one quarter section (one hundred and sixty acres) for seventy-five cents per acre. If they wanted more, they must pay a dollar for it. A quarter section will make a good home for a man of small, or middling property, and the great body of the West consists of those descriptions. The bill will, therefore, accommodate the great body of the people, at one dollar for general purchasers, and seventy-five cents per acre to actual settlers. It will do well in the Northwest at those prices; it will be of some little benefit to the Southwest, and, eventually, may be the means of doing full justice to that section of the Union; for the passage of the bill, with the two first clauses, will lead to the adoption of the lower rates—the fifty and twenty-five cent clauses, which suit the inferior qualities of the bad land there.

Mr. McKINLEY moved to amend the bill, by striking out seventy-five cents per acre to actual settlers, and inserting fifty cents per acre in lieu thereof.

Mr. McKINLEY said that the bill, without the amendment which he had just offered, could not benefit his constituents much, as the most of the lands in Alabama, which had not sold for the minimum price at the public sales, was of very inferior quality. He would vote for the bill, however, if the amendment did not prevail, because he believed it would benefit the poorer class of population in the other new States, if it failed to effect that object in Alabama; and his policy was to make as many freeholders as possible in every part of the United States. He considered the policy heretofore pursued in relation to the inferior qualities of public lands, essentially wrong. The best lands have not, for several years past, brought but little more than one dollar and a quarter an acre at the public sales; and how can it be expected that land of inferior quality, which is passed over at those sales, and has remained subject to entry for many years, should now sell for as much as the best land in the market? The Senator from New Hampshire (Mr. Bell) says, there are seventy millions of acres of this refuse land now in the market, and the reason why it does not sell is, because there are not people to purchase it; that great quantities of lands are offered for sale every year; and that just as much is sold as there are people willing to purchase. The last proposition is true, as far as it applied to the choice lands offered at public sale, but entirely erroneous when applied to the refuse lands.

It has been shown that there are about one hundred and forty-four thousand white inhabitants in the new States, who pay taxes, and are not freeholders. A great portion of these are now residing on this refuse land, and many of them would become purchasers if the land was offered at its value. Of the seventy millions of acres of refuse lands, there is not one-third fit for cultivation, and not one-fourth now worth fifty cents an acre. If this one-fourth were divided among those citizens who are not freeholders, in the new States alone, they would have about one hundred acres each. Put this land at fifty cents an acre to actual settlers, and you will make freeholders of nearly the whole of them. For there are a great number of men who would pay forty dollars for

eighty acres of land, who never can pay one hundred dollars, the present price; and, if they could, they would not take the refuse land.

Sir, look for a moment at the effect of the present system. A great portion of these refuse lands have been in the market for more than twenty-five years, and still remain unsold. Suppose they had been sold twenty-five years ago, at fifty cents an acre, what would be the state of the account now at the Treasury? Simple interest on the principal, at six per cent., would yield, with the principal, one dollar and a quarter an acre, the price you now ask for them. During the whole of that time, you have been paying six per cent. interest on the public debt; which the proceeds of these lands was intended to aid in paying, and which the United States promised to apply to that object. How the United States have performed this promise, will be seen in the sequel. The Senator from New Hampshire (Mr. Bell) admits that this refuse land cannot be sold for fifty cents to come, at the present price, for want of purchasers. How will the account stand at the end of seventy-five years? At the end of that period, twenty-eight cents an acre, and the interest upon it, would yield, at the Treasury, one dollar and twenty-six cents an acre. It ought to be reflected, too, that payment of money into the Treasury from this source, while the interest is running on the public debt, operates so as to entitle every dollar of principal paid in, to compound, instead of simple interest; because the interest on the public debt is paid semi-annually. If compound interest were calculated, the principal sum would be doubled in less than eleven years; fifty cents an acre would pay a dollar and a quarter in less than fourteen years, and twenty-five cents would pay a dollar and a quarter in less than twenty years. If this estimate be correct, the United States would now be in a better condition, in a pecuniary point of view, than they really are, if they had sold the whole of this refuse land twenty years ago, at twenty-five cents an acre.

But, sir, these are not all the national benefits which would have resulted to the United States from this course of policy; thousands of individuals who are now tenants in the old States, or squatters on the public lands in the new States, would long since have been respectable and prosperous freeholders of lands which, by a narrow and illiberal policy, have been held up at a price greatly above their intrinsic value.

But the Senator from New Hampshire (Mr. Bell) says these settlers upon the public lands are intruders, violators of the laws, and trespassers against the United States; and, therefore, entitled to less favor than any other class of purchasers. I beg leave (said Mr. McK.) to differ with the honorable gentleman from New Hampshire, upon all of these points. In the first place, the act of Congress of 1807 was intended to protect the United States against the adverse possession of those who claimed titles to the lands ceded to the United States by Georgia and France, upon titles derived under either of those powers, previous to the cessions, until the titles could be adjudicated; and the power granted to the President by that act never has been exerted, except for those purposes. I therefore say, that those who have settled upon the public lands, not claiming title adversely to the United States, are not violators of law, nor trespassers. And I say further, sir, that they are meritorious individuals, because they have been the pioneers to all the new settlements in the West and Southwest. They have penetrated the forest, cultivated a portion of the lands, built cabins, and afforded facilities to those who wished to purchase, to explore the lands before the sales, and to obtain supplies of provisions for the first year after purchasing. The enhanced value given to the land thus improved and settled by these unfortunate people, has been put into the public Treasury. The lands were sold from under them,

which, but for the improvements they had made, and the facilities they had afforded for settling the country, would not have sold for one-half the price they brought, and, in many instances, would not have sold at all; they have been deprived of, and the United States have greatly profited by, their labor. After suffering the hardships, fatigue, and privations incident to the settlement of a new country, and being unable to purchase the lands they had thus rendered valuable, what have they done? Precisely what the Senator from Illinois [Mr. McLEAN] has told you. They have sought out some tract of this refuse land, which, having a little spot upon it fit for cultivation, and which the limited improvements necessary for the support of a family would not, in their estimation, tempt any one to give a dollar and a quarter an acre for it; and there they are now living, and constantly afraid to extend their comforts, lest they tempt some individual to enter the land, and turn them adrift again.

Sir, this is a true history of these unfortunate individuals who have been stigmatized as violators of the law—as trespassers against the United States, and who, it has been said, ought to be punished rather than rewarded. It is true, sir, they are poor; and, if that be a crime, the proper way to punish them is to hold up the land at such a price that they cannot purchase it. But let gentlemen recollect that they inflict this punishment at the expense of the Treasury of the United States. For, if the calculation of the Senator from New Hampshire [Mr. BELL] be correct, when he says that all the public lands belonging to the United States cannot be sold in a century at one dollar and a quarter an acre, leaving the refuse lands unsold, I presume he means, and all those who are unable to give a dollar and a quarter an acre, without land, then it would be well to sit down, and deliberately calculate the number of individuals who will probably be without land at that period, and what sum per acre, counting interest upon it for a century, would, at the end of that time, give a dollar and a quarter an acre for these lands, and how many of them would have been able to have paid the principal sum.

In addition to this, it would be well to calculate how much the United States would have gained by the taxes upon this unsettled land; how much the national wealth and prosperity would have been increased by the improved condition of their citizens, and their increased wealth and multiplied subjects of taxation. A few figures made upon these subjects might aid the statesman in coming to a just conclusion upon this subject. I hope, sir, the amendment will be adopted, and those unfortunate citizens be provided for, and all others contemplated by this bill.

Mr. BENTON spoke with great ardor and zeal in favor of letting the settlers have their homes at fifty cents an acre. He dwelt upon the meritorious character of their claims and their services. He said, many of these settlers had been ten, fifteen, and twenty years in possession of their little farms. They had sought for broken and inferior tracts, in order to enjoy in security their little homes, free from the cupidity of speculators, to whom such small spots, as stated by the Senator from Alabama, [Mr. McKINLEY] would not be an object, but the improvements gave them value; and for the sake of these improvements there were many ungenerous persons who would enter over the head of the settler, and take the home and the labor from a poor man, or a widow and her children. Mr. B. said that these settlers had made improvements which cost them the labor of many years; that parents had buried their children, wives had buried their husbands, and husbands their wives, on these little spots; that their affections, as well as their interest, bound them to them; that no good man would take away their little homes, and no bad one ought to be allowed to do it. Mr. B. argued that all such settlers ought to have donations, and that this section was

intended at all events to give them a preference. Fifty cents difference in the price would give a decided preference; it would operate partly as a donation, by giving up a part of the price. If, then, the price stood at fifty cents to the settlers, they would be entirely safe from speculators. If the fifty cent clause was rejected, and the price to settlers stood at seventy-five cents, the preference to the settler would only be twenty-five cents in the acre; an advantage surely, and one for which he would be grateful, but not sufficient in all instances to secure him against ungenerous speculators.

Mr. BELL said, he was opposed to any innovation upon the present system of selling the public lands. They are the common property of all the States, and should be disposed of only with a view to the common benefit of all, and not for the advantage of the inhabitants of the new States exclusively. They are sold by the existing laws at a price so low, that it is within the reach of every man possessed of a common share of industry and prudence, to acquire a quantity sufficient to enable him to support a family by agricultural labor. I am opposed to any reduction of the price of these lands; but if they must be reduced, I hope it will not be below the price of one dollar per acre, the sum proposed by my colleague as the price to common purchasers. I am still more opposed to that part of his amendment which proposes to fix the price to actual settlers at seventy-five cents per acre. There is no good reason why we should make a discrimination in their favor.

These settlers have taken possession of the public lands, in direct violation of the laws of the United States, and without any pretext of title. They are intruders—mere trespassers, who have selected and seized upon the best and most eligible of the public lands. Can we be justified in giving them the best lands at the lowest price, and thus reward them for a violation of the laws? If you make a discrimination of twenty-five or fifty per cent. in favor of actual settlers, you will sell no land but to actual settlers. No purchaser will buy land at one dollar per acre, when he can obtain the same land at seventy-five cents per acre, by making an actual settlement upon it. If the immense tracts of land in the market, beyond the actual wants of purchasers, should be offered for sale at the reduced prices proposed by this bill, or even by the amendment offered, no man will purchase on speculation, or with the expectation of selling to actual settlers at a profit. Such speculations have nearly ceased to be made under the existing laws, and none would be made at the reduced prices proposed by this bill.

The actual operation of this bill, as proposed to be amended, will inevitably reduce the price of all the public lands from one dollar and twenty-five cents to seventy-five cents per acre. We have more than seventy millions of acres of public lands already in the market, upon which this bill will operate.

Are we aware of the great reduction of the annual revenue from the sales of the public lands which must result from the passage of this law? The people of the old States are aware of the value of the public lands as a source of revenue, to be appropriated for the common benefit, and for their relief from the burthens of taxation; and they will require us to render to them a reason for unnecessarily lessening or bartering it away for any object or motive unconnected with the common and general interest.

We have been told that these lands cannot now be sold, because they are held at a price above their value. This is not the true cause why more extensive sales of these lands are not made at present prices. That cause is to be found in the immense quantities which have been thrown into the market beyond the actual demand for cultivation. The price of land, as of every other description of property, depends upon the quantity in market, compared

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with the number of purchasers. When a surplus, beyond what is required by purchasers, is thrown into market, a reduction of price is the inevitable effect; and that reduction will be in exact proportion to the amount of such surplus. This has been the unsound policy of this Government in relation to her public lands. We have put seventy millions of acres of the public lands into the market, when the average annual sales are only one million of acres.

We have a quantity of land in the market sufficient to supply the wants of purchasers for the next fifty years; and we are daily increasing this quantity. The friends of this bill have mistaken the source of the evil of which they complain, if such evil exist. The new States have really increased rapidly in wealth and population. That they have not increased more rapidly, has not been occasioned by a high price of the public lands, but from a deficiency of purchasers at any price. The increase of the quantity of lands thrown into the market has gone far beyond the increase of our population. If the bill could create men to become purchasers, the object expected from it might be attained; but if not, the lands would not be sold, even if offered at twenty-five cents per acre.

Mr. CLAYTON moved the indefinite postponement of the bill. I am not [said he] hostile to a judicious and equitable graduation or reduction of the prices of these lands, according to their value. It is true that, of the seventy millions of acres which will be offered for sale under the provisions of this bill, a part is worth much less than the minimum price established by law, while a part is worth more than that price. As the bill now stands, all the lands which shall not be disposed of in June next will be offered to purchasers at one dollar per acre, and to actual settlers at seventy-five cents per acre. This bill never offered a graduation of these prices on any equitable principle. It never did offer lands to purchasers with a just discrimination between good and bad land. Before the bill, as it originally stood, met its death blow from its own friends, it was, in substance, a proposition to give away the public domain—not to sell it by a fair graduation of prices, distinguishing between lands of the best and of inferior qualities. The proposition now contained in it, is not absolutely to give away these lands, but so to reduce the prices, that such as remain unsold at the present minimum shall be now offered—all at the same price—without the slightest reference to the quality or value of different parcels, in different districts of country.

There are some districts where large quantities of land, not worth fifty cents per acre, will be offered for sale under the provisions of this bill, at one dollar per acre, and when the actual settler cannot buy them for less than seventy-five cents. There are others, where those lands, which are the best in the country, will be offered at the same prices. Where the land is not worth the price proposed by the bill, it must remain unsold; or, if it be sold, is it just to extort from the purchaser the same price for it which you ask for the finest tracts you own? The great danger, however, is, that should this bill pass, it will cause the destruction of the whole land system of this Government, and deprive this nation of a revenue exceeding a million of dollars per annum. I will not repeat the objections which I formerly urged against the original proposition as it stood before the amendments this day adopted had so materially changed its nature. That proposition had failed; but, after the gentleman from New Hampshire [Mr. WOODBURY] had consoled its friends for its defeat, by informing them, in the hearing of the Senate, that the present project would be a good starting post, from which they might move hereafter in the business of reducing these prices year after year, I am bound to consider this measure as the entering wedge to the same system of universal donation which they have just been compelled to abandon, and liable, therefore, to the same objections. The injustice of so great a reduction of these prices, in its

effect on former purchasers, is manifest. Congress, while they reduced the minimum in 1821, virtually gave a pledge to those purchasers, that the value of their property should not be destroyed by underselling them, as this bill now proposes, at a sum nearly fifty per cent. below the prices paid by them.

The kind of graduation which I am disposed to adopt, is that which is founded on an honest discrimination between the value of different quantities of land. We can get information from our land offices, to enable us to make that discrimination. We can ascertain what the land is intrinsically worth; and, so far from entertaining a hostile feeling to the West, when I have that information I will go as far as others, who make much greater professions of friendship to that section of the country, in offering these lands at a price most liberal to the purchaser, in order to augment their population and the number of freeholders, on whose increase we have been told so much depends. But I am unwilling to make a man in one district pay one dollar per acre for land worth not half the value of a tract in another district, which another man may purchase for the same price. I view the bill as unjust to the citizens of those districts where the land is poor. In my judgment, we ought to put it in their power also, by an honest graduation of these prices, to buy the public land for sums not exceeding their actual value; but, under the operation of this bill, those who have settled on the best lands of the country will pay but seventy-five cents per acre, while the citizen of Ohio, for example, who may reside near a tract which has been thirty years in market, and which could not hitherto be sold because of its inferior quality, cannot purchase what is worth only fifty cents, for less than seventy-five cents per acre. This is no graduation. It is an unequal distribution of public favors; and its injustice, in diminishing the value of all the lands in the country, will cause a loss, amounting, in the aggregate, to millions among the citizens of the new States, as well as a great falling off in the public revenue. He concluded, by urging some objections to another principle of the bill, which, as he considered, under pretence of favoring actual settlers, held out great inducements to trespassers upon the whole public domain, and contravened the established policy of the Government, which had always been to protect these lands from waste and pillage.

[Mr. KANE replied. After some conversation between Mr. CLAYTON and Mr. McKINLEY, Mr. C. agreed to suspend his motion, to enable Mr. McKINLEY to move an amendment, restricting the operation of the bill to lands which had been in market before June, 1827.]

Mr. CLAYTON said that he would now renew his motion, which had been waived for the time, to enable the friends of this bill to make it as free from objections as they could. He would not debate with the honorable member from Illinois, whether it was good policy to encourage trespassers on the public lands, by offering bounties for the purpose. In reference to that, he would only say, that from the earliest history of this Government there appeared a continued series of acts of the Legislature, and proclamations of the President, against the commission of waste on the public property. Nor did he desire to be understood as opposing the system which gave preference in the purchase of settled lands to the actual settler at a fair price. He did not design to protract the debate by further discussing with the gentleman from Missouri, who advocated this bill, [Mr. BAXTON] whether the inequality of value of these lands in different districts was not a sufficient objection to the passage of this bill, which offered all the lands at one price. But he again urged the impolicy and injustice of underselling the former purchasers, who had paid full value for their lands, having bought them at one dollar and twenty-five cents, and much of them at two dollars per acre; and who, after having paid taxes on them for many years, would now find millions of acres of equal



value, in market around them, at seventy-five cents per acre. He urged that the price at which the lands were to be offered to settlers, was to be regarded as the true minimum established by the bill, as most of the lands would be taken up under the pretence of settlement. He observed, also, that the bill could not pass the other House, if it were now acted on in the Senate; and the effect of its passage here would be to increase an illusion on this subject, which had already spread too far.

Mr. BENTON objected most decidedly to the indefinite postponement. The idea that there was not time to act upon the bill in the other House, was entirely fallacious. The subject was well understood there. The two Houses of Congress, for many sessions, had proceeded, with equal steps, in this matter. The graduation bill had been reported in each, at the commencement of each session, for years past. As it now stood, the provisions were so few, brief, plain, and simple, that every person could understand them at one reading; and the subject was so familiar to the mind, that every member will have his opinion made up as soon as he understood them. The provisions were now reduced to the single clauses which reduced the price of the land, which had been offered for three years and upwards at one dollar and twenty-five cents per acre, and could find no purchaser at that price, to one dollar to non-settlers, and seventy-five cents per acre to settlers. This is the sum total of the bill; and surely it would not take five minutes for any member of either House to make up his mind for or against it.

Mr. B. concluded, by asking for the yeas and nays; which were ordered.

Mr. KANE expressed his gratification at the course adopted by the honorable gentleman from Delaware. His motion for indefinite postponement, [said Mr. K.] is made for the avowed purpose of deciding the fate of the bill. This course, on every account, is more acceptable than that suggested by the Senator from Maine, of laying it upon the table, for the purpose of printing the bill as amended. The session is near its close, and delay will be fatal. Where is the necessity for printing? Is it difficult to comprehend the amendments? The whole length and breadth of the bill as it now stands, its entire substance, consists in a simple provision, which reduces the price of the public lands to one dollar an acre, with an exception favorable to the actual settler, who is permitted to purchase at seventy-five cents. Every body can understand this, and every Senator has a view of the whole ground upon which he is about to act. Why, then, delay for printing? Next in importance to the measure itself, is an early decision upon it—a decision at this very session of Congress. Year after year have the people of the new States, in all the forms which can give expression to their deep and solemn convictions of its necessity, presented the subject before you. Over and over again has the matter been seriously and fully discussed. The varying complexions of things here, has for years alternately aroused their hopes, and alarmed their fears. But to this session of Congress have they looked with an intensity of expectation, which none but their own Representatives can fully appreciate, for decisive action. Let the fate of the bill then be what it may, a speedy decision is not an unreasonable request. There are considerations of interest, of general and national interest, too, which recommend despatch. Those who have the means of purchasing land at the present price, have delayed the purchase, on account of the expectations so long held forth from this chamber, and they will delay until you decide. Those unable to purchase at high prices, have been led to believe (a belief, too, founded upon the most reasonable grounds) that such reduction would be made as to enable them to buy, and as should bring the acquisition of a freehold within their competency. To one or other of these descriptions of men belong the one hundred and forty thousand tax-paying individuals who are

not freeholders, and who reside, as we are officially informed, in the new States and territories. Each of these has the determination to become a landholder, according to his wants and his ability. A decision, then, and especially a favorable decision, is of some consequence to the public revenue. I [said Mr. K.] am unwilling again to go home, and feel compelled to give doubtful answers to the thousand inquiries which will be made of me regarding the prospect of reducing the price of the public land. I wish to understand the true feeling of Congress about it, and be enabled to let my constituents know what that feeling is.

Some objections have been made to the passage of the amended bill, by the Senator from Delaware, [Mr. CLAYTON] which require an answer. He objects, first, because a uniform price is fixed upon lands of various quality; secondly, on account of what I consider its best feature, the discrimination in favor of the actual settler. The bill, as first reported, was free from the first objection, certainly in form it was free from it; for it contained a graduation of price to the quality to be fixed, in the only mode which appears to me at all practicable. So far as it was in the power of the friends of the bill to retain that feature, their duty had been performed to the best of their ability. The Senate have just decided against it, and to that decision we most respectfully submit. It may be satisfactory to gentlemen, however, to know, that that decision has only re-affirmed the principles of our land system, as it has ever existed, and as it now exists. By that system, whenever, in the judgment of the President, the public interest requires it, a district of surveyed land, upon long and general notice first given, is offered for sale by public auction, and is sold for the highest price which can be obtained, but not for a less sum than a legal and arbitrary minimum. Lands thus offered, and not sold, are subject to entry at that minimum, without regard to quality. All the lands to which this bill applies, have already undergone this operation. If there be any thing wrong, then, in this uniformity of price, in the judgment of the gentleman from Delaware, he must do something more than indefinitely postpone this bill, to correct the error. He must repeal the old, long continued, and existing law, which fixes a uniform minimum upon all sorts of lands. Postponing this bill will leave matters just where they stand; and the passage of it does not alter the objectionable feature, nor increase the evil. Surely, then, sir, if this be in itself an objection, this is not the time to urge it; for, upon this occasion, it cannot accomplish any other object than to destroy this bill, without curing the evil which constitutes the objection. I pass on to another topic. A discrimination in favor of the actual settlers is made, and that is a cause of complaint, particularly with the Senator from New Hampshire, [Mr. BALL.] He calls these settlers trespassers and squatters. In his opinion, they have violated the law in settling upon the land, and are, therefore, entitled to no favor. It is true, sir, that a law was passed in 1807, to prevent settlements being made on lands ceded to the United States. The reason of that enactment has been often stated on this floor, and is fully established by the uniform conduct of the Government with regard to its execution. It was intended to accomplish a particular purpose. A case had arisen, or was about to arise, in New Orleans, which gave origin to that law. No attempt has ever been made by the Executive of the United States to enforce, generally, the provisions of that act; and Congress have expressed, in repeated instances, a determination to prevent its enforcement. The very next year after that law passed, settlements made in violation of its letter were legalized, and pre-emptions were secured to these men who are called trespassers. More than twenty laws have since passed, granting, in different forms, pre-emption rights to settlers. Wherever the public property is about to be seriously invaded, and some great injury to be inflicted upon the public interests by settlers, this law

MAY 5, 1830.]

*The Graduation Bill.*

[SENATE.]

ought, and no doubt will, be put in force against these aggressors. But a sound view of the true interests of the people of this country forbids a further execution of it—so says the conduct of every President, and every Congress from that time to this. People unable to buy land settle upon public land, upon the faith of all the past practice of the Government. They feel security in its justice, which promises to them the same forbearance and favor which have ever been extended to others. I have, sir, another answer to this suggestion, which I think emphatic. We have this session, without much opposition, passed a bill through this body, extending a right of pre-emption to every man in the United States settled upon public land. If these settlers are trespassers now, they are not likely long to remain so. The principle of a pre-emption bill is a principle of discrimination in favor of the actual settler. It is no new thing. The truth, sir, is, that these trespassers, as they are called, have always been the favorites of the Government, and will continue to be so, so long as sagacity, good sense, and patriotism shall prevail in its councils. Need I go into particulars to explain this sentiment? Does not every man know and see that the value of the public property is enhanced by cultivation and improvement; that the strength of the community, moral and physical, is augmented by every encouragement given to agriculture; that the security of your frontiers is promoted by a settled population upon them; that the heavy evils of poor rates and pauperism are avoided by a liberal disposition of the soil; that a general spirit of industry and independence is diffused by it; and that the strength, and vigor, and health of the whole country is improved? Permit me, sir, to ask the gentleman what he would do with these settlers? Remember, they are numerous. Shall the marshal, accompanied by the military strength of the Government, be directed to remove these men, women, children, and all? Where will he send them to? Into the Indian country, to the Mexican States, or to Canada? These neighbors of Mexico and Canada will be glad to receive them, and give them land into the bargain. They are not powerful enough yet, and you will add greatly to their strength; and if it be desirable to make our neighbors more powerful than ourselves, the plan will answer that object in due course of time. But I dismiss this part of the subject with a single remark: Such a policy is short sighted, injurious to the best interests of the whole country, inhuman, and impossible of execution.

The competition created by this bill between the settler and speculator must hasten sales, and add to the revenue. The former will use all his exertions to save his improvements from the grasp of the latter, and the latter will be anxious to secure lands before the more sacred claims of the cultivator shall attach. There is something noble in the law which suspends the rapacity of a speculator, by assigning privileges to honest industry. The mandate of the Government, which compels the jobber to pay at a rate of discrimination, before he possesses himself of the labor and comforts of another, conveys a just rebuke. Mr. K. said, he had so frequently given his views at large upon the subject, that he felt it wrong to occupy more time. He could not conclude, however, without bringing to the view of the Senate, once more, the fact, that the receipts into the treasury, from the sales of lands, had in no one year been equal to a moderate interest upon the sum which the lands, all things considered, had cost the Government. If revenue was the object, some change must be made. Throughout, it had been a losing concern. What so likely to increase receipts as a reduction of price? and what more consoling to the benevolent mind, than the consideration that increased receipts will be accompanied by the increased comforts of one hundred and forty thousand freedmen?

Mr. BENTON replied to the suggestions of Mr. WENDELL, and stated that if the bill was to be confined in its

application to lands which had been seven or eight years in market, it would have very little operation except in the State of Ohio. In that State, all the lands (with a very small exception) had been in market at one dollar and twenty-five cents per acre for eight years or upwards; but in Indiana, Illinois, Missouri, Alabama, Mississippi, and Louisiana, and the Territories of Michigan, Arkansas, and Florida, the mass of the lands have come into market since that time, and would be excluded from the operation of the bill. Mr. B. referred to official tables to show this fact, and went on to say that a motion had been made in the Senate two years ago, when the graduation bill was under consideration, to introduce this principle; and that it was then rejected by a decisive vote of the Senate, because it was shown that its operation would be partial and unequal. Mr. B. was entirely friendly to the State of Ohio, and had given stronger proofs than words, that he would promote her prosperity. The bill, as it stood, would be highly advantageous to her, for she had fifty-seven thousand non-freeholders, as was proved by the return of the marshal of the State; and she had upwards of six millions of acres of public land which had been offered at one dollar and twenty-five cents for many years without finding purchasers, and which were reported by the registers and receivers to be chiefly second and third rate land, and generally worth less than one dollar per acre. The bill, therefore, could not but be highly advantageous to Ohio, as it stood. It would enable many of these fifty-seven thousand non-freeholders to become freeholders; it would give the State revenue from the taxes, and increased strength and wealth from increased cultivation.

Mr. JOHNSTON hoped the bill would not be postponed at this stage; it had been fully discussed, and was perfectly understood. Most of the objectionable and most of the beneficial provisions of the bill had been stricken out; it contained but two propositions, simple and distinct. He hoped the direct vote of the Senate would be taken upon them.

Mr. J. said, it appeared to him there was a general concurrence of opinion upon two principles; first, that the price of the public lands ought to be reduced or graduated to the quality; and, secondly, that the actual settler ought to have the lands at a less price than the minimum selling price. He thought there was a great approximation of opinion upon these two points. The reason and expediency of the measures seemed obvious. But the difficulty which presented itself was in the detail—the mode of effecting the object. It is not pretended that an acre of first rate land, or a tract composed of a reasonable proportion of that quality, is not worth the present price, but for that reason the inferior qualities are worthless. It is due to justice, to individuals, and to the States having large quantities of second and third rate land, to reduce the price to the relative value of the lands, so as to give them an equal opportunity of settling their lands and increasing their population. You have sold twenty millions of acres of the first quality, and most advantageously situated. Those States having these lands have been preferred, and were first sold and settled, while the other States have been, and must be, postponed until lands rise in value, from the increased demand arising from increased population. The price ought to be graduated to the quality, so as to put the States upon a fair equality, by bringing their lands into the market upon terms of equal competition, and so as to give every class of people lands suited to their wants and their condition, upon fair relative terms. The great difficulty is not in the recognition of the truth of these principles, but how to effect the object. The idea of classing them into three qualities suggests itself as the most natural mode; and this will probably be finally adopted and carried into effect, but it will require time and reflection to devise a plan which will be

safe, practicable, and fully comprehended and approved by the people of the United States. Such a system may be carried into effect, to the great benefit of the people and of the States. The great object of all, however, seems to be to provide a moderate and inducing price to the actual settler, who is in general poor, just commencing the world; who is the pioneer that goes forth to subdue the wilderness, to open and prepare the way for the march of civilization; who encounters all the hardships, and performs all the labor of extending your settlements and improving the country.

Sir, the people must have lands, and you must let them have them at such price as they can pay; if they cannot buy, they must settle on the public lands, where they have no inducement to labor, and where they will be always anxious until they obtain the land, or they will be idle, dependent tenantry, unfit to exercise the rights of freemen.

The payment of the public debt will now allow Congress, in making a disposition of the lands for the common benefit, and not merely with a view to the revenue, to take a more enlarged view of the public interest. What is the view which the statesman, looking to the whole country, and all our interests, to the happiness of the people, and the power of the Government, would take? To the million of dollars a year, drawn reluctantly from the poorest class of people? or would he look to the number of independent freeholders, the cultivation of the soil, the improving condition of the country, and the rise of flourishing States, and the addition of new republics to the Union? How would a great man, (Napoleon, for example,) presiding over this great country, and looking only to power, view this question? Would he look to the millions of dollars? No; but to the extent of territory, the population, the productions, the trade, the commerce, the capital, the capacity to pay taxes, and the means of increasing all these national objects. He would look to the real elements of power, the number of people, the amount of productive labor, the mass of wealth. But we have other and higher objects—to make citizens, and render them happy and prosperous.

The system heretofore pursued illustrates, under all disadvantages, the effect on the people and the Government. In forty years the wilderness of the West has been converted into a cultivated country; eight States have been formed, with four millions of people, paying eight millions of revenue a year, and the whole rapidly advancing. In this short space we have founded and established an empire out of a population of four millions.

You have, at the same time, drawn forty millions of dollars from this region, which has distressed the people, drawn from them the circulating medium, deprived the inhabitants of the very means they wanted to cultivate and improve the lands, and thereby greatly retarded the growth of the country, as well as individual prosperity.

More enlightened views are now taken of this interest. We begin to see the wisdom of inducing our people to settle as soon as they arrive at manhood; which is done by giving them the lands on easy, moderate terms; the less price and the greater inducement, the better. The new generation, arriving at manhood, go forth into the new States. The first object is independence, and a home, and a habitation, which is obtained as soon as they acquire land. They then begin the work of life; they become citizens, they marry; and, while they subdue the earth, also multiply and replenish it. As soon as the land produces fruit, it goes into your trade, furnishes the elements for navigation and commerce, and these furnish revenue; and this revenue is the shape in which the people should make their returns for the bounty of the Government.

The West now pay you eight times as much, in the form of duties, as you obtain a year for the lands. They pay you, in yearly revenue, four times as much as the interest of the whole capital drawn from the sales of the public lands,

and this disproportion will be annually increasing; but how greatly you would have increased the production, trade, commerce, and revenue, if you had left the forty millions, as active capital, in the hands of these industrious citizens; how far you would have thrown the country forward!

I believe the propriety of giving the settler lands at a reduced price, is acknowledged; and I have no doubt a general law would pass to give them the land, wherever they choose to settle, at fifty cents.

It is the object of this bill partially to effect these two objects, of reducing and graduating the price. It is founded on the idea that those lands, having been offered for sale, and not having been bought, are not worth the price, and, therefore, in justice, ought to be reduced one dollar, and that the actual settler ought to have the lands cheaper than the purchaser.

The first objection is to the quantity of land embraced in the bill, which is about seventy or eighty millions of acres. But it must be remembered that this is the remains of thirty years' sales; that twenty millions have been selected out, and that a large quantity of this land is unfit for cultivation—a very large proportion of third rate lands that no one would pay the taxes for; and of the remainder, where there is some good land, the cultivable part will be a small proportion to the whole. A very large quantity of land has been surveyed; a much greater quantity than necessary, through mismanagement, neglect, or fraud. They have surveyed large quantities of pine woods, prairie, and other inferior qualities, as a matter of speculation—lands which can never sell, because unsuited to habitation and cultivation. But that has been corrected within a few years, and will be better guarded in future.

The second objection is, that it will have an effect upon the value of property in the Western country.

I do not think this small reduction can have any sensible effect, or that the public price has much effect on the price of estates. Farms in the Western country vary from two to thirty dollars an acre, and depend upon the quality of the soil, local advantages, and proximity to market or navigation; but in a great measure upon the real value of the improvements. Farms may, in general, be purchased for the value of the labor expended on them. Those estates are, in general, bought by men of property, and never by that class of settlers who go into the woods to buy their farms, to improve by their own labor, because they have not the means to purchase the improved lands; and it is their poverty and necessity that compels them to encounter the hardships of settling a new place, and in a new country. The price of lands can never rise much above the value of the improvements, although they will often fall below; while we have an immense quantity of land that must remain in the market for a great number of years. There is an intrinsic value in the production and in the comfort and enjoyment of a cultivated farm in an improved country, which will not be materially changed by the reduction proposed.

But, sir, this bill is only a partial provision, and not adequate to the exigency of the case. It is a matter of justice to the people, and to the States, to class these lands, and graduate the quality and the price, so that all the States may have a fair opportunity of settling, and all the people of the different conditions of life an opportunity of procuring the kind of land that suits them, at a proper and just price. There is a large class of people that prefer the middle quality of land; the oak, hickory, and pine lands, because it is more healthy, and better adapted to their habits and mode of life.

It is a partial remedy for the settler, because it is limited to the lands already offered for sale, which ought to have been extended to all lands that have been or may be surveyed; and the price to the actual settler, who shall reside permanently on the land, and make improvements, ought to be reduced to fifty cents.

MAY 6, 7, 1830.]

*Officers, &c. of the Revolution—Virginia line.*

[SENATE.]

Sir, it is in the hope of seeing these two objects obtained that I vote for this bill, the benefit of which will not be felt in Louisiana. The lands offered for sale there would not bring the minimum price, because they are inferior lands, and will not be sold or settled until the price is graduated to the quality of the soil.

Sir, I hope this bill will not be postponed.

Mr. BARTON said, the bill was no longer "a bill to graduate the price of the public lands, to make donations to actual settlers, and to cede the refuse to the States in which they lie." The motions of the Senators from South Carolina and New Hampshire [Messrs. HAYNE and WOODBURY] had divested it of that character, and reduced it to a mere proposition to reduce the price of the lands that had been heretofore offered for sale, and give a preference to actual settlers. The bill, as it now read, [Mr. B. said] was nothing but his own project, offered to the Senate in 1828 as a substitute for the graduation bill, and strenuously opposed by the friends of the graduation bill. Nay, it was less favorable than the substitute he had then offered; for his amendment proposed this same reduction of price to one dollar, and also to make a small donation to actual settlers upon five years' inhabitation and cultivation. That amendment was, therefore, more favorable to the actual settler than the bill as now amended; but he was content with the preference here given to actual settlers.

Mr. B. said, he had then declared on this floor that there would be no difficulty in reducing the price of public lands if the other scheme were out of the way. If the matter had been left to the Committee on Public Lands, as it should have been without interference from other quarters, the situation of the emigrants to our new lands would at this day have been better than it now is.

He would vote, he said, against the motion to postpone the bill, not because it now embraced his own project of reducing the price; but because he did not consider revenue from the lands as the greatest object to be attained in disposing of them. The facilities to our citizens to become freeholders was a greater object. The inequality in the operation of the law, mentioned by the gentleman from Delaware, was unavoidable. Theoretical equality was unattainable in practice. When land was reduced, in 1820, from two dollars to one and a quarter, a like inequality existed. The elder State of Ohio had paid two dollars for most of her land; while the younger ones, that bought since that reduction, paid but one dollar twenty-five cents. So, in this reduction, should it be passed, a like inequality would be found unavoidable.

He had little hope [he said] that this measure, at this late period of the session, could be got through the other House. It ought to have been introduced and acted on sooner. It ought to have been accepted when he offered it in 1828, when it was practicable.

This matter ought to have been left to the control of the Committee on the Public Lands, who never were in favor of the impracticable project held forth in the now abandoned graduation bill. As the abandonment of that bill, however, freed him from the shackles of those instructions he had heretofore mentioned to the Senate, he would vote for this, his own old measure, hopeless as it now was at this late period of the session; hoping, that if it did not pass at this session, it, or some more judicious plan of reduction, would be adopted at the next, as to those lands that had been long in market more especially. His great object was to keep the lands out of the hands of monopolists, and use them rather as a fund to make our citizens freeholders, than as a source of revenue.

The question was then put on Mr. CLAYTON'S motion to postpone indefinitely, and decided in the negative by the following vote:

YEAS—Messrs. Barnard, Bell, Burnet, Chase, Clayton, Dickerson, Foot, Frelinghuysen, Holmes, Knight, Marks,

Naudain, Robbins, Sanford, Seymour, Silsbee, Smith, of South Carolina, Sprague, Tyler, Willey—20.

NAYS—Messrs. Adams, Barton, Benton, Bibb, Brown, Dudley, Ellis, Forsyth, Grundy, Hayne, Hendricks, Iredell, Johnston, Kane, King, Livingston, McKinley, McLean, Noble, Rowan, Ruggles, Tazewell, Troup, White, Woodbury—25.

The bill was then ordered to be engrossed for a third reading, by yeas and nays, as follows:

YEAS—Messrs. Adams, Barton, Benton, Bibb, Brown, Ellis, Forsyth, Grundy, Hayne, Hendricks, Iredell, Johnston, Kane, King, Livingston, McKinley, McLean, Noble, Rowan, Ruggles, Tazewell, Troup, White, Woodbury—24.

NAYS—Messrs. Barnard, Bell, Burnet, Chase, Clayton, Dickerson, Dudley, Foot, Frelinghuysen, Holmes, Knight, Marks, Naudain, Robbins, Sanford, Seymour, Silsbee, Smith, of South Carolina, Sprague, Tyler, Webster, Willey—22.

THURSDAY, MAY 6, 1830.

[The Senate was this day chiefly occupied in the discussion of bills of a private nature.]

FRIDAY, MAY 7, 1830.

OFFICERS, &amp;c. OF THE REVOLUTION—VIRGINIA LINE.

The bill for the relief of the officers and soldiers of the Virginia State line in the war of the Revolution was taken up; when

Mr. TYLER said, that he felt it to be his duty briefly to explain to the Senate the grounds on which he rested his support to this bill. He would premise this explanation, by stating that Virginia asked nothing of the liberality or the bounty of this Government. He should make no appeal to its gratitude in favor of those whose descendants were interested in the passage of the measure now before the Senate. If they had no claim either in justice or equity; if, in plainer words, they were not entitled to obtain, provided this Government was suable, a decree or judgment in a court of law or equity, for that which is now demanded for them, he desired that the bill might be rejected. The General Assembly of the State, one of whose representatives he was on that floor, had adopted certain resolves upon this subject, not in the character of a suppliant for Congressional bounty, but from a desire to fulfil her engagements solemnly entered into with men who had evinced their fidelity to her and the cause of American independence, by long and faithful service. That State would scorn to be a suppliant to a Government which has no power to bestow charity, or to exercise a spirit of munificence. He had premised thus much, not only in justice to his State, but to himself.

He then entered into an exposition of the grounds on which the bill rested. The State of Virginia, by sundry legislative resolves, commencing at an early period of the Revolutionary war, had held out inducements to her citizens to enter into the military service. Amongst the most prominent of which was, the promise of land bounties to her officers and soldiers, as well upon the State as continental establishment. She was then the mistress of an extensive region; and if she had continued to retain her sovereignty over it, no murmur of complaint would ever have been uttered against her by those who fought not her battles only, but those of the confederacy. She drew no discrimination between her State and continental troops. None in truth existed. The only difference between them was, a mere difference as to the Government by whom they were to be paid. The service of the State troops was as trying and as perilous as that of the continentals. The same fields were embued with their blood; and when victory perched on the banner of the one, it alighted also

on those of the other. In fulfilment of her plighted faith, a resolution was adopted by her Legislature, on the 19th of December, 1778, appropriating all the lands lying between Green river, the Cumberland mountain, the North Carolina line, the Tennessee and Ohio rivers, exclusively to the purpose of satisfying the claims to military bounty; and, in 1781, she added the lands lying south of Tennessee river, and between the Ohio and North Carolina line and the Mississippi. He recited these facts to show distinctly to the Senate that she had ever considered the claims of both her lines as inseparable and undistinguishable—a fact which it was necessary to bear faithfully in mind.

In 1781, she adopted the policy of ceding to the United States her extensive territory northwest of the river Ohio, which had been conquered exclusively by her own arms; and, on the second day of January, passed a resolution authorizing her delegates in Congress to make the cession on certain conditions. Here [Mr. T. said] the difficulty appertaining to this subject had commenced—a difficulty which had heretofore prevented her from doing full and ample justice to her gallant sons. By the resolution authorizing the cession, (he would call it the power of attorney under which her agents acted,) her reservation of lands appertained as well to the benefit of her State as continental troops. This was the only authority with which she ever invested any one, in relation to the lands ceded.

Here Mr. T. read from a copy of the original resolution the following words: "That in case the quantity of good lands on the southeast side of the Ohio, upon the waters of the Cumberland river, and between the Green river and the Tennessee river, which have been reserved by law for the Virginia troops upon continental establishment, and upon her own State establishment, should (for the reasons therein stated) prove insufficient for their legal bounties, the deficiency shall be made up to the said troops in good land, to be laid off between the rivers Scioto and the Little Miami, on the north side of the river Ohio," &c. &c. No one will doubt that her agents were bound by their positive letters of instructions; and that if the deed varied in any essential particular from the terms of the authority by which, and by which alone, it was executed, waiving the question whether the deed might not be entirely avoided thereby, a court of equity would correct such variation, and supply all defects. This was the fact in regard to this transaction. The deed assigned recited the whole of the conditions expressed in the resolution, *totidem verbis*, but omitted all mention of the State troops. How could this have arisen? The Legislature of Virginia gave no authority to any one, other than that which he had just mentioned. She had never contemplated a measure of justice for her continentals, which she did not, at the same time, deal out to her State troops. There was but one mode of accounting for it. There must have been an omission, either in the copy recited, or in the recital of the copy. No other rational explanation could be given. He had, in fact, if his memory did not most egregiously deceive him, seen a certificate to that effect, from Mr. Monroe, who assisted in executing the deed. He had not been able, recently, to lay his hand on that document, nor did he esteem it material. The narrative into which he had entered served fully to establish it. In fact, the journals of Congress, of 1783, showed how the mistake had originated. A committee was appointed to consider of the terms of cession, and to report thereon; and they undertook, in their report, to set forth, in the very words of each, the various conditions on which Virginia had proposed to make the cession. The fifth condition was that appertaining to this subject; and in the recital of that, the error was committed which ran into the deed afterwards. That committee had the resolution of the General Assembly before them; and it is not to be credited, for a moment, that they intentionally recited falsely

its terms. It is much more creditable and just towards that committee to ascribe the omission to a mere oversight. If he was right in this, it followed that the State troops had a full right to enter upon the reserved lands northwest of the river Ohio, in order to locate their warrants. The lands reserved in Kentucky had proved insufficient, from two causes. First, in running the division line between Kentucky and Tennessee, the territory of Tennessee had encroached considerably on those reserved lands; and, secondly, a portion of that tract of country was inhabited by the Chickasaw tribe of Indians, up to 1819, when a treaty was negotiated with them; whereupon, Kentucky claimed exclusive jurisdiction over the country, and forbade the location of the military warrants. In the mean time, the State troops were not, and have not, at any time, been permitted to avail themselves of the reservation on the northwest of the river Ohio, and now the permission to do so would come too late.

The continental troops have taken up all the undisputed land, of any value, contained in that reservation; and, by reason of a mistake in running the first boundary line, the United States have sold a large portion of what properly fell within that reservation. Thus it is that many of the State troops have never been satisfied in their just demands. Not by any fault on the part of Virginia, but from accidental circumstances, over which she had no control. There remains now within the reserved territory no lands which would remunerate the labor and expense of location. The Government itself has sold a large portion of them; and, so far as a deficiency is produced from that cause, no one can doubt but that the United States are bound to make it good. But if the reservation, the interposition of this Government apart, had proved deficient, this Government ought to make it good. It paid down no valuable consideration for that extensive domain. It received it as a gratuity. If the reservation had exceeded the demands of the officers and soldiers, all the surplus would have belonged to this Government. Surely the rule should work both ways. If you would take the surplus, if any, you ought to supply the deficiencies, if any.

But these claims rested upon another ground, which he considered equally strong. The contract with the soldier created on his behalf a lien on all the unlocated lands held by Virginia at the time of entering into that contract. The whole Northwestern Territory was subject to his claim. Virginia could not make void that lien. This Government, therefore, must have been subject to it, since it was prior, in point of time, to the deed of cession. In a court of justice, in a case between individuals, he apprehended that but one judgment could be pronounced in this matter; and he trusted that the Senate would not hesitate in fulfilling the demands of justice. No deep concern need be felt as to the amount of these unsatisfied warrants. He was in possession of a document which enabled him to arrive with something like accuracy at the quantity of land. It was a statement of the Register of the Land Office, from which the warrants had issued, furnished in 1822. There issued to the State troops, prior to the year 1792, warrants, amounting in all to one million one hundred and forty thousand five hundred and eighty-three and two-thirds acres: and between 1792 and 1828, others amounting to thirty-seven thousand four hundred and nine and one-third acres; making in all one million one hundred and seventy-seven thousand nine hundred and ninety-three acres. Of these, one million thirty-one thousand one hundred and thirty-four and two-thirds acres were located; leaving of unsatisfied warrants one hundred and forty-six thousand eight hundred and fifty-eight and one-third acres. Some small addition has, no doubt, been made since; but when it is seen that, in thirty years, warrants covering but thirty-seven thousand four hundred and nine and one-third acres have been issued, it may justly be inferred that those which have been issued since are of

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inconsiderable amount. When it is recollected that the Congress, but two years ago, appropriated one million of acres in aid of the Ohio canal, and is engaged almost daily in making extensive grants to other objects, he could not persuade himself that it would hesitate to pass this bill, in fulfillment of such a purpose as that which it proposed to accomplish.

Mr. KNIGHT said, he rose to obtain information on the subject under consideration, and to ask the Senator from Virginia whether a reservation was made in the deed of cession in favor of the State troops, and whether they were placed on a footing with the Virginia continental troops, in regard to the land or location of the military warrants. He understood no reservation was made in the deed of cession in favor of the State troops. Then why should be given to the State troops of Virginia more than is given to other State troops? Other States had troops who were also found valiantly contending by the side of the continental troops, and who have applied here for aid, in the form of pensions, out of the common fund, and they have been refused. They have been told to go to the States for compensation; that they were State troops, and, therefore, the State must pay them.

Sir, it was stated that a reservation of lands was made for the troops of Virginia, west of the Ohio, between the Miami and Scioto, and that the United States had interposed, and sold a part of the land reserved. It is conceived that the United States could not sell these lands to the prejudice of these claims. If Virginia made the reservation, she will hold them notwithstanding these sales. The Virginia State troops have no right, either in justice or equity, to more than the troops of other States; and if the gentleman would consent to amend the bill, so as to include all the State troops, he would vote for it; but to give these lands to the Virginia troops alone, would be doing more than the Senate had been willing to do for others. Why should be given to the State troops of Virginia that which is withheld from others?

Sir, it is said that it was intended to have included the reservation for the State troops as well as those on the continental line. Was it so done by the deed of cession? It is not pretended. No, sir, it was not. Did no other States make cessions to this Government but Virginia? Sir, the United States ceded what they had; they ceded revenue, Virginia ceded lands. The revenue, it is believed, will amount to as much as these lands; and if the revenue be given back, compensation will not be asked for the State troops. We then should be able to reward them ourselves; but to give to Virginia troops alone, is doing more than is required, in my opinion. I have not looked at the deed of cession, nor the conditions on which the cession was made; but I have understood that the continental troops only were provided for by that instrument.

Mr. KANE moved to amend the bill, in the seventh line, by inserting, between the words "any" and "unappropriated" the word "unsettled." [The effect of the amendment was intended to restrict the locations of Virginia land warrants to public lands unappropriated and unsettled; which amendment was agreed to.]

Messrs. NOBLE and HENDRICKS opposed the location of these land warrants in Indiana; not because of any hostility to the principles of the bill—those they did not question—but they objected to their location in Indiana, in consequence of the difficulties which grew out of a former similar bill, for the relief of the "Canadian volunteers." They feared that similar dissatisfaction and confusion would arise under the provisions of the present bill, and would, therefore, move that it be amended by striking out "Indiana."

Mr. KANE then said, that so far from its being an objection to him that any of these locations should be made in his own State, he was decidedly in favor of them. He believed that, in expressing his own sentiments, he did those

of his constituents, whose interests would be promoted by emigration to the State.

Mr. BENTON said that the persons who were interested in these claims lived in different States, some of them in Missouri; and he had letters requesting him to get leave to locate in that State. He had no objection to it. He would be willing that the whole quantity should be located in Missouri. It would increase the settlement and cultivation of the State, and augment the number of taxpayers. These were desirable things in a new State. Even a non-resident proprietor was a more profitable landholder to the State than the Federal Government; for such proprietors paid taxes, which the Federal Government did not.

He should make no motion to amend the bill by enlarging the sphere for the location of the warrants; he left it to the Senators from Virginia, who had charge of the bill, to conduct it as they pleased. He would vote for it in any shape, either confined to the territory which Virginia formerly ceded to the Federal Government, or extended to the whole body of the public lands. Upon the United States he conceived the obligation to be the same, to yield land for the satisfaction of the warrants, whether it was requested in one place or in another. To the holders of the warrants, who were now the children and grandchildren of the officers and soldiers of the Revolution, and who were dispersed through many States, it would be more convenient to have leave to locate in other States besides those mentioned in the bill. Doubtless we shall have applications next winter, if the bill passes as drawn, for leave to locate elsewhere, and I shall be for granting it. The only reason that the Senators from Virginia have given for confining the locations to the land which Virginia formerly owned, is the difference between strict right and equity; they contend for a strict right to locate on the old Northwestern Territory; and, on this there seems to be reason; but it is the same to the Federal Government to pay out of any portion of her lands.

Messrs. TAZEWELL and BURNET severally opposed the motion of Mr. HENDRICKS; which, on the question being taken, was rejected.

The bill was ordered to be engrossed by the following vote: YEAS—Messrs. Adams, Barnard, Barton, Benton, Bibb, Brown, Burnet, Chase, Clayton, Dickerson, Ellis, Foot, Forsyth, Frelinghuysen, Grundy, Hayne, Holmes, Iredell, Johnston, Kane, King, Livingston, McKinley, McLean, Marks, Naudain, Rowan, Sanford, Seymour, Silasbee, Smith, of South Carolina, Sprague, Tazewell, Troup, Tyler, Webster, White, Willey, Woodbury—39.

NAYS—Messrs. Hendricks, Knight, Noble, Rugles—4.

#### THE GRADUATION BILL.

On motion by Mr. BENTON, the graduation bill was taken up, yeas 22, yeas 18; and after, the blanks in the fourth section were filled with twenty five cents and fifty cents.

Mr. FOOT moved to refer the bill to the Commissioner of the General Land Office, with instructions to report at the next session of Congress the quantity of land in each district, which has been offered for sale and remains unsold; the length of time the same has been in market, and subject to entry at private sale at the minimum price; the quantity and value of the land, and the prospects of settlement; the number of land offices in which no sales have been made during the last, or previous years; and what will be the effect of this bill upon the present land system, and upon the revenue arising from the sales of public lands. He said, we are told by almost every Senator from the Western States that we do not understand this subject. Sir, we have asked information, and it has been refused. Senators express great surprise and astonishment that we

should even ask information. The Senator from Massachusetts, [Mr. WEBSTER,] when, at the close of his speech, on the resolution instructing the Committee on Public Lands to inquire and report on this subject, he moved its indefinite postponement, probably was not aware of the fact, that every member of this committee resided in those States in which the public lands are located, and that their mouths were sealed up by instructions from their own Legislatures! and that no report could be expected from them, without instructions from the Senate! This motion has been pronounced extraordinary. Sir, it is surely not more extraordinary than the course adopted by the Senators who opposed the resolution for inquiry, and the debate which followed. Mr. F. said, that while he held a seat in the Senate, he should take the liberty of deciding for himself as to the propriety of his course in relation to the interests of his own State and the whole Union, within the rules of the Senate. Since the resolution for inquiry had been so strongly opposed, he had examined the subject as far as his time would permit; but could not go through the voluminous land laws embracing 1,000 pages or more. But he had found one provision in the act of 24th April, 1823, which had not been noticed by any of the Senators, either on this bill or the resolution, and which was sufficient to prevent him from voting for the bill in its present shape. Mr. F. read from the third section: "But no lands shall be sold, either at public or private sale, at a less sum than one dollar twenty-five cents per acre." Here the Government has pledged its faith to the purchaser under the system of cash sales—that these lands shall not be sold at a less price, to the injury of the purchaser. He was not prepared to say whether this pledge would embrace lands in market previous to the act of 1820. But they certainly did embrace all lands since brought into market. He wished to ascertain the quantity in market previous to the passage of that act, and its quality, and what provisions might be properly made for the disposition of the lands which had been long in market for the benefit of the actual settler. This bill furnished no system. It only reduced all lands in market prior to 1827 to one dollar to purchasers, and seventy-five cents to settlers; and we had no information on which we could calculate the effects, either upon the revenue or the land system. This was his object in the motion—not from motives of hostility to the West. Some of his nearest friends resided in the West.

Mr. WOODBURY said, it was obvious to the Senate, from what took place at the former reading of this bill, that his position in relation to it was very peculiar.

This position made the remarks of gentlemen from the East against the measure bear so directly on him personally, and on the solitary vote from that quarter, his sense of public duty had required him to make, as to furnish, he hoped, a sufficient apology for a few seconds, a reply to the member from Massachusetts, [Mr. WEBSTER.]

The motion now under consideration, for a reference, and consequently a defeat of the bill the present session, is professed to be grounded on the want of information as to the real value of the lands within the purview of its provisions; and the member from Massachusetts seems to support the motion on the hypothesis that there is no evidence now before the Senate, to show these lands to be of an inferior quality to those which have already been sold, at the price of one dollar twenty-five cents per acre.

It gave him pleasure to find that the second section, making a discrimination in price favorable to the actual settlers, was thought judicious; and, therefore, he should only attempt to recall to the recollection of the Senate those circumstances which were now in their possession, and which, to his mind, furnished plenary proof that these lands were inferior in quality, and ought to be sold at a reduced price.

He should not go over the detail of a former day's debate, but state, generally, that the lands had all been offered

at public auction, and a purchase refused of those remaining. They had since been picked over and culled at private sale, from three to thirty years, and nobody had been found willing to buy the refuse left, at one dollar twenty-five cents. Did not these facts alone warrant a presumption that the lands thus left were less valuable than those which had been taken? Could any inference be more fair or legitimate? But, beside this, we had already had the full and accurate statements of the land officers, which this motion appeared to suppose were not before us; we already had, and, on the second reading of the bill, it would be remembered, he read those statements on a number of points, as they had been laboriously condensed into a tabular form by one of the friends of the bill. From them it appeared, by persons most competent to judge, that the average value of all these lands was not only low at one dollar per acre, but that in only five or six districts were they worth seventy-five cents per acre. How then could any person argue, with these returns before them, that there was no evidence of the inferior quality of these lands, or that they were not worth over one dollar per acre?

Another singular circumstance in those returns was, that the lands which had been the longest in the market, say from eight to twenty years, and which the gentleman from Massachusetts thought might be less valuable, and should be put lower than those which had been offered a shorter time, were, in truth, the most valuable of the whole.

If a discrimination was made at all, it should be against them; because they were situated in the oldest States at the Northwest in smaller parcels, and, though of inferior quality, were enhanced in value by the improvements in their neighborhood, and by the utility of them as appendages to the farms of old settlers. But only a single district of all those was appraised at an average value, over a dollar per acre, while the great mass of the lands embraced in this bill was appraised as low as, if not lower, than fifty cents per acre.

Gentlemen could examine these official statements in detail; and it would be found, that they not only rendered the motion for a reference unnecessary, but they contained decisive testimony in support of the fair presumption of common sense, that when large tracts of land had for years been offered for sale, both in public and private, in large or small quantities, at one dollar twenty-five cents per acre, and many millions of acres picked out and purchased, the residue must be of inferior quality.

On such proof, he thought the bill a just measure, and would frankly avow, that after all the lands worth a dollar per acre had been sold in conformity to its provisions, he should not hesitate, in equal satisfactory testimony, to support a reduction of the price of the remaining refuse tracts to what might be proved to be their fair value.

This would he right, as regards the interests of all. He made no claims for it, as peculiarly liberal, but should never shrink from advocating what he believed to be right.

Mr. WEBSTER supported Mr. FOOT'S motion in a speech of considerable length, to which Mr. KANE replied.

Mr. HENDRICKS said, that the proposition now before the Senate was to refer the bill to the Commissioner of the General Land Office for a report, which it would require much time to make. It was well known that that officer, for many weeks past, had been unable to attend to the duties of his office, and that this direction of the bill would be its certain postponement for the present session. He appealed to the magnanimity of the Senate, on the unfairness of such a course, and hoped that the Senate would not indirectly defeat a bill which was most certainly favored by a majority of the body. The information wished for was in possession of the Senate, and had been referred to in progress of the debate. The Commissioner of the General Land Office could have no other infor-

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mation, and could do no more than refer to it on our files, or, perhaps, throw it into a more condensed form. The Senator from Massachusetts [Mr. WEBSTER] seems to be favorable to the principles of this bill, but the details do not please him. He believes that lands of inferior quality ought to be diminished in price; but seems unwilling to admit, that having been long in market, and remaining unsold, is evidence of inferior or bad quality. Why, sir, if we wait till we entirely agree on the details of bills, we can never legislate; we may adjourn and go home. When did the Senate, or even a majority of the Senate, agree on the details of any bill? All we can expect is, to agree on the principle of such bills as this. The details are less important. The details of this bill, perhaps, please not a single member. They do not please me. The bill is not what I think it ought to be, but I shall vote for it, as the best which can at present be done. Because it contains two important principles—that of reducing the price on lands which have been three years and more in market, without purchasers, to one dollar per acre, and that of giving advantages to actual settlers. I shall vote for it, because it goes further than any provision heretofore enacted, in putting the public lands on easy terms, into the hands of the poor—into the hands of the emigrating classes of the old States, and of the agricultural portions of the community in general. This is the proper destination of the public lands. By so appropriating them, we do the greatest good, induce the greatest degree of happiness and national prosperity, with the means placed at our disposal. The Senator from Massachusetts would go further than the bill; but yet he cannot vote for this bill.

Mr. H. said, that he, too, would go further than this bill; and it was his purpose to have moved an amendment to it. He had one prepared; an amendment proposing that lands which had been twenty years in market should be sold at fifty cents per acre. But, after all the lower minimums of the bill had been stricken out, and the proposition of the Senator from Alabama, [Mr. McKINLEY] to reduce to fifty cents per acre, in favor of actual settlers, had also been rejected, he saw it was useless to offer any further amendment. He regretted, at the time of it, the rejection of the second minimum, that in the descending scale; but now believed that that rejection was fortunate, because the bill had yet as much weight as it could get along with. It was [said Mr. H.] a proposition to which all would agree, that lands of inferior quality ought not to be kept in market at the same price as the best lands.

The districts of country, for instance, bordering on the Ohio river, were more rough, and of worse quality, than lands further back. In the State he had the honor to represent, a large portion of these lands had been in market from twenty to thirty years. These lands were still held at the same price as the best lands in the country; and the consequence was, that the country remote from the river was more densely settled than many portions of it near the river.

It had been stated, in the progress of this debate, [said Mr. H.] that lands remaining a long time in market, unsold, was no evidence of bad quality; but of the fact that there were not purchasers, that there was too much of the article for the demand. But surely the opinion, that the surplus population of this country requires no more of the public lands than have heretofore been sold, cannot be correct. Who could look abroad in the community, without seeing thousands, and tens of thousands, who would better their condition, by abandoning their present pursuits, and becoming cultivators of the soil? The people of this and every country would betake themselves to agriculture, just in proportion to the means within their power of engaging in it; for that, more than any other, was the occupation to which man was naturally inclined. Then let the public domain be put more certainly within the power of the poor, and we would see thousands taking up

the line of march to the new States, who had not before thought of it; and this state of things would not only better the condition of those who go, but of those who stay in the old States: for, to those who stay, industry would have the more sure and liberal reward, as the hands that were engaged in it should be diminished in numbers. It was the duty of the Government so to manage its affairs, as to increase, in the greatest degree, the happiness of the people: and, connected with the public lands, this could best be done, by increasing the means of becoming freeholders to those who are already in the country; increasing facility to the emigrating classes of the old States; to the sons of industrious farmers and mechanics of the old States; men of industry and enterprise, whose sphere of action was too much confined in the old States, who have not capital to become farmers, or manufacturers, or merchants, there—such men as have energy enough to change country and climate, and to enter upon new theatres of life. It is to such as these, more than any other, both of the old States and of the new, that the public lands of right belong. They promise to make the best possible use of them.

In this view of the subject, [said Mr. H.] I feel surprised that Senators from the old States should hesitate about supporting this bill. It is in favor of your constituents, gentlemen, as well as the people of the new States, that this bill provides; and perhaps in a much greater degree in your favor than in ours. The great mass of settlers which this bill invites, must come from the old States. In this view, the interests of the old States and those of the new are precisely the same. It can never be the policy of the Government to chain the citizen to his paternal country and soil, in the dread of transferring political power west of the mountains. The great error is, in viewing the old States and the new as having separate and distinct interests in this bill; and in looking at the subject in a pecuniary point of view, instead of that which a paternal bosom feels for the welfare, and happiness, and prosperity of its offspring.

Let, sir, the emigrating classes of the old States, and those who are identified with them by the ties of consanguinity and affection, once take a right view of this question, and all will be right. It will then be seen that the just views of the new States, in reference to the public lands, are not appreciated by the Representatives of the old States, because by them not well understood, or, if understood, that they are kept in the back ground by the natural prejudices of the old States—prejudices, in favor of wealth and political power; honest prejudices, entertained by the most enlightened and the best of men. This subject seems right in the old States; and the young men of those States, would, with one voice, declare in favor of the policy of the West. Every one of the community, not fettered by property—not to the land of his birth, would accord in declaring in favor of an asylum in the West, to be procured on the easiest terms, for the surplus population of the East and the South. Then there would be a union of opinion in our favor; and in this state of public sentiment, their Representatives would unite with us, in preparing, in the new States, homes and fire-sides for such portion of their population as can never expect to enjoy these inestimable blessings in the land of their fathers.

Mr. BENTON rose to say, that all the information possessed to be called for by the resolution was already in possession of the Senate, obtained by it long since, and printed by its order; and that any reference that should now be made of the bill, by sending it to the Commissioner of the General Land Office, in search of information, would be to send it from the place where the information was, and to the place where it was not. He considered the motion of reference as a motion to get rid of the bill altogether, and that not in the usual way, by a di-



rect and responsible vote, but in a most unusual and extraordinary mode. He hoped the Senate, by a decisive vote, would discontinue that mode of proceeding, and bring the bill to its issue in an open, fair, parliamentary way, by a direct vote upon its passage. The bill was now at the very last stage; it was ready for the very last—for the yeas and nays on its final passage. Its friends are ready, and willing, to risk its fate; and its enemies should let them have fair play and decisive action. Mr. B. remarked upon the length of time which the bill had been depending, the fulness of the discussions which had heretofore taken place, and the complete knowledge which every Senator must have of the subject in 1824. He had first moved the subject in a bill containing nearly similar provisions to the graduation bill as now amended. The first bill provided for the reduction of the price of public lands, after five years' exposure to sale, to a minimum of fifty cents per acre, and a donation to actual settlers out of the land which would not sell for fifty cents. That bill was condemned *in toto* by the land committee; and its chairman,\* in a verbal report which he was directed to make, censured the whole plan as premature and improper, and stated that he was instructed to move its indefinite postponement. After this decisive condemnation of the plan of reducing the price of the unsold and unsaleable lands, and making donations to actual settlers, the graduation plan was adopted, being copied from the land laws of the State of Tennessee, where the system of graduated prices had been tried, and worked well. The plan had been submitted to the Western States and Territories, and met their approbation; it had been repeatedly discussed in the Senate, and very nearly adopted by it. The amendment now made retained its two first clauses and distinguishing characteristic; they retained the one dollar price to non-settlers, and the seventy-five cents price to settlers. The remaining clauses, struck out, could not be used at present, even if retained, and the bill should pass. They could only come into operation several years hence, and before that time they can be adopted. Their rejection, at present, is a postponement to obviate the objections of some gentlemen, and does not prevent their adoption at a future day, if the people desire it, and Congress should be convinced of its justice. If the bill should pass as amended, there will be three prices for the public lands, instead of one price, as at present. The first price will be for the new lands, and will be one dollar and twenty-five cents per acre. The second price will be for the old lands, which have been exposed both to public auction and afterwards to private sale, for three years and upwards, and will be one dollar per acre to non-settlers. The third price will be for actual settlers, at seventy-five cents per acre, and will be limited to the old lands, and restricted to the quantity of one quarter section. This would be doing something for the people; it would be a great deal, and would command the thanks and benedictions of ten States and Territories. It would present a just graduation of prices as far as it went, and would establish the obvious distinction between old and new lands, the picked and the unpicked districts, which the nature of things requires, and would also make the discrimination between actual settlers and speculators, which all profess to admire, but which our laws have never yet recognised.

Mr. B. read a letter from a gentleman in Maine, to show the terms on which that State and Massachusetts were selling their public land, which Massachusetts had not given up when Virginia and other States gave up theirs, and proved by the letter that the prices which they sold for were far below the prices in the graduation bill, and yet that speculators could not buy, even at their low rates, without being ruined. The letter said, "The average price of land by the township, meaning townships unset-

tled, and not particularly valuable for timber, is from fifteen to sixty cents per acre." "About thirty years ago, the Commonwealth of Massachusetts sold to the late William Bingham two and a half millions of acres at ten cents, (I believe,) and his estate will never be able to obtain the interest of the capital, and the expenses of management."

Mr. B. adverted to the advertisement which he had read some days ago, fixing the minimum prices of many districts of the public lands in Maine at twenty and twenty-five cents per acre, and to the fact that these were new lands, never before in market, and offered on credits of one, two, and three years at these low prices, and drew the inference that the graduation, as it originally stood, and much more since its amendment, had gone too high instead of too low in its prices; that it demanded more for refuse lands which had been picked many years under the laws of the United States; and some of them, as in Missouri, Illinois, Arkansas, Louisiana, Florida, and part of Mississippi, for fifty and a hundred years under the British, French, and Spaniards, before the United States acquired the possession of them.

Mr. B. read the bill which he had first introduced for selling the refuse lands of the United States, and making provision for actual settlers; and argued that it was, in principle, nearly the same with the graduation bill as now amended.

The following is the bill, and the report of the committee against it:

"IN SENATE OF THE U. S. April 28, 1824.

"Agreeably to notice, Mr. BENTON asked and obtained leave to bring in the following bill; which was read, and passed to a second reading.

"A bill to sell and dispose of the refuse lands of the United States.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the lands belonging to the United States, which have been heretofore, or shall be hereafter, offered at public sale, and shall remain five years after being so offered, without being sold at the minimum price of one dollar and twenty-five cents per acre, shall be again offered at public sale, but shall not be sold for a less sum than fifty cents per acre.

"Sec. 2. And be it further enacted, That any head of a family, or young man, above twenty-one years of age, or widow, being citizens of the United States, may demand and receive from the Register and Receiver of the proper land office, a written permission to take possession of, and settle upon, any half-quarter section of land which shall remain unsold, after having been offered for sale at the minimum price of fifty cents per acre; and, upon inhabiting and cultivating the same for three successive years, shall be entitled to receive a patent therefor, as a donation from the United States.

"Sec. 3. And be it further enacted, That the lands which shall remain unsold, after having been offered at public sale at the minimum price of fifty cents per acre, may be sold at private sale for that sum, at any time before a permission shall have been granted to settle on the same."

"MAY 3, 1824.

"Mr. BARTON, the chairman of the committee, stated that the committee believed the system proposed in this bill incompatible with the full and fair execution of the present system of raising revenue from the public lands for the discharge of our national debt; as the promulgation of the system now proposed would have the effect of preventing public sales, and private sales at the present minimum price; for few would buy when, by waiting a few years, they might get the lands at fifty cents per acre. However proper the proposed plan might become hereafter, the committee deemed it premature and im-

\* Mr. Benton.

MAY 8, 10, 1830.]

Sunday Mails.—Turnpike Road to Fredericktown.

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proper at this time; and had, therefore, instructed him to move the indefinite postponement of this bill when it should be taken up for consideration."

The bill was further debated by Messrs. DICKERSON, SPRAGUE, MCKINLEY, NOBLE, and ELLIS.

When the question was taken, the motion of Mr. Foor was rejected by the following vote:

YEAS—Messrs. Bell, Burnet, Clayton, Foot, Naudain, Robbins, Seymour, Webster—8.

NAYS—Messrs. Adams, Barnard, Barton, Benton, Bibb, Brown, Chase, Dickerson, Dudley, Ellis, Forsyth, Frelinghuysen, Grundy, Hayne, Hendricks, Holmes, Iredehl, Johnston, Kane, King, Knight, Livingston, McKinley, McLean, Marks, Noble, Rowan, Ruggles, Sanford, Smith, of South Carolina, Sprague, Tazewell, Troup, Tyler, White, Willey, Woodbury—37.

Mr. BARTON said he had before given his reasons why he should vote for the bill as it was; but it seemed to be his fate to have all he said or did, on this subject, misunderstood or misrepresented. Only a few days ago, he said he had been under the necessity to call upon two members of this body to put down a falsehood in relation to his course on the graduation bill.

The Senators called on had effectually put that misrepresentation to rest. This morning he found that even the National Intelligencer had, by mistake, put him down as having moved to lay the bill on the table yesterday.

He was now under the necessity of calling on the whole Senate, without regard to party, to bear witness to a falsification of the debate and proceedings upon this bill on the 6th instant, by the Printer to the Senate, in an editorial article. He had then publicly stated his reasons why he would vote for the reduction proposed, and why he would vote for the minimum of seventy-five cents per acre to actual settlers; that he thought a difference of twenty-five cents per acre, between the person who had gone on the land and the other common owners of this public property, was a sufficient preference to the actual settler over the other purchasers of the public lands; and should therefore vote for that minimum, although he had proposed small donations to such settlers in 1828, being disposed to take what seemed to be practicable.

But, he asked, would the Senate believe that nota word was mentioned of all this in the Telegraph?

He did not complain of not having been noticed by the Public Printer; but he complained of his having fixed his eye upon him, and, like a mere spy, watched his rising or setting, in a silent vote on the gentleman from Alabama's motion to reduce that minimum to fifty cents, and reported that vote alone, without any of the concomitant and explanatory statements which accompanied that debate. This, he believed, was the first time an editor, whether public printer or not, had fixed his eye, like a mere hiring spy, upon a member in his seat, seized on a vote silently given, and blazoned it to the public alone, suppressing all the explanations that accompanied the vote. No man disposed to tell the truth, and the whole truth, would be guilty of such a garbled and falsified account of the proceedings of the body. The only notice taken by the Public Printer of his course on that day, was the following—speaking of the motion to reduce the minimum to fifty cents:

"The vote on this motion was not taken by yeas and nays, but the West was not sufficiently unanimous in favor of it, (Mr. BARTON, of Missouri, being against it.) This placed between two indices, with the single vote given, and all the accompanying explanations and debate cut off and suppressed, there could be no room for doubt of its being a wilful and intentional falsification of the debate and proceedings of the Senate upon that subject. It proved that the editor of the Telegraph had fixed his eye, as a spy, on him; watched a silent vote, which it was thought would be unpopular; and, contrary to the univer-

sal practice of reporters, had given that vote in the paper, garbled and disconnected—without even naming him on the occasion, except with that view of misrepresentation.

This, he said, was a question for the employers of the Public Printer: whether he should be permitted thus to garble, misrepresent, and falsify the debates and proceedings of the Senate, in a manner to which no man, above the grade of a hiring spy, and falsifier of the debate, would descend.

The bill was then ordered to a third reading by the following vote:

YEAS—Messrs. Adams, Barton, Benton, Bibb, Brown, Ellis, Forsyth, Grundy, Hayne, Hendricks, Iredehl, Johnston, Kane, King, Livingston, McKinley, McLean, Noble, Rowan, Ruggles, Tazewell, Troup, White, Woodbury—34.

NAYS—Messrs. Barnard, Bell, Burnet, Chase, Clayton, Dickerson, Dudley, Foot, Frelinghuysen, Holmes, Knight, Marks, Naudain, Robbins, Sanford, Seymour, Silsbee, Smith, of South Carolina, Sprague, Tyler, Webster, Willey—22.

The title was then amended, to read "An act to reduce the price of a portion of the public lands heretofore in market, and to grant a preference to actual settlers."

SATURDAY, MAY 8, 1830.

## SUNDAY MAILS.

On motion by Mr. FRELINGHUYSEN, the resolution submitted by him on the 10th March last, and subsequently laid on the table, "to instruct the Committee on the Post Office and Post Roads to report a bill repealing so much of the act on the regulation of post offices as requires the delivery of letters, packets, and papers on the Sabbath, and further to prohibit the transportation of the mail on that day," was resumed, and an interesting debate arose, in which Mr. FRELINGHUYSEN advocated, and Mr. LIVINGSTON opposed, the resolution; after which, it was laid on the table, at four o'clock, on motion by Mr. BIBB.

MONDAY, MAY 10, 1830.

## TURNPIKE ROAD TO FREDERICKTOWN.

On motion, by Mr. SMITH, of Maryland, the bill authorizing a subscription of stock in the Washington and Rockville Turnpike Road Company, was resumed.

Mr. DICKERSON opposed the bill chiefly because another company had proposed an equally eligible route, and to make the road at an expense considerably below that proposed by this company.

Mr. NOBLE inquired whether the gentleman from New Jersey would vote for the bill under any circumstances, even although he should be privileged to select the route.

Mr. HENDRICKS said that there was no other company in existence, but the one named in the bill. It was true, however, that certain persons who interfered to delay the passage of this bill at the last session, had applied to the Legislature of Maryland for an act of incorporation, which he believed was refused.

Mr. SMITH, of Maryland, said that he did not rise to discuss the merits of the bill, as his health, if inclination served, would prevent him; but simply to remark that the Senate was as well prepared to act on the subject at this time as they would ever be, and hoped it would be now decided.

The bill was then ordered to be engrossed for a third reading, by the following vote:

YEAS—Messrs. Barnard, Barton, Benton, Burnet, Chambers, Chase, Clayton, Dudley, Forsyth, Frelinghuysen, Hendricks, Holmes, King, Knight, Livingston, McKinley, Marks, Naudain, Noble, Robbins, Rowan, Rug-

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Reduction of Duties on Coffee, Tea, and Cocoa.

[MAY 11, 1830.]

gles, Seymour, Silsbee, Smith, of Maryland, Webster, Willey—27.

NAYS—Messrs. Adams, Bell, Brown, Dickerson, Ellis, Foot, Grundy, Hayne, Iredell, Kane, McLean, Sanford, Smith, of South Carolina, Sprague, Tazewell, Troup, Tyler, White, Woodbury—19.

#### TEA AND COFFEE.

On motion by Mr. KING, the bill from the House of Representatives "to reduce the duties on coffee, tea, and cocoa," was taken up in Committee of the Whole, with the amendments of the Committee on Finance of the Senate thereto.

The first of these amendments, proposing a reduction of the duty on salt from twenty to ten cents the bushel, was opposed by Mr. MARKS, on the ground that as the same proposition had been rejected by the House of Representatives, in the progress of the bill there, it was not probable that any change of sentiment had taken place on the subject since, and thought that the only effect of any amendment to the bill, at this late stage of the session, would be to defeat it.

After some remarks by Mr. HAYNE, in favor of, and by Mr. SILSBEE, Mr. SMITH, of Maryland, and Mr. JOHNSTON, against the amendment,

Mr. GRUNDY moved to lay the subject on the table, in order that the Senate might proceed to the business specially assigned for this day; which motion was negatived by yeas and nays, 19 to 28.

Mr. HOLMES renewed the motion to lay the bill on the table, for the purpose of considering Executive business, which he thought would occupy the time of the Senate but a short time, when the bill might be resumed; and this motion having prevailed, the remainder of the day was spent in Executive business.

TUESDAY, MAY 11, 1830.

The bill "to reduce the duties on coffee, tea, and cocoa," was, on motion by Mr. SILSBEE, considered in Committee of the Whole, with the amendments reported thereto by the Committee on Finance; and the amendment being in part agreed to,

On the question to agree to the second amendment, as following:

Section 1, line eight, after the word "more," insert, And from and after the thirty-first day of December, 1830, the duty on salt shall be ten cents for every fifty-six pounds, and no more—

It was rejected, 20 to 26.

[The following remarks of Mr. BENTON, in connection with this bill, are all that have been preserved.]

Mr. BENTON commenced his speech, by saying that he was no advocate for unprofitable debate, and had no ambition to add his name to the catalogue of barren orators; but that there were cases in which speaking did good; cases in which moderate abilities produced great results; and he believed the question of repealing the salt tax to be one of those cases. It had certainly been so in England. There the salt tax had been overturned by the labors of plain men, under circumstances much more unfavorable to their undertaking than exist here. The English salt tax had continued one hundred and fifty years. It was cherished by the ministry, to whom it yielded a million and a half sterling of revenue; it was defended by the domestic salt makers, to whom it gave a monopoly of the home market; it was consecrated by time, having subsisted for five generations; it was fortified by the habits of the people, who were born, and had grown gray, under it; and it was sanctioned by the necessities of the State, which required every resource of rigorous taxation. Yet it was overturned; and the overthrow was effected by two debates, conducted, not by the orators whose renown has filled the world—not by Sheridan,

Burke, Pitt, and Fox—but by plain, business men—Mr. Calcraft, Mr. Curwen, and Mr. Egerton. These patriotic members of the British Parliament commenced the war upon the British salt tax in 1817, and finished it in 1822. They commenced with the omens and auspices all against them, and ended with complete success. They abolished the salt tax *in toto*. They swept it all off, bravely rejecting all compromises when they had got their adversaries half vanquished, and carrying their appeals home to the people, until they had roused a spirit before which the ministry quailed, the monopolizers trembled, the Parliament gave way, and the tax fell. This example is encouraging; it is full of consolation and of hope; it shows what zeal and perseverance can do in a good cause; it shows that the cause of truth and justice is triumphant when its advocates are bold and faithful. It leads to the conviction that the American salt tax will fall as the British tax did, as soon as the people shall see that its continuance is a burthen to them, without adequate advantage to the Government, and that its repeal is in their own hands.

The enormous amount of the tax was the first point to which Mr. B. would direct his attention. He said it was near three hundred per cent. upon Liverpool blown, and four hundred per cent. upon alum salt; but as the Liverpool was a very inferior salt, and not much used in the West, he would confine his observations to the salt of Portugal and the West Indies, called by the general name of alum. The import price of this salt was from eight to nine cents a bushel of fifty-six pounds each, and the duty upon that bushel was twenty cents. Here was a tax of upwards of two hundred per cent. Then the merchant had his profit upon the duty as well as the cost of the article; and when it went through the hands of several merchants before it got to the consumer, each had his profit upon it; and whenever this profit amounted to fifty per cent. upon the duty, it was upwards of one hundred per cent. upon the salt. Then, the tariff laws have deprived the consumer of thirty-four pounds in the bushel, by substituting weight for measure, and that weight a false one. The true weight of a measured bushel of alum salt is eighty-four pounds; but the British tariff laws, for the sake of multiplying the bushels, and increasing the products of the tax, substituted weight for measure; and our tariff laws copied after them, and adopted their standard of fifty-six pounds to the bushel.

[Here General SMITH, of Maryland, rose, and said that he had led the Senator from Missouri into an error, in telling him, some time back, that the weight of alum salt was eighty-four pounds. Subsequent reflection had shown him that it was below eighty.]

Mr. B. resumed his speech. He said, the Senator from Maryland was not so far wrong in his first information as he supposed; that be [Mr. B.] was informed from other sources that Turk's Island salt weighed above eighty pounds; and he had a report before him of a committee of the British House of Commons, made in 1817, by Mr. Calcraft, the chairman of the committee, in which the weight of the best Bay of Biscay salt; stated at eighty-four pounds. But let us assume the weight at eighty pounds; and at this weight it is incontestible that the tariff laws have been the means of defrauding the consumer of thirty pounds in the bushel. For these laws reduce the bushel to fifty-six pounds; and the retail merchant and salt manufacturer, improving upon this hint, have made a further reduction of six pounds, and reduced the bushel to fifty. This is a loss of three parts in eight—very nearly one-half—and making the salt cost nearly one hundred per cent more. Putting all this together—the duty, the merchants' profit upon that duty, and the loss in the bushel—and the duty on alum salt is shown to be near four hundred per cent; in other words, the tax is four times the value of the article, and makes it cost the consumer four times as much as it would cost without the tax. This is

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& cruel oppression upon the people; one which they ought not to bear without necessity, and which there is no necessity, as shall be fully shown, for bearing any longer.

Mr. B. entered into statistical details, to show the aggregate amount of this tax, which he stated to be enormous, and contrary to every principle of taxation, even if taxes were so necessary to justify the taxing of salt. He stated the importation of foreign salt, in 1829, at six millions of bushels, round numbers; the value of seven hundred and fifteen thousand dollars, and the tax at twenty cents a bushel, one million two hundred thousand dollars; the merchant's profit upon that duty at fifty per cent. is six hundred thousand dollars; and the secret or hidden tax, in the shape of false weight for true measure, at the rate of thirty pounds in the bushel, was four hundred and fifty thousand dollars. Here, then, is taxation to the amount of about two millions and a quarter of dollars, upon an article costing seven hundred and fifty thousand dollars, and that article one of prime necessity and universal use, ranking, next after bread, in the catalogue of articles for human subsistence.

The distribution of this enormous tax upon the different sections of the Union, was the next object of Mr. B's inquiry; and, for this purpose, he viewed the Union under three great divisions—the northeast, the south, and the west. To the northeast, and especially to some parts of it, he considered the salt tax to be no burthen, but rather a benefit and a money-making business. The fishing allowances and bounties produced this effect. In consideration of the salt duty, the curers and exporters of fish are allowed money out of the treasury, to the amount, as it was intended, of the salt duty paid by them; but it has been proved to be twice as much. The annual allowance is about two hundred and fifty thousand dollars, and the aggregate drawn from the treasury since the first imposition of the salt duty in 1789, is shown by the treasury returns to be five millions of dollars. Much of this is drawn by undue means, as is shown by the report of the Secretary of the Treasury, at the commencement of the present session, page eight of the annual report on the finances. The Northeast makes much salt at home, and chiefly by solar evaporation, which fits it for curing fish and provisions. Much of it is proved, by the returns of the salt makers, to be used in the fisheries, while the fisheries are drawing money from the treasury under the laws which intended to indemnify them for the duty paid on foreign salt. To this section of the Union, then, the salt tax is not felt as a burthen.

Let us proceed to the South. In this section there are but few salt works, and no bounties or allowances, as there are no fisheries. The consumers are thrown almost entirely upon the foreign supply, and chiefly use the Liverpool blown. The import price of this is about fifteen cents a bushel; the weight and strength is less than that of alum salt; and the tax falls heavily and directly upon the people, to the whole amount of their consumption. It is a heavy burthen upon the South.

The West is the last section to be viewed, and it will be found to be the true seat of the most oppressive operations of the salt tax. The domestic supply is high in price, deficient in quantity, and altogether unfit for one of the greatest purposes for which salt is there wanted—curing provisions for exportation. A foreign supply is indispensable, and alum salt is the kind used. The import price of this kind, from the West Indies, is nine cents a bushel; from Portugal, eight cents a bushel. At these prices, the West could be supplied with this salt at New Orleans, if the duty was abolished; but, in consequence of the duty, it costs thirty seven and a half cents per bushel there, being four times the import price of the article, and seventy-five cents per bushel at Louisville and other central parts of the valley of the Mississippi. This enormous price, resolved into its component parts, is thus made

up: 1. Eight or nine cents a bushel for the salt. 2. Twenty cents for duty. 3. Eight or ten cents for merchant's profit at New Orleans. 4. Sixteen or seventeen cents for freight to Louisville. 5. Fifteen or twenty cents for the second merchant's profit, who counts his per centum on his whole outlay. In all, about seventy-five cents for a bushel of fifty pounds, which, if there was no duty, and the tariff regulations of weight for measure abolished, would be bought in New Orleans, by the measured bushel of eighty pounds weight, for eight or nine cents, and would be brought up the river, by steamboats, at the rate of thirty-three and a third cents per hundred weight. It thus appears that the salt tax falls heaviest upon the West. It is an error to suppose that the South is the greatest sufferer. The West wants it for every purpose the South does, and two great purposes besides—curing provision for export, and salting stock. The West uses alum salt, and on this the duty is heaviest, because the price is lower, and the weight greater. Twenty cents on salt which costs eight or nine cents a bushel is a much heavier duty than on that which costs fifteen cents; and then the deception in the substitution of weight for measure is much greater in alum salt, which weighs so much more than the Liverpool blown. Like the South, the West receives no bounties or allowances on account of the salt duties. This may be fair in the South, where the imported salt is not re-exported upon fish or provisions; but it is unfair in the West, where the exportation of beef, pork, bacon, cheese, and butter, is prodigious, and the foreign salt re-exported upon the whole of it.

Mr. B. then argued, with great warmth, that the provision curers and exporters were entitled to the same bounties and allowances with the exporters of fish. The claims of each rested upon the same principle, and upon the principle of all drawbacks—that of a reimbursement of the duty which was paid on the imported salt when re-exported on fish and provisions. The same principle covers the beef and pork of the farmer, which covers the fish of the fisherman; and such was the law in the beginning. The first act of Congress, in the year 1789, which imposed a duty upon salt, allowed a bounty, in lieu of a drawback, on beef and pork exported, as well as fish. The bounty was the same in each case; it was five cents a quintal on dried fish, five cents a barrel on pickled fish, and five on beef and pork. As the duty on salt was increased, the bounties and allowances were increased also. Fish and salted beef and pork fared alike for the first twenty years. They fared alike till the revival of the salt tax at the commencement of the late war. Then they parted company; bounties and allowances were continued to the fisheries, and dropped on beef and pork; and this has been the case ever since. The exporters of fish are now drawing at the rate of two hundred and fifty thousand dollars per annum, as a reimbursement for their salt tax; while exporters of provisions draw nothing. The aggregate of the fishing bounties and allowances, actually drawn from the treasury, exceeds five millions of dollars; while the exporters of provisions, who get nothing, would have been entitled to draw a greater sum; for the export in salted provisions exceeds the value of exported fish.

Mr. B. could not quit this part of his subject, without endeavoring to fix the attention of the Senate upon the provision trade of the West. He took this trade in its largest sense, as including the export trade of beef, pork, bacon, cheese, and butter, to foreign countries, especially the West Indies; the domestic trade to the Lower Mississippi and the Southern States; the neighborhood trade, as supplying the towns in the upper States, the miners in Missouri and the Upper Mississippi, the army and the navy; and the various professions, which, being otherwise employed, did not raise their own provisions. The amount of this trade, in this comprehensive view, was prodigious, and annually increasing, and involving in its current al-

most the entire population of the West, either as the growers and makers of the provisions, the curers, exporters, or consumers. The amount could scarcely be ascertained. What was exported from New Orleans was shown to be great; but it was only a fraction of the whole trade. He declared it to be entitled to the favorable consideration of Congress, and that the repeal of the salt duty was the greatest favor, if an act of justice ought to come under the name of favor, which could be rendered it, as the salt was necessary in growing the hogs and cattle, as well as in preparing the beef and pork for market. A reduction in the price of salt, next to a reduction in the price of land, was the greatest blessing which the Federal Government could now confer upon the West. Mr. B. referred to the example of England, who favored her provision curers, and permitted them to import alum salt free of duty, for the encouragement of the provision trade, even when her own salt manufacturers were producing an abundant and superfluous supply of common salt. He showed that she did more; that she extended the same relief and encouragement to the Irish; and he read from the British statute book an act of the British Parliament, passed in 1807, entitled "An act to encourage the export of salted beef and pork from Ireland," which allowed a bounty of ten pence sterling on every hundred weight of beef and pork so exported, in consideration of the duty paid on the salt which was used in the curing of it. He stated, that, at a later period, the duty had been entirely repealed, and the Irish, in common with other British subjects, allowed a free trade with all the world, in salt; and then demanded, in the most emphatic manner, if the people of the West could not obtain from the American Congress the justice which the oppressed Irish had procured from a British Parliament, composed of hereditary nobles, and filled with representatives of rotten boroughs, and slavish retainers of the King's ministers. Having shown the enormous amount of the tax, its unequal operation in different sections of the Union, and the superior claims of the West for its abolition, Mr. B. proceeded to examine the reasons for keeping it up. These grew out of the "American system;" for the duty was no longer wanted for revenue. The plea of revenue was cut off by our own conduct. We had voted, two years ago, to reduce the duties one-half on wines, and were now voting to reduce them to a fraction on coffee, tea, and chocolate. This is proof decisive that the revenue can dispense with a part of the taxes. The objection, then, to the repeal of the salt duty, stands upon the "American system;" and thus this system is presented to the people by its own warm friends and zealous champions, as reducing the moderate duties on Champagne wine and imperial tea, which the rich and luxurious alone use, and leaving the enormous and unequal duties upon salt, without which the farmer cannot raise his stock or cure his provisions; without which the laboring man cannot eat his dinner, nor the beggar boil his greens! Thus this system is presented as favoring the rich and luxurious, oppressing the poor and laborious! But let us examine into it, and see with what justice, and with what conformity to its own declared principles, the "American system" has taken the salt tax under its shelter and protection. The principles of that system, as I understand them, and practise upon them, are to tax, through the custom house, the foreign rivals of our own essential productions, when, by that taxation, an adequate supply of the same article, as good and as cheap, can be made at home. These were the principles of the system [Mr. B. said] when he was initiated, and, if they had changed since, he had not changed with them; and he apprehended a promulgation of the change would produce a schism amongst its followers. Taking these to be the principles of the system, let the salt tax be brought to its test. In the first place, the domestic manufacture had enjoyed all possible protection. The duty was near three

hundred per cent. on Liverpool salt, and four hundred upon alum salt; and to this must be added, so far as relates to all the interior manufactories, the protection arising from transportation, frequently equal to two or three hundred per cent. more. This great and excessive protection has been enjoyed, without interruption, for the last eighteen years, and partially for twenty years longer. This surely is time enough for the trial of a manufacture which requires but little skill or experience to carry it on. Now for the results. Have the domestic manufactories produced an adequate supply for the country? They have not, nor half enough. The production of the last year, (1849,) as shown in the returns to the Secretary of the Treasury, is about five millions of bushels; the importation of foreign salt, for the same period, as shown by the custom house returns, is five million nine hundred and forty-five thousand five hundred and forty-seven bushels. This shows the consumption to be eleven millions of bushels, of which five are domestic. Here the failure in the essential particular of an adequate supply is more than one-half. In the next place, how is it in point of price? Is the domestic article furnished as cheap as the foreign? Far from it, as already shown, and still further, as can be shown. The price of the domestic, along the coast of the Atlantic States, varies, at the works, from thirty-seven and a half to fifty cents; in the interior, the usual prices, at the works, are from thirty-three and a third cents to one dollar for the bushel of fifty pounds, which can nearly be put into a half bushel measure. The prices of the foreign salt, at the import duties, as shown in the custom house returns for 1849, are, for the Liverpool blown, about fifteen cents for the bushel of fifty-six pounds; for Turk's Island and other West India salt, about nine cents; for St. Ubes and other Portugal salt, about eight cents; for Spanish salt, Bay of Biscay and Gibraltar, about seven cents; from the Island of Malta, six cents. Leaving out the Liverpool salt, which is made by boiling, and, therefore, contains slack and bittern, a septic ingredient, which promotes putrefaction, and renders that salt unfit for curing provisions, and which is not used in the West, and the average price of the strong, pure, alum salt, made by solar evaporation, in hot climates, is about eight cents to the bushel. Here, then, is another lamentable failure. Instead of being sold as cheap as the foreign, the domestic salt is from four to twelve times the price of alum salt. The last inquiry is as to the quality of the domestic article. Is it as good as the foreign? This is the most essential application of the test; and here again the failure is decisive. The domestic salt will not cure provisions for exportation, (the little excepted which is made, in the Northeast, by solar evaporation,) nor for consumption in the South, nor for long keeping at the army posts, nor for voyages with the navy. For all these purposes it is worthless and useless, and the provisions which are put up in it are lost, or have to be repacked, at a great expense, in alum salt. This fact is well known throughout the West, where too many citizens have paid the penalty of trusting to domestic salt, to be duped or injured by it any longer. In proof of this, Mr. B. read a statement from a citizen of Indiana, Mr. J. G. Read, whose respectability he vouched for, alleging that he had sustained a loss of near three hundred and fifty dollars upon a cargo of three hundred barrels of pork, at New Orleans, in the year 1827, in consequence of putting it up in domestic salt. The pork began to spoil as soon as it arrived in the warm climate of the South. To save it, Mr. Read had to incur the expense of repacking in alum salt—a process, which cost him one dollar and twelve and a half cents on each barrel, besides twelve and a half cents for replacing each hoop that got broke in the operation, and the expense of the drays hauling the pork to and from the place of repacking. Mr. B. said that this was the case with one and all. They must repack, in alum salt, at New Orleans, at the same expense that Mr. Read did, or pro-

MAY 11, 1830.]

*Reduction of Duties on Coffee, Tea and Cocoa.*

[SENATE.]

cure that kind of salt beforehand, burthened as it was with duty, and diminished in the bushel by the tariff laws. Surely the West cannot present this picture of imposition to the Congress, and ask in vain for the relief which the Irish, proverbial for oppression, received from the British Parliament. And here he submitted to the Senate, that the American system, without a gross departure from its original principles, could not cover this duty any longer. It has had the full benefit of that system in high duties, imposed, for a long time, on foreign salt; it had not produced an adequate supply for the country, nor half a supply; nor at as cheap a rate, by three hundred or one thousand per cent.; and what it did supply, so far from being equal in quantity, could not even be used as a substitute for the great and important business of the provision trade. The amount of so much of that trade as went to foreign countries, Mr. B. showed to be sixty-six thousand barrels of beef, fifty-four thousand barrels of pork, two millions of pounds of bacon, two millions of pounds of butter, and one million of pounds of cheese; and he considered the supply for the army and navy, and for consumption in the South, to exceed the quantity exported.

Mr. B. examined another ground of claim for the continuance of the duties, founded on the amount of capital which the manufacturers had embarked in the business. They had returned this capital at upwards of three millions of dollars; but when you come to analyze the particulars of this imposing sum, two millions of it are found to be taken up with wooden vats, and their scantling roofs, which are in a state of daily deterioration, and must rot in a few years, whether used or not. Such items could not be counted as capital, unless when new, or nearly so; and it is not to be presumed that any new works have been erected since the problem of paying the public debt has been discussed and solved; and a great reduction of taxes looked to as a consequence of that event. Another portion of the capital was in kettles, also a perishable item, to which the same remark extends as to the wood in vats. A third large item in the estimate of capital is a great number of wells and furnaces, left to stand idle on purpose, in order to make less salt and demand higher prices for it. Deducting all these items, or so much of each as ought to be deducted, and it would probably turn out that the boasted capital in these works did not exceed the amount of one year's tax upon the people to keep them up. That tax has been shown to be, for 1829, one million two hundred thousand dollars of direct duty; merchant's profit upon that sum, at the rate of fifty per cent., making six hundred thousand dollars; and four hundred and fifty thousand dollars more for the loss of thirty pounds in every bushel: in all, two millions and a quarter of dollars. The real capital, in all human probability, does not reach that sum. The capital to be affected by the repeal of the duty cannot be the half of it; for all the interior works—all those in upper Pennsylvania, in Western Virginia, in Ohio, in Kentucky, Indiana, Illinois, and Missouri, are beyond the reach of foreign salt, except at an advance of from two to three hundred per cent. upon its cost. They are protected without a tariff, by locality, by distance, and by the expense of transporting foreign salt into the fair and legitimate sphere of their supply and consumption. Doubtless it would be better for the consumers to buy all the works, and stop them, than to go on paying the present enormous duty, and its accumulated burthens, to keep them up. But this alternative cannot be necessary. The people cannot be driven to this resort. After reducing the duties on tea, coffee, wines, and chocolate, the duty upon salt must fall. The American system cannot keep it up. It cannot continue to tax the first necessary of life, after untaxing its luxuries. The duty was repealed *in toto*, under the administration of Mr. Jefferson. The probable extinction of the public debt enabled the Government at that time to dispense with certain taxes, and salt took

precedence then of tea, coffee, chocolate, and wine. It cannot be necessary here to dilate upon the uses of salt. But, in repealing that duty in England, it was thought worthy of notice that salt was necessary to the health, growth, and fattening of hogs, cattle, sheep, and horses; that it was a preservative of hay and clover, and restored moulded and flooded hay to its good and wholesome state, and made even straw and chaff available as food for cattle. The domestic salt makers need not speak of protection against alien salt. No quantity of duty will keep it out. The people must have it for the provision trade; and the duty upon that kind of salt is a grievous burthen upon them, without being of the least advantage to the salt makers.

Mr. B. said, it was an argument in favor of keeping up these duties, that in time of war we should have to depend upon the home supply. He said we had no war at present, nor any prospect of one, and that it was neither wise nor beneficial to anticipate, and inflict upon ourselves beforehand, the calamities of that state. "Sufficient for the day is the evil thereof." When the war comes, we will see about the price of salt; in the mean while, the cheaper we get it now, the higher we shall be able to pay for it then. But he did not admit the argument. The making of salt was a plain and easy business. It required no skill or experience. If a part of the works stop when the price becomes low, they will start again the day it rises. If the whole were stopped now, they would all be in full operation in the first few months of war. Besides, many works were stopped now. On the Kenhaws, twenty-four furnaces, capable of making four hundred thousand bushels per annum, are returned by the owners as idle. On the Holston, only one well is worked, making five hundred bushels a day, when ten thousand could be made. At many other places a part of the works are stopped, and for the purpose of making a less quantity, and getting a higher price. If the owners thus stop their works for their private advantage, they must not complain if the interest of the people should require more of them to stop.

Mr. B. said, there was no argument which could be used here, in favor of continuing this duty, which was not used, and used in vain, in England; and many were used there, of much real force, which cannot be used here. The American system, by name, was not impressed into the service of the tax there, but its doctrines were; and he read a part of the report of the committee on salt duties, in 1817, to prove it. It was the statement of the agent of the British salt manufacturers, Mr. William Horne, who was sworn and examined as a witness. He said: "I will commence by referring to the evidence I gave upon the subject of rock salt, in order to establish the presumption of the national importance of the salt trade, arising from the large extent of British capital employed in the trade, and the considerable number of persons dependant upon it for support. I, at the same time, stated that the salt trade was in a very depressed state, and that it continued to fall off. I think it cannot be doubted that the salt trade, in common with all staple British manufactures, is entitled to the protection of Government; and the British manufacturers of salt consider that, in common with other manufacturers of this country, they are entitled to such protection, in particular from a competition at home with foreign manufacturers; and, in consequence, they hope to see a prohibitory duty on foreign salt."

Such was the petition of the British manufacturers. They urged the amount of their capital, the depressed state of their business, the number of persons dependant upon it for support, the duty of the Government to protect it, the necessity for a prohibitory duty on foreign salt, and the fact that they were making more than the country could consume. The ministry backed them with a call for the continuance of the revenue, one million five hundred thousand pounds sterling, derived from the salt tax; and with a threat to lay that amount upon something else, if it

SENATE.]

Impeachment of James H. Peck.—Light-house Bill, &amp;c.

[MAY 12, 1830.]

was taken off of salt. All would not do. Mr. Calcraft, and his friends, appealed to the rights and interests of the people, as overruling considerations in questions of taxation. They denounced the tax itself as little less than impiety, and an attack upon the goodness and wisdom of God, who had filled the bowels of the earth, and the waves of the sea, with salt for the use and blessing of man, and to whom it was denied, its use clogged and fettered, by odious and abominable taxes. They demanded the whole repeal; and when the ministry and the manufacturers, overpowered by the voice of the people, offered to give up three-fourths of the tax, they bravely resisted the proposition, stood out for total repeal, and carried it.

Mr. B. could not doubt a like result here, and he looked forward, with infinite satisfaction, to the era of a free trade in salt. The first effect of such a trade would be, to reduce the price of alum salt, at the import cities, to eight or nine cents a bushel. The second effect would be, a return to the measured bushel, by getting rid of the tariff regulation, which substituted weight for measure, and reduced eighty-four pounds to fifty. The third effect would be, to establish a great trade, carried on by barter, between the inhabitants of the United States and the people of the countries which produce alum salt, to the infinite advantage and comfort of both parties. He examined the operation of this barter at New Orleans. He said, this pure and superior salt, made entirely by solar evaporation, came from countries which were deficient in the articles of food, in which the West abounded. It came from the West Indies, from the coasts of Spain and Portugal, and from places in the Mediterranean; all of which are at this time consumers of American provisions, and take from us beef, pork, bacon, rice, corn, corn meal, flour, potatoes, &c. Their salt costs them almost nothing. It is made on the sea beach by the power of the sun, with little care and aid from man. It is brought to the United States by ballast, costing nothing for the transportation across the sea. The duty alone prevents it from coming to the United States in the most unbounded quantity. Remove the duty, and the trade would be prodigious. A bushel of corn is worth more than a sack of salt to the half-starved people to whom the sea and the sun give as much of this salt as they will rake up and pack away. The levee at New Orleans would be covered—the warehouses would be crammed with salt; the barter trade would become extensive and universal; a bushel of corn, or of potatoes, a few pounds of butter, or a few pounds of beef or pork, would purchase a sack of salt; the steamboats would bring it up for a trifle; and all the upper States of the Great Valley, where salt is so scarce, so dear, and so indispensable for rearing stock and curing provisions, in addition to all its obvious uses, would be cheaply and abundantly supplied with that article. Mr. B. concluded with saying, that, next to the reduction of the price of public lands, and the free use of the earth for labor and cultivation, he considered the abolition of the salt tax, and a free trade in foreign salt, as the greatest blessing which the Federal Government could now bestow upon the people of the West.

The remaining amendments reported by the committee being agreed to, the bill was further amended; and, the amendments being concurred in, were ordered to be engrossed, and the bill read a third time as amended.

#### IMPEACHMENT OF JAMES H. PECK.

At 12 o'clock the Senate resolved itself into a High Court of Impeachment.

Mr. SMITH, of Maryland, and Mr. CHAMBERS, who were absent on the organization of the court, being present, the VICE PRESIDENT administered the usual oath to them.

The Sergeant-at-Arms was then directed to make proclamation in the usual form, to keep silence; after which, The Sergeant-at-Arms returned the writ of summons,

with his proceedings thereon; that is, he had served the same on James H. Peck, on Thursday last, in the city of Baltimore, and had left with him a copy thereof; to the truth of which he was sworn by the Secretary.

Proclamation was then made that James H. Peck appear and answer the article of impeachment, and he accordingly appeared, attended by Mr. Wirt, as his counsel; and being seated within the bar,

The VICE PRESIDENT informed Judge Peck that the Court was ready to receive his answer.

JUDGE PECK rose, and addressed the Senate as follows:

Mr. PRESIDENT: I appear, in obedience to a summons from this honorable Court, to answer an article of impeachment exhibited against me by the honorable the House of Representatives; and I have a motion to make, which I request may be done by my counsel.

The VICE PRESIDENT having signified the willingness of the Court to receive the motion,

Mr. WIRT rose, and, having read reasons therefor, submitted the following motion in behalf of Judge Peck:

1. That a reasonable time may be allowed me to prepare my answer and plea; and, for this purpose, I ask until the 25th day of the present month.

2. That, after my answer and plea shall be filed, process for witnesses may be awarded to me, and a reasonable time may be allowed to collect my witnesses and proofs from the State of Missouri.

Mr. WEBSTER then submitted the following order:

Ordered, That James H. Peck file his answer and plea with the Secretary of the Senate, to the article of impeachment exhibited against him by the House of Representatives, on or before the second Monday of the next session of Congress.

Ordered, That the Secretary notify the foregoing order to the House of Representatives, and to James H. Peck.

Mr. BIBB moved to amend the order, by striking out the "second Monday of the next session of Congress," and inserting the 25th day of the present month, which was agreed to; and the order was then made as amended.

On motion by Mr. CHAMBERS, the Court adjourned to meet on Tuesday, the 25th instant, at 12 o'clock.

WEDNESDAY, MAY 12, 1830.

#### LIGHT-HOUSE BILL, &c.

The bill "making appropriations for building light-houses, light-boats, beacons, and monuments, placing buoys, and for improving harbors and directing surveys," was taken up in Committee of the Whole, as amended on motion by Mr. WOODBURY; and that it be recommended to the Committee on Commerce, and that Mr. GRUNDY'S motion to recommit the bill, with instructions to class the several subjects embraced in it, and report a bill on each.

Mr. HAYNE called for a division of the question, and it was accordingly taken on recommitting the bill, and negatived by the following vote: Yeas 16, nays 30.

This motion was advocated by Messrs. GRUNDY, HAYNE, TYLER, BENTON, and SMITH, of South Carolina, on the ground that the subjects embraced in the bill were incongruous in their character, and ought to be considered in separate bills, in order that gentlemen might not be forced either to vote for objects or measures which they did not approve, or, by such union, to reject such as they might approve.

Mr. WOODBURY thought the contrary; that it was a perfect congruity in uniting in one bill all the subjects named in this. Light-houses, &c. were necessary to facilitate and protect commerce; surveys were necessary preparatory to appropriations for improving the navigation of rivers, &c.; and navigation indispensable to commerce, &c. Mr. W. also thought, that if the motion prevailed, the bill could not be passed during the present session, &c.

MAY 13 TO 15, 1830.]

Maysville Turnpike Road.

[SENATE.]

Messrs. WEBSTER, SILSBEE, HOLMES, SANFORD, and FOOT, also opposed the recommitment.

Mr. BARNARD moved to amend the amendment of the Committee of Commerce, which appropriates three hundred dollars for surveying Back creek, in Maryland, to ascertain the expense of improving its navigation, by inserting, in place of it, "forty thousand dollars for the improvement of the navigation of Back creek."

This motion was supported by Messrs. BARNARD, CHAMBERS, MARKS, WEBSTER, and CLAYTON, and objected to by Messrs. WOODBURY, SMITH, of Maryland, and HAYNE.

Mr. SMITH, of Maryland, moved to amend the proposed amendment, so that the sum appropriated should be a grant to the Chesapeake and Delaware Canal Company, to aid them in improving the navigation of the creek, which was rejected.

Mr. WOODBURY then moved to strike out "forty thousand dollars," and insert "twenty-five thousand dollars."

Mr. HAYNE called for a division; and the question to strike out was lost by the following vote: Yeas 21, nays 25.

The amendment proposed by Mr. BARNARD was then agreed to by the following vote: Yeas 26, nays 21.

Sundry other amendments having been made to the bill, it was reported to the Senate; and the amendments were ordered to be engrossed, and the bill read a third time as amended.

[On the 13th, 14th, and 15th of May, there was much business done in Senate, and a number of bills were passed. Among other bills under consideration was that authorizing a subscription of stock in the Maysville, Washington, Paris, and Lexington Turnpike Road. The publishers have, in their possession, only the following remarks by Mr. TYLER.]

Mr. T. stated that he did not rise to enter into a constitutional argument on the bill now under consideration. He should wait for more favorable auspices, before he ventured to detain the Senate by such an argument. The period might be near at hand, when the principles of the constitution would once more be invoked, and the true democratic party be called upon to rally around the standard which was unfurled in times long since gone by. Whenever the day should arrive in which the country would be so far relieved from the unslippery spell in which it had been bound, as to listen with attention to an exposition of this subject, on constitutional grounds, he would not be wanting in his duty. I was [said Mr. T.] in that Congress which was the first to enter gravely into the discussion of the constitutional power of this Government to make roads and canals. I then attentively weighed all that was urged by the advocates of the system—if system that may be called, which is none—and my decision was against them. Every subsequent reflection has confirmed the opinion then expressed; and the experience of the last six years has satisfied me, that, in its exercise, all that is dear and should be considered sacred in our institutions is put to hazard. Experience is the parent of true wisdom, and the lights which she has furnished upon this subject ought to be bright enough to conduct our footsteps back to the path from which we have strayed. Can any man say in what this system is to end? Formerly, it was held to be national. I have no such word in my political vocabulary. A nation of twenty-four nations, is an idea which I cannot realize. A confederacy may embrace many nations; but by what process twenty-four can be converted into one, I am still to learn. Yes, sir, formerly it was contended that the road-making powers could only be exerted over national objects, but now it is gravely contended that every thing is national, and that the bounty of this Government may be exerted in aiding to construct a road but sixty miles long. And what do we hear? Why, that the stock thus

taken up by the Government is destined, in the end, to yield a handsome dividend; that this road runs through the most fertile district of country in the world, and is the great thoroughfare through the State of Kentucky. Let me remark, that it is by no means the least surprising circumstance connected with it, that, when its advantages are so decidedly great, and the promised dividend on the stock so large, the State of Kentucky itself, if its citizens are reluctant to subscribe, should not take up the stock. Why permit this Government, already possessed of such abundant sources of revenue, to engross this also? Why suffer it, from this time and for ever, to levy a tax for the benefit of other portions of the confederacy, on the good people of Kentucky? Let the truth be spoken. The benefits of the contemplated subscription are destined to arise to certain individuals, who have been incorporated by the Legislature of that State to construct this road. Their fortunes are to be advanced, and they are earnestly urging us to aid them in this enterprise. Now, sir, I desire Senators to reflect upon the consequences of passing this bill. In all our legislation, we should act upon an enlarged principle—the principle of equal justice. If we subscribe to this undertaking, where shall we stop? What company shall we deny, or what work shall we refuse to aid? Will you aid all works of equal extent—every road of sixty miles in length? If we do not, shall we not be justly chargeable with injustice? But, sir, upon what principle is it that we shall limit our subscriptions to roads of precisely the same extent with this? Why not, if they shall fall a little short of this? I ask of gentlemen to show me the limit of their principle. Pass this bill, [said Mr. T.] and no man can set bounds to the applications which will be made to us at the next session. We shall have a perfect jumble of all manner of schemes and plans; national and local; public and private; in lawyers' phrase, a perfect hodgepodge. Can any Government bear such an operation? Can any community exist in peace under such a system? It will terminate precisely as has done another magnificent scheme. Four or five years ago, our ingenious politicians found the power in the constitution to improve harbors, and to make our rivers navigable. They began with roadsteads for the navy; and in what has it terminated? Let our observation this session illustrate. We have got now to surveying creeks which have not water enough to keep at work a common grist mill. The appropriation made but the other day, for the survey of Mousen river, in the State of Maine, in the very face, too, of an explanation of its actual condition, made by the chairman of the Committee of Commerce, has left me no room to hope that any opposition to the bill now under consideration will be successful. It is, nevertheless, my duty, as a member of the committee who reported this bill, to state to the Senate the objections which I have to it. When the subject was before the committee, it was attempted to show that it was but the part of a scheme, more enlarged and more extensive. It was said to be but a link in a great road hereafter to be finished by this Government from Zanesville, in Ohio, to a point opposite to Maysville, on the Ohio river; and from Lexington to Nashville; and from thence on to Florence, in Alabama. On this ground, it claimed nationality of character. The chain was broken by the interposition of the Ohio river; and what was to be done to supply it, I do not know. A bridge would scarcely have been thought of, and a ferry, founded by authority of this Government, might subject to too severe a test this road-making power. Now, sir, it is the easiest thing imaginable to make a road a national road. Every road in the country readily becomes so. Each is connected with every other, whether by a straight line or otherwise, is not material. The angle at which the county road passing by my door intersects the principal road leading from this city to Richmond, and from thence to Huntsville, in Alabama, whether it be a right angle or an acute



SENATE.]

Mayville Turnpike Road.

[MAY 15, 1830.]

angle, must be wholly immaterial. It is a part of a national road, and is immediately connected with every other road in the United States. If this Mayville road rested on a pivot, and could be turned round from its present posture of east and west, to north and south, it would be still as much a national road as it now is. The only difference would be, that it would lead to other States and to other cities. Here, then, is the termination of this stupendous national scheme—this great American system of road making and canal digging—this system, in support of which, the constitution was carefully scanned through all its provisions. Here is exhibited the rightful exercise of this power under the authority to raise an army, and, *ex vi termini*, to construct a permanent road for military purposes. Here the great power of regulating commerce, not in truth by making rules or regulations by which it shall be carried on between the States, but by affording facilities in travelling from Mayville to Lexington, a distance of sixty miles. Splendid and magnificent, truly, has this great American system become, now that this Government is set down by the side of some few of the citizens of Maron, Bourbon, and Fayette counties, to deliberate upon the important questions which must arise in the construction of this road, whether there shall be a cart load of sand or gravel, more or less, deposited on this spot or on that.

It has pleased one gentleman in this debate to indulge in certain remarks relative to the condition in which Virginia is placed from its want of good roads; and he has been pleased to denounce our prejudices, as he has thought proper to call them. I have but one reply to make to the Senator, and it is, that we as little desire his sympathies, as we deserve his denunciation. If we are content with our situation, surely no one else has any right to complain of it. The Senator might have drawn very different conclusions in reference to us, from the very facts which he has stated. Sir, I will not deny that my native State would be greatly benefited by the application of governmental resources to its improvement. No State in this confederacy requires the expenditure of larger sums of money to objects of internal improvement; and none would be more benefited by such application. When then we stand aloof from this system; when we close our ears to the syren voice which has won so many others to the support of these measures, what is the true attitude in which we stand before the world? Can we be charged with interested or selfish designs or feelings? If we were actuated by any such, we should reach forth our hands, and gather this golden fruit. Instead of this, we give no vote for those measures, even which appertain to our immediate benefit; against the appropriation in aid of the Dismal Swamp canal, the Senators of Virginia on this floor have uniformly voted. No, sir, we will never consent to sacrifice the constitution of this land to a mere ephemeral policy. Pleasure has ever more been represented by poets and by painters as clothed in perpetual smiles, and adorned with the richest jewels; and in real life, we have known many who, allured by her deceptions, blandishments, and hollow but showy temptations, have followed as she pointed, until ruin has befallen them. So will it be with us as a confederated republic. These are the feelings and sentiments of those whom I represent on this floor. Unmoved by the whispering of a seductive policy, Virginia can only regard that course of governmental action as sound, which falls clearly within the pale of the constitution. Think you, sir, that we were more insensible than others to the advantages of good roads and canals? Not so, [said Mr. T.] let them be made out of the proper treasury—that of each State; and they will find in no quarter a more devoted advocate than myself. But when the interposition of this Government is invoked, and the high reward which an exuberant treasury offers, is held out, I say nay to the exercise of the power. It is

in vain that gentlemen represent to me the benefits of the system. It is vain that I am told of its being a harmless policy. Show me the grant in the constitution in plain terms, not extorted by a forced interpretation, and not until then will I listen to you. In my youth, I remember to have read in that wisest of all wise books, if the moral be well observed, I mean *Æsop*, the fable of the cock and the fox; and as it serves to illustrate my feelings and views on this particular subject, I beg leave to repeat it as well as my memory enables me to do it. A fox, in search of prey, passed by the door of a hen roost, and, finding the door locked, resolved to try his skill in obtaining admission. He resorted to an expedient, sir, which so often proves successful in the affairs of the world, that of flattery and hypocrisy united. His salutation was friendly and courteous. He expressed his great concern at having heard that the cock had been indisposed. The cock assured him that his health was perfectly good, and much the better from the circumstance of Mr. fox being on the outside of the door, and the door being locked. The fox pretended not to credit this, and desired permission to see him, so that he might bear testimony to the fact from ocular demonstration; and such was his great anxiety to look in upon him, that he urged the very humble request of being only permitted to get his nose in at the door. The cock very wisely refused this permission, declaring to him at the same time, that, if he permitted him to get his nose in, his whole body would soon follow. Such were my feelings when this road-making power was first claimed for this Government. But, sir, it was vain that Virginia protested against it. Vain that she urged upon others the moral of the fable which I have just recited. The good and true State, North Carolina, reasoned as did Virginia; but all in vain. This harmless and beneficent power was yielded; and what has followed, let the whole South testify. She can bear witness throughout all her borders; measure after measure has followed; until powers as supreme and as universal are claimed for this Government, as if the parchment upon your table had never been executed. The internal policy of the States prescribed, the industry of the country regulated, and all the mere charities of life exercised as fully by this Government as by an imperial monarch. The States sinking every day with accelerated velocity into the condition of mere provinces; and a great national government to grow out of the ruins of the confederacy. Can the people of these States be reconciled to this? Or, will they continue supine until the whole fabric of the Government is changed? Sir, does any one believe that we can exist under a consolidated national government? Look to the present condition of things, and the question is answered. I ask every member of this House, whether it could have been conceived, that, when this American system was entered upon, the results which are now constantly transpiring would have arisen. What scenes are exhibited on the legislative floor under the influence of the feelings of local interest? I do but glance at them, and will not dwell upon them. When were sectional lines ever before so strongly drawn? But I forbear, sir, I forbear. Let those who believe that a national government will best suit our condition, turn to the map, and his doubts will be solved. A country embracing so great an extent of territory—possessing such a diversity of interests; one extremity congealed by the frosts of an almost perpetual winter, the other parched by almost tropical suns. Can a national legislature know the interests of these extremes, feel their wants, or advance their wishes? It is in vain to disguise it; a central government here, call it by what name you please, which shall attempt to legislate for local interests, is an open and manifest despotism. Ingenuity is tortured to bring this Government to this. The first fruits are bitter enough; combinations have arisen, and combination will follow combination, to the end of the chapter. The South now suf-

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fers, and anon it will be the turn of the North and of the West. Suppose that all Europe existed under a consolidated government, each State being degraded to the condition of a mere principality, what scenes would not be exhibited, and how tremendous a tyranny would be created, wielded not by a single man, but by stern, inflexible, immovable majorities? Russia, Prussia, Sweden, and Denmark, uniting with Austria, would evermore wage a war of plunder against France and the southern provinces. The more fertile the country, and more genial the climate, the greater temptation to combine against it with a view to legislative plunder. Who can doubt this? And yet the States of this Union are not differently circumstanced. A national government, acting here through the instrumentality of law, in other words, in obedience to an under-league of interests, will operate as forcibly and as fatally. The gentleman has in these considerations the true foundation of our prejudices, if so they are to be called. We oppose ourselves to every strained construction of the constitution, under the knowledge that the concession of one power, however slight, leads to the claim of another, and another, until all will be gone.

It has become customary, of late years, to ridicule the Virginia doctrines, as they are called. That State which has stood by this Union, through good and through evil report, is sneered at and reviled. So was it in former times. Under the first Adams she was declared rebellious and factious; and it was said that her republicans should be trampled into dust and ashes. She, nevertheless, with Kentucky, raised her voice against the infractions of the constitution. She does the same now. And what were the infractions against which she then protested, in comparison with those against which she now protests? Bad enough they were, it is true. But the art of construing the constitution, and the efforts to make it a nose of wax, was then but barely commenced. The secession law was passed, and thereby the principle of force was resorted to. Now, sir, a more insidious, and a more dangerous principle is brought into action. Money is now relied upon; cupidity—avarice, are the infernal agents now invoked. These are the fatal sisters who weave the web of our destiny; and, if we do not destroy that web before we come to be more fully entangled, if we permit first an arm and then a leg to be tied up, there will be left to us no means of escape. Let us now begin the effort, and, by drawing back this Government to its legitimate orbit, save our institutions from destruction. My untiring efforts shall not be wanting in so holy a cause. But if we surrender ourselves into the hands of ingenious politicians, those aspirants for high office who seek evermore to enlist in their support the strongest passions of human nature, with a view to their individual aggrandizement, the ark of the covenant will be destroyed, and the temple rent in twain. Let us expel the money changers from that temple, and introduce the only true worship. In this way only, I am fully satisfied, can we preserve the Union of these States, and secure their unceasing happiness.

The Senate is indebted for these remarks to the gratuitous attack which has been made upon Virginia in this debate. They have been as unpremeditated as that attack was unexpected; but I could not forego the opportunity thus afforded me of expressing my feelings.

[The bill, as it is known, passed the Senate.]

[On the 17th, 18th, and 19th of May, the Senate acted on various bills; there was some debate, but nothing of sufficient interest to be inserted in the Register of Debates.]

THURSDAY, MAY 20, 1830.

## MR. FOOT'S RESOLUTION.

On motion by Mr. GRUNDY, the Senate resumed the consideration of the resolution submitted by Mr. FOOT, as

proposed to be amended by the mover: when Mr. ROBINS said, that thinking, as he did, that some constitutional doctrines advanced in the debate were erroneous—were dangerous to the Union—and the more dangerous, as coming from high and respectable names in the country—and gone, and to go forth under the sanction of such authority—he had felt it to be a duty to manifest his dissent to those doctrines; and to state the grounds on which that dissent was predicated. The State, one of whose Representatives I have the honor to be in this body, [said Mr. R.] being a small State, beside her common, has a peculiar interest in this Union; in its integrity, its endurance, its strength—that strength is her strength; on that, her being, as well as her well-being, depends. I take a share in this debate for this sole purpose, and shall confine myself to this object. As to other topics introduced into this debate, however interesting they may be to this country—and interesting, very interesting, some of them are—I shall spare to the patience of the Senate any remarks of mine upon them, satisfied that their opinion upon them would not be further enlightened by any thing in my power further to offer.

Whether a State can decide upon the constitutionality of a law, and upon its obligation within a State, which has been so frequently affirmed or assumed in this debate, must depend upon the theory of the constitution. And here the inquiry is not, what that theory ought to be, but what it is; if it be not what it ought to be, the people, who made it, have the power, by an amendment, to make it what it ought to be. That theory may not be perfect, (though I think it is nearly so, as any thing human ever devised for the rule and happiness of mankind ever was, or probably ever will be; and that this is demonstrated by its results,) but whether perfect or imperfect, what is now wanted, is not its vindication, but its explication.

What, then, is that theory?

I understand it to be this: and that the different provisions of the compact all conspire to show it to be this—namely:

That the constitution of the United States is paramount to the State constitutions:

That all laws made in pursuance of the constitution of the United States, and all treaties made by the authority of the United States, are the supreme law of the land, any State law, made or to be made, to the contrary notwithstanding:

That all State judges are bound by this supreme law, any State law or constitution to the contrary notwithstanding:

That the Executive of the United States is charged with the duty of executing that supreme law:

That all questions arising from the conflict of the constitution of the United States, and any State constitution, or arising from the conflict of the laws of the United States and the laws or constitution of any State, or from the constitution of the United States and the laws of the United States, are to be settled by the courts of the United States; and that what they settle to be the supreme law of the land, is to be considered and taken to be the supreme law of the land, and is to be executed by the Executive as the supreme law of the land.

Such I understand to be the theory of the constitution of these United States; and whether for good or for evil, that such is its true theory.

For the constitution says—Article VI, clause 2d:

"This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges of every State shall be bound thereby, any thing in the laws of any State to the contrary notwithstanding."

The constitution further says—Article III, sec. 1:

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"The judicial power of the United States shall be vested in one supreme court, and such other courts as the United States shall from time to time ordain and establish." And, section 2—"The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made under their authority."

"It further says—same article, sec. 2:

"He [the Executive] shall take care that the laws be faithfully executed."

Then, I ask, is not the theory which I have stated, the necessary result of the provisions which I have read? To go over the parts of that theory, one by one, and to compare each with the provisions by which it is established: Is not the constitution of the United States paramount to the State constitutions? The words are, "that the constitution of the United States shall be the supreme law of the land."

Are not the laws made in pursuance of the constitution of the United States, and the treaties made by the United States, the supreme law of the land? So the constitution says in so many words, which have just been read, and need not be repeated.

Are not the questions arising from the conflict of the constitution of the United States with the State constitutions, and arising from the conflict of the laws of the United States and the State laws and constitutions, and arising from the conflict of the constitution of the United States and the laws of the United States, to be settled by the courts of the United States? The constitution says—

"The judicial power shall extend to all cases in law or equity arising under the constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."

Is not the Executive of the Union to execute the laws of the Union? The constitution says, "he [the Executive] shall take care that the laws are faithfully executed."

Are not the final judgments of the courts of the United States to be executed by the Executive of the United States?

It is his proper and peculiar duty to execute them; to execute the laws faithfully, he must execute those judgments.

Then it follows, that what these courts finally decide the constitution to be, must be taken to be the constitution. The law, which they finally decide to be a law, made in pursuance of the constitution, must be taken to be a law made in pursuance of the constitution; a treaty which they finally decide to be a treaty made under and within the authority of the United States, to be a treaty made under and within the authority of the United States: and together must be taken to be the supreme law of the land, and must be executed as the supreme law. It must be so, unless there is some other tribunal authorized to rejudge those judgments; and to decide over the head of the United States' Judiciary. Need it be remarked that the constitution neither provides nor recognises any such tribunal; but, on the contrary, that it precludes the idea of any such tribunal, and that expressly? For, it expressly provides that "the judges of every State shall be bound by the law of the United States, the State constitution and laws to the contrary notwithstanding, and bound, as is necessarily implied, by that law as expounded by the courts of the United States; for the law of every government must be taken to be, as judicially expounded by that government. How then a State can be that other, ulterior, and superior tribunal, is beyond my comprehension. The doctrine, as a constitutional doctrine, appears to me infinitely preposterous, and to be without a particle of ground for its support.

Now, if abandoning the authority of the constitution for any such doctrine, it is contended that the doctrine results from the nature of a confederate government, formed by

independent sovereignties, which seems to be the idea of some gentlemen, though not very distinctly stated and avowed, except by the honorable gentleman from Kentucky, by whom it was very distinctly stated and avowed, it is enough to say that the nature of a confederate government is just what the confederates chose to make it, and have made it: and their rights and duties are determined by the compact which they have made. Now, the constitution of the United States is the compact of confederacy by these States; and that must determine their rights and their obligations. So that the doctrine, if it is to be maintained at all, must be maintained as a constitutional doctrine. Besides, it may be proper here to remark, that this government, though confederate, is not a mere confederacy, it is national as well as confederate; in many important features it is purely national. In its action it is wholly so; it acts upon individuals directly, and not on them through the States. It is the first instance of a government of that compound character which has existed in the world; and it is that character which constitutes its great excellence. It is that which gives to it all the advantages of a single State, combined with all the advantages of a confederacy, exempted from its evils: it is that which adapts it so admirably to our wide-spread and almost boundless domain, and to the almost countless millions that are to spread over to occupy and to fill it: it is that which gives to it a capacity to exert our energy every where, and equally every where, sufficient to preserve peace and maintain justice; and which, at the same time, restrains it every where, and equally every where, from exerting a power incompatible with freedom. Now, if this doctrine, that a State may interfere to arrest the operations of government, would result from the nature of a pure confederacy, (which, however, it would not, unless such was its nature from the terms of the compact, or its nature must depend upon those terms,) still how could it result from the nature of a government, not a pure confederacy, but partly confederate and partly national? Surely, so far as it is national, the nation is to determine whether the government shall cease, or its operations be suspended, and not a minority of the nation, as a single State must be.

Will it be said that the theory of the constitution, as thus interpreted, is unsafe for the States and their independent rights? That the power of the General Government (by this theory) being irresistible—and power being in its nature ambitious and grasping—may and will absorb the power of the States, it has been said; for this, I suppose, is what is meant by saying that the tendency of the General Government is to consolidation. If this were so, it would prove that the structure of our government is defective, and that some corrective for this defect ought to be supplied; but surely it would not follow that each State is to determine what that corrective shall be, and when and how it shall be supplied and applied; for all defects in the constitution, the constitution itself has prescribed the course for obtaining the remedy.

But, waiving this, how is the theory of the constitution, as thus interpreted, unsafe for the States and their independent rights? It is true we may suppose such an abuse of power in the General Government, and by a conspiracy of all its branches, at the same time, and for the same purpose, as would put in peril the States and their independent rights; and so it would, and equally so, all our rights; but then you must first suppose for such a degree of corruption of human nature itself as is wholly incompatible with any government which is a trust from the people. For it supposes a corruption of the Legislature in both its branches—a corruption of the Judiciary, and a corruption of the Executive; and a conspiracy of all these to betray the delegated trust of the people. Now, this is to suppose such a degree of corruption in a State itself, as, I repeat, is wholly incompatible with a government which is a government, which is a trust, and to be managed ac-

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cording to the trust. When that degree of corruption which is supposed takes place in a State, from that moment that State is doomed to the misrule of anarchy for a while, to be followed, and quickly, too, by the iron rule of despotism; and nothing human, nothing human, I repeat, can stay the hand of its destiny; nothing short of Omnipotence himself, and His almighty arm, can stay it. When that day shall arrive, the day that shall witness such a degree of corruption in the whole body of our public administration, it will argue a correspondent degree of corruption in the whole body of the people; and then we shall have no reason to talk about State rights, nor any rights; all, all, every right, State and national, will be buried, or hastening to their burial in the same common grave; on that grave we shall see planted the standard of despotism, unfurling its ensigns to the breeze, and waving in triumph over the buried rights of the nation. A gigantic tyranny, with his iron sceptre, will then crush this young and rising world. The wide earth will feel the calamity, and bewail the extinction of the last best hope of human kind. Thence I hold, that State rights and national rights are inseparably bound together in one common bond of fate; together to live, or together to perish:

"That one faith, one flame, one fate shall both attend."

For, observe, the States and their independent rights can only be assailed through the legislation of Congress; there the tyranny is to begin; there the law, which is to usurp and engross the appropriate favor of the States, is to be propounded and passed; which law the Judiciary is to sustain, and the Executive to carry into effect. Now all the members of the Legislature in both branches of Congress, they who are to make this law, which is to begin this usurpation and tyranny, come from the people—shortly to return to the people, and are themselves a part of the people. Now, who is the man, where is the man so infatuated as to give his vote for such a law? It would be in him an act of political suicide—it would be an act of treason to himself as well as to his country—it would be an act of self immolation, and without motive. Unless he gave it as a conspirator against the liberties of his country.

Where then is the danger to the States and their independent rights from the power of the General Government, admitting it to be what it has been explained to be, and irresistible? It is in fact no where to be found but in our imaginations; and in the supposition and picture of incredible cases. It appears to me that our jealousies on this head arise from the indistinctness of our notions as to State rights; from confounding things different in their nature, things distinguishable and which ought to be distinguished; in a word, from mistaking the common rights of the nation for the peculiar rights of the States.

State rights, as I understand them—I mean the rights which the States retain and possess, and exercise independently of the General Government—consist in the right of legislating exclusively on certain objects within the State; and in legislating not exclusively, but concurrently with the General Government on certain other objects within the State. That these State rights are limited to these limits of legislation, to these objects of exclusive and concurrent legislation; that the right of State jurisdiction is limited by these limits of legislation; and that the power of the State Executive has the same limits. If this be a correct definition of the limits of the independent rights of the States, (and, if it be not, let any one show any other State right not included within those limits, and I will abandon the inference which I am going to deduce therefrom)—I say, if this be a correct definition of the limits of State rights, independent of the General Government, it will follow, that all this clamor against the General Government, on the subject of State rights, is entirely without foundation. For no instance can be cited in which the General Government has usurped the power belonging to the States; that is, the power of legisla-

ing on subjects exclusively within the legislation of the States; nor of legislating exclusively on objects as to which the States have a right of concurrent legislation. No; not one instance in the whole history of the Government. Admitting, then, if you please, that the States have a right of self-defence as to their independent rights, it will be time enough to determine what is to be done when the necessity of such defence shall arise; that is, when the General Government shall usurp the power of legislating upon objects exclusively within the State legislation, or the power of legislating exclusively upon objects as to which the States have a right of concurrent legislation. If that time shall ever come, when the General Government, in all its branches, shall be so corrupt and abandoned as to conspire to usurp this power, (and to usurp it they must all conspire,) and to strip the States of these rights, and shall attempt to establish the usurpation, then let the States defend themselves; let them resist the attempt, and to the death, for then the compact will indeed be dissolved; then the question will be a question of force, between the oppressor on the one side, and the oppressed on the other, and the sword must decide it.

The right of self-defence, by this appeal to force, is the right of every people, in the last resort, under every form of government, whether single or confederate. In both, there is a line where forbearance with the Government ceases to be a duty, and where the right of resistance begins—in single governments, with the people, and in confederate, with the States. In single governments, this line may not be distinctly marked, and made visible to the eye, and then is to be determined rather by feeling than the understanding; but in a confederate government it may be distinctly marked, and made palpable to the understanding. And in ours it is so; in ours it is the line which has been indicated; the line which separates the independent rights of the States from the powers of the General Government; and which independent rights are obviously those, and those only which lie within the limits which have been defined. For all other rights, and which are called State rights, are as obviously the common rights of the nation, and not the peculiar and independent rights of the State.

If an act of the General Government shall exceed its authority under the constitution, but which act does not infringe any independent State right, that is the concern of the nation, not of any State in particular, any further than as it is part of the nation; and to judge of that act is no more a State right than it is an individual right. For instance, suppose the Government exceeds, or is supposed to exceed, its authority in the exercise of the treaty-making power; and suppose the purchase of Louisiana to be that instance, (and this was the opinion of some,) surely no State independent right was infringed by this act. No State, therefore, as a State, had any more right to judge and determine upon the unconstitutionality of the act, than any individual had. It was the concern of all, and of all equally. It was the whole people's business; and it was the business of their constituted authorities to determine it. The same may be said of the admission of Louisiana, as a State, into the Union, which was also deemed by some an unconstitutional act; and so of other acts of the like kind.

Again: if an act of the General Government exceeds its authority, but does not infringe any State independent right, but does infringe the right or rights of individuals, that is an affair between the individual and the General Government. Surely it is not a State right to adjudicate that affair, and redress that individual. For, by the compact, that affair is to be adjudicated under the authority of the General Government; the redress is to come from that authority; and, by the compact, a State has nothing to do with it. And were the State to interfere, it would be a manifest usurpation of power, far from being the exercise of a State right.

So as to all acts in prosecution of, or in furtherance of

any schemes of national policy which may be deemed to be unauthorized by the constitution, but which do not infringe any independent State right, these are to be judged of and determined by the nation and the national authorities. No State has any thing to do with the adjudication, any further than as it makes a part of the nation, and speaks through the constituted authorities of the nation.

In a word, I am confident that no one act of the Government, of any class which has been complained of as unconstitutional, will be found, on examination, to touch any one independent State right; and that in every instance it will be found that it is the national right only, if any, that has been affected.

But are not these national rights as important to the nation, as the State rights are to the States? I agree that they are.

Now, suppose acts of the National Government to be violations of the constitution, but not violations of the State rights, and therefore the common concern of the nation, and not the peculiar concern of any State, what is to be done, and what is the remedy? I answer, the remedy lies with the nation. The law says it is unconstitutional; let the law be repealed; the nation has the power to repeal it; their elections give them this power; or let the National Judiciary say it is unconstitutional, and then it is repealed. But, suppose the Judiciary will not say it is unconstitutional, and the nation will not have it repealed. What, then, is the remedy? I answer, there is none, and that there ought to be none; for then it is a national question, settled by the nation, by a majority against the minority; and the law is to be deemed and taken to be constitutional; it must be so, unless you deny that great principle of all society, that a majority is to govern, and maintain that disorganizing principle, that a minority is not to submit to the will of the majority. Well, if not to submit, what then? Why then to separate, for there can be no other remedy. What follows? Why, that a minority of that minority, in a similar case, and which must happen, is also to separate; and the majority of that minority is in the same situation, and must go on with the same process, both dividing and subdividing, till the society itself is destroyed, or fitted up into family clans.

If a minority is not to submit to a majority, and if separation is to be the remedy for difference of opinion, and these the consequences of separation, the remedy is infinitely worse than the evil; for it is to destroy the very being of society; to remedy an evil which is necessary to all society; namely, the evil of difference of opinion. I repeat, that the remedy for all unconstitutional acts of the General Government affecting the nation lies in the power of the nation. For it is an entire mistake to suppose, as has been supposed, that the Supreme Court is the ultimate arbiter in these cases. For though the Supreme Court may decide a law to be constitutional which is not constitutional, a thing, by the way, not very likely to happen, they cannot continue the law. It rests with the nation to determine whether it shall be continued, or shall be repealed. And if the Supreme Court misinterpret the constitution, a thing as unlikely to happen, it lies in the power of the nation to apply the remedy, and correct the error; it lies in the power of amendment. So it is the nation, and not the Supreme Court, who is the ultimate arbiter in all those cases.

If the constitutional principles which I have now attempted to develop, are true constitutional principles, and if I have been so fortunate as to make the development intelligible to the Senate, they will show them that the constitutional doctrines to which I have alluded and excepted are erroneous, and ought to be repudiated; and, if dangerous to the stability of the Union, that they ought to be reprobated. For it is not easy even to imagine the value of that stake which we all have in the integrity of this Union, the great States as well as the small. This beau-

tiful and almost boundless country; this splendid patrimony of our fathers; this, if we are wise, still more splendid inheritance of our children, and of their children, down to the latest generations of our posterity; as to all that it now is, and as to all that we hope it may be; all, all is put to hazard by the hazard of this Union. And to talk of calculating the value of the Union! as if it could be counted in dollars and cents—a value which no power of numbers can express, no stretch of imagination can embrace, and which baffles every effort of the mind to comprehend in its magnitude!

This happy work of our Union, consummated by our happy constitution, I am wont to consider as the offspring of something more than human wisdom, great as that wisdom was in its founders and framers: for, as we are taught, "there is a spirit in man, and the inspiration of the Almighty giveth it understanding." And I believe (I hope not superstitiously, but piously) that it was manifest in that work. I believe it a providential event, marking the divine favor on this favored land; and, of the many marks of that favor to be noted in our short but eventful history, I believe that to be the most signal.

The Union! I am wont to consider it as the guardian angel of this country, commissioned by the Almighty to preside over her high destinies, and to lead her on to their fulfilment to a glory, as I fondly believe, that eye hath not seen, of which the ear hath not heard; in whose blaze the master States of the world will be lost, as stars are lost in the blaze of the noontide sun. And to talk of calculating the value of this Union!

It may assist us to form some estimate of this value, though very inadequate, by endeavoring to form some estimate, though equally inadequate, of its loss.

What would be the new state of things if this Union should be broken up, we cannot exactly know; but what it may be, it is easy to imagine. Whether broken up into separate confederacies, or into isolated sovereignties, the evils would be equally certain and equally appalling. To state a few of the most prominent, and but to hint at these: The Union, which now is their strength, would be lost and gone; their weakness would render them defenceless against a foreign power; wars among themselves, sooner or later, would become inevitable; burthens would be fearfully increased, while the means of meeting them would be as fearfully diminished; privations of all sorts would be grievously multiplied; standing armies would be the consequence of wars and the danger of subjugation, and the loss of liberty the consequence of standing armies. This dreadful state of things would last till, to consummate the misery, some fortunate ambitious chief, in consequence of his splendid achievements, should be able to clothe himself with the imperial purple, establish a new dynasty, and support it by his victorious legions. Now, say whether the value of the Union can be calculated and told in dollars and cents, when such will be or may be consequences of its dissolution!

Mr. FOOT said that the resolution under consideration, proposing an inquiry into the condition of the public lands—a subject of very great and increasing interest, not only on account of their intrinsic value, but as connected with the settlement, the growth, and prosperity of the country—had been made the occasion for a debate, perhaps as able and interesting as any which had ever engaged the attention of the Senate. The strong interest which had been manifested, by the unusual attention of the public mind, and the avidity with which the speeches of Senators had been sought and extensively read, had evidenced the deep solicitude and intense interest which had been felt through the whole community. Nor was this matter of surprise. The various and interesting topics which had been introduced and discussed were calculated to produce that effect.

This debate [said Mr. F.] will form a compendious history of the policy of our Government, from its commence-

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ment for a half century, its progress in the arts as well as in arms, its trials and its triumphs. It has exposed the machinations and plots which have been formed against it, and their latent causes. It has shown with what perfect ease the majesty of the laws has been maintained, and the constitution preserved from every insidious as well as open attack; and has demonstrated the correctness of Mr. Jefferson's opinion, "that error may safely be tolerated while reason is left free to combat it." It has disappointed the hopes of the enemies of our republican form of Government, and furnished additional evidence that "man is capable of self-government." And, although in the ardor of debate, and in the latitude of discussion, some expressions have been used which savored too much of personal hostility and sectional jealousy, it has shown that "every difference of opinion is not a difference of principle;" and that, notwithstanding all our prejudices, and all our jealousies, there still exists, in every section of the country, an attachment to our free institutions, to the constitution, and to the union of the States, so sincere and so ardent, that we may, with pride and pleasure, proclaim to the world—"The republic is safe!"

Although this protracted debate has, in some measure, defeated the object which induced me to offer the resolution—which, in my opinion, was one of great importance—still I can say, with the utmost sincerity, it causes no regret. Much valuable information has been elicited in relation to the public lands, and a rich fund in relation to the genius, the structure, and policy of the Government, which will be invaluable to the rising generation and to posterity. It will be my main purpose, in pursuance of the original design, to defend the resolution and myself from some attacks made at the commencement of the discussion, and to urge its adoption.

The Senator from Missouri, [Mr. BAXTER] when the resolution first came up for consideration, declared, "It is time to make a stand, to face about, and to fight a decisive battle for the West!" And, sir, he entered the field with his bloody standard, with this motto—"War to the knife, and the knife to the hilt!" With this tremendous "yell," and such "notes" of "preparation," what were we to expect? Our only alternative was desperate resistance or indiscriminate "butchery!" I suppose we are to conclude the decisive battle has been fought. The Senator kept up a brisk fire for four days, besides some skirmishing with the "outposts" for several succeeding days. The firing has now ceased on the part of the assailant, and with it a "*clamorque virum, clangor que Tubarum.*" What has been the result of his attack upon the resolution, or the mover of the resolution? or upon the Middle States, or the citadel of New England?

It would, perhaps, be considered rather unkind to quote upon him "*Montes parturiunt,*" &c.; but, sir, it can give him no offence to quote an expression of his friend from South Carolina, [Mr. HAYNE] "he has been driven back discomfited!" especially since he gave public thanks to the "generous South" for the tariff.

It is probable the Senator had never heard the derivation of the term Yankee, when he attacked the "Universal Yankee Nation." That he may understand better the character of those people in any future contest, I will give him its origin, so far as it has come to my knowledge. Tradition says that, during the Revolutionary war, two citizens of Connecticut were sent to New York to negotiate on exchange of prisoners. At the table of the commander of the British army, where these gentlemen were invited to dine, (not, however, for any votes they had given,) the term "Yankee" was overheard in an under tone. Lord Howe, in a pleasant manner, asked these gentlemen the meaning of the term "Yankee," which he had heard at his table, (casting a look of reproof and censure upon some young officers from whom it came.) The reply was—"It is derived from two Indian words, signifying

Wasp and Hornet, and is full of meaning—the Wasp never abandons the citadel; the Hornet drives the enemy from his borders."

The resolution which the Senator compared to "Pandora's box" is not yet demolished, but waiting very patiently for the decision of the Senate. Nor is it considered by the Senators from the West generally as "full of evils;" and surely the Senator himself must acknowledge the mover has not been much moved by his attacks, and may be assured he will decline his polite invitation to Missouri for information. It is expected here; the resolution asks for information; and, after the generous offer of full information at Missouri, it is expected the Senate will not refuse the committee the opportunity to furnish it. To prove the hostility of the East, the Senator has culled the yeas and nays for forty years—and what does he find? Men voting upon principle, honestly and consistently—men who did not change with every wind: votes which ought to make none but political trimmers and demagogues blush for inconsistency! And fortunate, indeed, will it be for that Senator, if, at some future period in the annals of this country, some ruthless hand should disturb his ashes, the journals will show as much purity of intention, and patriotism, and as much consistency in his political course, as has been found by him in his fruitless search for evidence of hostility to "his West—his country—not mine." But, sir, where does he find hostility to the West? Where was "his West?" where was Missouri, when those votes were given? A Spanish Province. Where would Missouri have been, if Mr. Jefferson's advice had been followed, "to shut up the West—to prohibit any whites to settle north of Arkansas river, and to reserve it for the Indians?"

But the Hartford Convention, ay, the Hartford Convention! Here was hostility to the West! Although the Senator has excepted me from any participation in the Hartford Convention, I have only to say, the people of New England themselves have settled that business, by giving the authors and abettors leave to retire to private life, where they will remain, unless the Senator or his political friends call them from their dignified retirement.

One word to the Senator from South Carolina, [Mr. HAYNE] who knows but little of the republicanism of New England, if he places any of the Essex Junto at its head, and who has also made a furious attack upon the federalism of New England. If the republicans of South Carolina will make the same disposition of their rash and imprudent men as the republicans of New England have done of those among them, the union of the States will be in no danger. Sir, I do not find that New England has suffered much in this contest; few laurels have ever been gained in that section by her enemies; whether savage or civilized, internal or external, she never has asked or received much assistance from her sister States. Her own resources have been abundant in every emergency. She has borne her full share of public burthens and sufferings. The blood of her sons has flowed freely in the defence of other parts of the Union, and their bones are whitening on almost every battle ground. She yields to none in liberal and generous sacrifices in her country's cause. She is attached strongly to the Union; her children are in every State; she feels no hostility or jealousy to any part of the Union; she seeks the common good; and sees, "more in sorrow than in anger," the various attempts to excite prejudice against her; but she relies with full confidence on her own consciousness of rectitude and strict justice to others, and asks nothing more than a kind return of reciprocal good feeling and confidence. But, sir, to such as are disposed to excite these sectional jealousies, I will only recommend a careful perusal of Washington's Farewell Address, and leave them to the "gnawings of their own conscience," and the execrations of all good men.

This resolution proposes an inquiry into the condition

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of the public lands; and "we must not even inquire," says the Senator from Missouri, [MR. BAXTON]; "it is against a high moral principle on which he stands;" and this was echoed by the Senator from New Hampshire, [MR. WOODBURY]. And pray, sir, what is this great moral principle? "It is not right to inquire into the expediency of doing wrong." If he had said it is not right to do wrong, and would always stand on that ground, he would be entitled to much credit. Sir, the Senator has boasted much of "carrying the war into the enemy's country," and he will pardon me for retaliating in such a warfare. If any thing has effectually checked the sale of the public lands, it has been his bill "for graduating the price of the public lands, and giving them to the States in which they lie." For proof of this, I appeal to the reports of the land commissioners, and to Senators living in those States—and, under this resolution, the committee may find an effectual remedy. Reject the graduating bill, and the evil is entirely removed.

Mr. Foot said that, believing most fully in the doctrines of a former President of the United States, "that the acquisition of the public lands, made at the expense of the whole Union, not only in treasure, but also in blood, marks a right of property in them equally extensive;" and that the public domain is the common property of all the States; and considering, also, the high responsibility resting on Congress, to make such a disposition of the public lands as will promote the general interests of all the States, I proposed this resolution for the consideration of the Senate.

And although the Senator from Missouri [MR. BENTON] has said "the West is his country, not mine—he knows it, I do not," he must allow me to press the inquiry, notwithstanding his great zeal on every question in relation to his favorite subject—the public lands.

The Senator from Indiana, [MR. NOBLE], who has said, "we are in possession, and we will have the land, and distance shall be defeat," as well as the Senator from Missouri, [MR. BAXTON], seemed to insinuate that I was trespassing on forbidden ground. But, sir, they must remember, that my State, being one of the "old thirteen," has never quit-claimed her right and title to the public lands; and, like a prudent parent, has not thought it advisable to give up all the property to the children, and trust to filial affection alone for support; and whatever may be their opinions, they must allow me the privilege of judging for myself in what way the interests of my own State will best be promoted. Whatever may be their object in commencing such an attack on a harmless resolution for inquiry merely, the effect has been to increase my solicitude for a full investigation. Nothing can excite stronger doubts of the soundness of any principle, or raise more suspicion of lurking mischief, than an overweening anxiety to exclude the light, and veil the subject in mystery and darkness. And I presume every one has, by this time, become fully satisfied that this unexpected and unprecedented attack, made by them on this resolution, has produced a great portion, if not all the excitement raised up on this subject. Resolutions of this character, merely directing inquiry, are of such frequent occurrence, that even when they are published in the journals, and suffered to pass without opposition, they produce no excitement; and the people wait for the report of the committee; and why was this resolution opposed? Was any favorite "graduating bill" thought to be in danger? Sir, a full report from the committee, on the subject of the public lands, would save much useless discussion on many bills relating to the public lands, which embrace about one-half of all our legislation.

In one point we all agree, that this subject is one of great and increasing interest.

The quantity of public land has been estimated at more than one thousand millions of acres; three hundred and

seventeen millions within the States and Territories, and seven hundred and fifty millions without those limits; two hundred and sixty-seven millions are free from the Indian claims, and eight hundred millions still subject to their claims, of which fifty-five millions are within the limits of the States and organized Territories; and will it be contended that this subject is not of sufficient importance to justify, and even to demand, our attention to the management of this concern?

The Senators have seen fit to charge, not only on me, but upon the section of the country in which I reside, hostility to the Western States, and various attempts to prevent emigration to the West: and the Senator from Missouri [MR. BAXTON] promised to "trace the progress of these measures to check emigration for forty-four years!" How has he redeemed his pledge? He has gone back far beyond his own experience or mine; and, sir, I think he has found it a Herculean task. We have often heard such charges from his own lips; what is the proof? does he get it from Spain? The public mind will no longer be satisfied with a mere repetition of such charges, often made, but supported only by repeated declarations and averments. It is not sufficient proof of these charges, for the Senator to quote his own speech on the tariff, in which he says, he commented severely "on the report of the Secretary, and no Senator contested the propriety of the construction he put upon it." Sir, this Secretary was not from New England. The tariff policy has been charged upon New England, within these walls, and throughout the Southern States. Sir, Senators on this floor certainly must know this charge is wholly unfounded. South Carolina has supported one tariff; the Middle and Western States have had their tariff. But an tariff has been supported by a majority of New England votes! It has been forced upon her. This fact is well known—the journals prove it—and I hope it may never again be misrepresented.

If the Senator proposes to draw arguments from his own speeches, he may indeed have a wide field; but the force of his arguments may not appear as great to others as to himself; and, if no Senator replies to him, does it furnish full proof that his arguments are unanswerable? Other reasons may exist why no one should be disposed to answer him.

The people of New England are intelligent; and it has been said they look well to their own interests; but this is no proof of hostility to others. They consider the citizens of the United States as children of one great family; our fathers, our children, our brothers and sisters, have gone to every State and Territory of this Union, and their children mingle with ours in our schools and colleges. We are bound together by the strongest ties of interest, of affection, and of consanguinity. What possible ground for suspicion of hostility can exist, except in a distempered imagination?

One word to the Senator from Indiana, [MR. NOBLE] who has said "the lands are their own, and they will have them, and distance shall be defeat!" I ask, where does he find the power, as a Senator in Congress, to vote away these lands? Has the State Legislature instructed or authorized him to vote away their lands? And as to the great excitement of which he speaks, if any such exists, it is factitious: in common language, "got up for effect." And how can the Senator from Illinois [MR. KANE] oppose this resolution, when he has attempted to prove that a radical and "thorough change in the land system is desirable, if not indispensable?" Or even the Senator from Missouri, [MR. BAXTON] who has been pressing his bill "for graduating the price of public lands" for years, and has told his constituents "he had strong hopes of carrying that favorite measure during the present session, when he expected to retire from the councils of the nation;" that is, if the newspapers tell the truth? And with respect to the Senator from New Hampshire, [MR. WOOD-

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**BURY** who said "he should vote against this resolution, because he would do in this respect as in his own case—he should be opposed to inquiry." I should probably concur in the opinion that the Senator would be an unsafe adviser; nor can I feel the force of his argument drawn from Persia. But, if the Senator claims to be the ambassador and minister plenipotentiary of all the republicans of New England, (and we have witnessed his coronation with all the forms and solemnities of Papal power, and heard him pronounced to be the "Peter and Rock on which the Republican Church shall be built," by the Senator from Missouri,) [Mr. **BAXTON**—] we should like to see his credentials—let him produce his commission, show its date, by whom signed—we want to see his instructions—that we may know with what special mission he is charged; whether with a general superintendence of all the interests of republicans, or merely, in his own language, "to set history right"—his own (as we may suppose) or the history of his new republican party—their origin, their manners and customs, and the particular object of the party which has confided to him the conservation of all the republicanism of New England. New England is represented on this floor by as good a portion of real, genuine republicans of the old school, as any section of this Union: and he must allow me to disclaim and deny any authority vested in him to represent the republicans of Connecticut. The republicans of 1798 are not to be "stretched on the bed of any modern Procrustes, or cut to its length;" they never have, and they never will, range themselves under the flag of the Essex Junto. Republicans constitute a large majority, and they will not consent that their number shall be circumscribed within the narrow limits of the supporters of this administration; nor will they hail them all as political brethren, while the Essex Junto and ultra federalists form so great a portion of their forces, and receive so large a share of Executive favors. They do not consider it to be sound republican doctrine, to remove from office an old faithful democrat and soldier of the Revolution, to make a place for an ultra federalist. A certain letter to Mr. Monroe revived the hopes of the federal party. That these hopes have not been disappointed, this Chamber has furnished ample proof. I do not complain of this; but I do protest against such a prostitution of the republican name and character. Let things be called by their right names; we ask no more. The Senator's favorite doctrine of proscription, "that in every change of a President all the old officers, from a sense of decency, ought to retire, and, if they do not resign, they should be dismissed," is not the doctrine of the republicans of Connecticut, as their acts will show. Our motto is, in the language of Mr. Jefferson, "equal and exact justice to all, of whatever State or persuasion, religious or political."

The Senator from Tennessee [Mr. **GAUVIN**] has alluded to Mr. Jefferson's proceedings in relation to my native State. If the Senator will examine Mr. J.'s letter to the New Haven remonstrants, and his refusal to remove the collector at New London, he will find a standard by which the proceedings of this administration will by no means bear the test. "The right of private opinion shall suffer no invasion from me," was Mr. Jefferson's language; and the wide difference between Mr. Jefferson's and the present administration is, he found a monopoly of office in the hands of one party, and the present administration seems determined to make a similar monopoly.

But, to return to the subject of the resolution. The first provision for the sales of the public lands was established by the act of 18th May, 1796, "providing for the sale of the lands of the United States northwest of the river Ohio, and above the mouth of Kentucky river." This act provides for surveying and laying off in townships of six miles square; one-half of these townships, taken, alternately, to be subdivided into sections of six hundred

and forty acres; and reserves salt springs, with a township contiguous, and four sections at the centre of each township. This act directs the immediate sale of the lands thus surveyed, and also the land unsold in the seven ranges of townships surveyed under the ordinance of 20th May, 1785, and directs the mode of payment; one-twentieth at the time of sale, to be forfeited if one-half be not paid in thirty days, and one year's credit on the balance; declares all navigable rivers, public highways; and in all rivers not navigable, owned by different persons, the bed and stream shall be common to both. This principle has been established in relation to all lands sold by the United States.

By the provisions of the act of the 3d of March, 1807, the President is authorized to remove, by force, any person who shall take possession or settle upon any of the public lands; and, since this discussion has commenced, he seems determined to enforce this law.

The act of January 14th, 1812, declares that no land sold at public sale, and reverted to the United States on account of failure to complete the payment, shall be sold at private sale at a less price than that for which the same tract was sold at public sale.

The act of 25th April, 1812, "for the establishment of a General Land Office in the Department of the Treasury," forms the basis of our present land system. Some of the most material alterations effected by subsequent acts, will be noticed, for the purpose of affording an outline of the present system; and the most important is in the act of 24th April, 1820, "making further provision for the sale of the public lands," which merits particular attention, as it produced almost an entire change in the whole system, by changing the former credit system to cash sales; reducing the price of the public lands from two dollars to one dollar twenty-five cents per acre; authorizing the sale of smaller tracts; and requiring that the land shall be offered at public sale, in half-quarter sections, or eighty acres, and may be so purchased and entered at private sale. This was an important and very beneficial provision for the actual settler. And, as a further inducement to the purchaser, it is expressly enacted that "no lands shall be sold, either at public or private sale, for a less price than one dollar and twenty-five cents per acre," pledging the faith of the Government absolutely to the purchaser, that the Government will not prejudice his interest, by disposing of any of their lands below the price fixed by law. By the fourth section of the same act, a further provision is made for the relief and benefit of those who had purchased on credit, and whose lands had become forfeited and had reverted to the United States for non-payment of the purchase money under the former credit system, allowing them a short time to make entry upon the lands relinquished by them, and prohibiting any person to enter such lands after the 1st of July then next, until the same had been offered at public sale. These provisions, with the pre-emption rights granted, have been always considered as affording great facilities to actual settlers. The seventh section of this act provides that "no land shall be purchased on account of the United States, except under a law authorizing such purchase." This is a very important provision, and it is to be wished that it may never be violated.

It will be recollected that, previous to the passage of the act of 1820, above recited, the purchasers of the public lands, under the credit system, had become indebted to the United States in an amount exceeding twenty millions of dollars. On the 2d March, 1821, Congress passed the "act for the relief of the purchasers of public lands, prior to the 1st day of July, 1820," allowing to those purchasers the privilege of relinquishing portions of the purchased lands, and applying the payments already made by instalments, to such portions of these lands as they chose to retain; and remitted and discharged the debtors from the payment of all the interest which had



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accrued, or would accrue, to the 30th of September then next; and a further provision allowed a discount or deduction of thirty-seven and a half per cent. upon all complete and full payments made before the 30th September next ensuing; and, by subsequent acts, these privileges and facilities have been extended to the 10th April, 1825, and virtually extended by an act passed this session. Several other liberal provisions are included in this act, but it is not necessary to enumerate them for my purpose, except the tenth section, which provides that "no land surrendered under this act shall be offered for sale for the term of two years after the surrender;" allowing in fact two years more for the benefit of the purchaser. Sir, this act was received with much satisfaction by the purchasers of public lands, and considered by all as an act, not only of justice merely, but of great liberality to the debtors; for the public lands, notwithstanding the ungracious charges which have been made by certain members of both Houses of Congress within a few years, and by the Senator [Mr. BAXTER] during the present session, in which he boldly declares that "nothing has been done for the West;" that, in all the appropriations for internal improvements, only about "seventy thousand dollars had been for the benefit of the West." Sir, the appropriations, in land only, for the benefit of the Western States, according to a return from the department, in answer to a resolution of mine, amounts to a sum exceeding ten millions of dollars; the land being valued at the minimum price of one dollar and twenty-five cents per acre. No complaint is made of this. My own vote will be found in favor of as many of these appropriations as in my opinion sound policy and our power under the constitution would permit. And it may be well suspected, from the course of this debate, that the very liberal provisions of our laws, for the benefit of the new States, have been made the foundation of the ungrateful insinuations and direct charges of hostility to the West. An ungrateful heart is never satisfied, or won by the increase of favors—"the more you give, the more you may," is often exemplified, and the greatest favors are too often repaid by the grossest ingratitude. This charge is by no means intended for the West generally; the West is high-minded, honorable, brave, and magnanimous; but she has some unworthy sons.

But really, if it has come to this, that we may not even inquire whether our system needs revision, without being told "it is not a proper subject of inquiry," that "it is time to make a stand, to face about, and to fight a decisive battle for the West, with 'war to the knife, and the knife to the hilt,'" for one, I was ready to meet this terrible crisis. It was best to meet it at once, and not wait for the time of which we have been forewarned, that, "as soon as they get strength, they will take the public domain, without asking the consent of Congress!" And, if it is seriously claimed that the public lands are the property of the States in which they lie, why are we called upon every year for an appropriation for the expense of surveys of the public lands? Do these States claim the lands as their own, and require us to survey them? It becomes a question of some importance, whether we shall go on surveying lands at an expense of sixty or eighty thousand dollars a year, or abolish both the surveyors' offices and the land offices. The Commissioner of the Land Office has recommended that the number be reduced.

I will now come directly to the question, and give the reasons why, in my opinion, the sales of the public lands ought to be limited, in the manner proposed in the resolution. It must be admitted, the land now in market, and subject to entry at private sale, at the minimum price, is more than sufficient for the demand for many years to come. From the report of the Commissioner of the General Land Office, to which I referred in offering the resolution, more than seventy-two millions of acres were unsold, which were subject to entry at the minimum price of

one dollar and twenty-five cents per acre. From some of the largest land districts no sales have been made, and no returns were received. These added, will probably increase the amount to more than eighty millions. The quantity of land sold is estimated at about twenty millions; appropriated for education, military bounties, improvements in roads and canals, &c. twenty millions of acres, making one hundred and twenty millions of acres, and leaving about thirty millions already surveyed, which have not yet been exposed to sale. The land surveyed previous to 1828 was one hundred and thirty-eight millions. The above estimate allows twelve millions of acres to have been surveyed within the last two years, making the whole quantity of lands surveyed one hundred and fifty millions of acres; from which, deducting the quantity sold, and that which has been appropriated by Congress for education, roads, &c. forty millions, will leave one hundred and ten millions now surveyed and undisposed of, eighty millions in market for sale, and subject to entry at the minimum price, and thirty millions ready to be brought into market at any moment to meet the demand. To this may be added a considerable portion of the lands which have been appropriated by Congress; for it is but fair to presume that no greater portion of these lands has been sold to actual settlers, than of the lands in the hands of the Government. Taking this basis of computation, it appears that thirty millions more must be added; add, also, the quantity of lands in the hands of speculators and land companies, and the original purchasers, which have never been occupied, and we may safely estimate the quantity of wild lands now in market for sale to actual settlers, at one hundred and twenty millions of acres. Indeed, the Senator seemed much alarmed because lands were offered for sale in Maine.

The Commissioner of the Land Office estimates the demand for land at one million acres annually. The annual sales for forty years, since the public lands have been offered for sale, have scarcely averaged half a million of acres per annum, notwithstanding the great rage for land speculation during some portion of that period; and it is to be presumed that more than this quantity is needed to induce emigration of actual settlers to the West. Probably not one-half of the lands already sold are in the hands of actual settlers, although some have been sold by the United States more than forty years. There is no doubt the limitation of sales of the public lands contemplated by the resolution will discourage speculators and others who look more to their own interest than the public weal, and from them opposition is to be expected. I ask the attention of the Senate particularly to this part of the discussion; and, if my positions are incorrect, the Senators from those States in which the lands lie will correct me. My opinion is, that neither the interests of the United States, nor the best interests of the new States, will be promoted by forcing such immense quantities of public lands into the market. It will not be denied that the quantity now in market is amply sufficient to meet the demand for actual settlers for half a century. But the Senator from Missouri [Mr. BAXTER] has told us these one hundred and twenty millions of acres are "scraps—mere refuse—the leavings of repeated sales and pickings—the crumbs that remain after others are served." If the statement of the Senator be correct, it certainly presents a very different picture of the allurements and fascinations of the West—"the Garden of the World"—from the one which has been held up to the emigrant. Are these the "rich bottoms"—the fertile regions—the "inexhaustible depth of soil," of which we have so often heard? In one hundred and fifty millions of acres, has there been found but twenty millions fit for cultivation? and is the remainder mere refuse? In what way does the Senator expect to sustain the dense population which his imagination but a few years since discovered "reposing

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on the bosom of the mother Earth, in the Valley of the Mississippi and the Western States?"

But, let us strip off the drapery thrown around this subject, and examine it minutely. How have these sales been effected? A large quantity of land is surveyed, on the application of squatters and speculators—the President issues his proclamation, that on a future day this land will be exposed to public sale. Does any one believe that the actual settler attends these sales? I beg the attention of Senators, who must know the facts better than myself. Is there not a combination immediately formed among the companies of speculators? and are not the most choice lands selected by them, and purchased at the minimum price? for our sales for several years prove that the minimum price only is obtained; and if the minimum price was ten cents the acre, would not the small part, and of the choicest land, sold at public sale, be sold at ten cents? Dare the actual settlers attempt to bid upon these "purse-proud companies and land speculators?" I acknowledge my obligation to Senators living in those States, and conversant with the subject, for this idea, and expression. The Senator has told you the West is "his country, not mine; he knows it, I do not." But, I think, by this investigation, we are likely to become somewhat better acquainted with it, and with the manner of disposing of the public lands, which may be useful. The quantity disposed of at these sales is governed entirely by these companies—some small sales of first quality, and advantageous locations, are bid off, enough to subject the land to entry at the minimum price; and all that remains is set down by the Senator as "scraps, mere refuse." But let it be remembered, about thirty millions have been surveyed, and not yet exposed to sale, which will supply the demand for several years for settlement only beside "scraps" of former sales; and here the settler may have his "new land, his first choice," as the Senator expresses it. But I will pursue this subject of the management of the speculators no further; but refer the Senate to the description given by the Senator from Alabama, [Mr. McKINLEY] in support of his bill for the relief of the actual settlers, in which he disclosed the plans of operation of these speculators, and proved, most conclusively, from facts within his own knowledge, that these "speculators controlled the sales of the public lands, and absolutely cheated both the Government and the actual settlers;" and also a statement made by a former receiver of the land office at Huntsville, in the same State, (Alabama,) now among the files of the Senate,—"that at the sales of public lands, which commenced by proclamation of the President, on the first Monday in February, in the year 1818, at Huntsville, a formidable company appeared, which had been formed for the purpose of putting down competition amongst attending bidders, and purchasing the most valuable lands at reduced prices, intending to make re-sale, and divide the profits of the speculation, and that himself and the other officers of the Government, and the superintendents of the sale, were invited to join them, and participate in the proceeds." Such proceedings beggar comment; I leave them for the consideration of the Senate.

Another reason why I wish the sale of public lands limited, is, to preserve the preseat land system. So long as you permit squatters to go on in advance of your surveys, and make selections of the choice lands, and then follow them with surveys and sales, you constantly increase the cupidity of speculators, and scatter a very sparse population over an immense tract of country, wholly destitute of the means of either literary or religious instruction, who will be incessantly calling on the Government for protection. They have been constantly intruding upon the Indian reservations, which have been guaranteed to them by the United States: the Indians, goaded to desperation, seize, perhaps, their cattle, or, in defence of their rights, raise the tomahawk, and "the

welkin rings" with the cry of "horrible Indian outrages;" the military force is called out, and the depredations of the whites upon this miserable remnant of a noble race is made the occasion for destroying perhaps a whole tribe, "vastly more sinned against than sinning;" or a bill is introduced into Congress, for thirty or forty thousand dollars to pay for damages done by the Indians. The history of our Indian wars will show that most of these wars have been produced by unlawful encroachments upon the Indians; and it would seem that the cupidity of our people will never be satisfied while the Indians possess an acre of land which is thought to be better than the lands in our possession, or in which valuable minerals have been discovered by squatters or trappers and hunters.

The disposal of the public lands has been, in this way, absolutely wrested from the Government, and monopolized by speculators and squatters; the land system is virtually broken down, and we are gravely told, "it is best for us it should be so," and nothing remains for us but to give the squatters pre-emption rights; and, instead of legislating for them, we are to legislate after them, in full pursuit to the Rocky Mountains, or to the Pacific Ocean. Your system of cash sales is destroyed, and a worse system than the old credit system grown up; the solemn plighted faith of the Government to the Indians, "to protect and defend them in their possessions," forms no barrier; and the solemn treaties guaranteeing their possessions for ever, means nothing further, and no longer, than until some good land or mineral is found in their possession, and then they must remove. But the sympathies of the good people of the United States are aroused; they begin to see and understand the course of policy which is hurrying these poor untutored sons of the forest, and once lords of the soil, to swift and inevitable destruction; and are beginning to cry out, spare these poor Indians! And their voice of mercy must and will be heard! And it becomes us to see to it, that our plighted faith does not become proverbial, as the "*punica fides*" of ancient times: and that the Indian may not say, *Timeo Danaos dona ferentes!*

By confining the sales of public lands to those already in market, we shall give the greatest possible encouragement to actual settlers; the hopes and the plans of the speculators will be entirely frustrated, a steady and industrious population will rapidly increase, and the other new States will present the same animating scene which the rapid settlement of Ohio has presented. The report of the Commissioner of the General Land Office furnishes proof in this respect, more valuable and interesting than volumes of theory and idle speculation. It shows us the sale of twenty-five thousand acres of land in one year, in a district in which there is but a small portion of public land; and probably the whole amount to actual settlers. Three hundred thousand dollars were received from Ohio during the last year. The interest of the United States is perfectly identified with the interests of the new States; both are interested in the settlement of those States by an industrious and honest population. The best interests of both will be promoted by putting down that system of speculation, which, as the Senator from Alabama very justly expressed it, "cheats both the Government and the actual settler." For a short period, perhaps, the receipts from the sale of public lands might not equal the present amount. But it cannot be the policy of the Government to follow the example of the improvident spendthrift, who cuts down all his valuable timber in a few years, and leaves his plantation stripped of its most valuable productions. The moneys received from the sales of public lands form but a small part of its real value to the country; the proper facilities for encouragement of actual settlements, and the security which the Government is bound to afford to its citizens within its limits—not only against violence, but also against imposi-

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*Mr. Foot's Resolution.*

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tion, frauds, and oppression, imperiously demand the inquiry, whether the land system cannot be saved from total destruction. Whether some plan cannot be devised, which shall promote the interest of the United States; the States in which the public lands lie—and the actual settler, the emigrant from the old States—and this is the object of the resolution. If the inquiry proposed is too limited, let it be extended to embrace the whole subject; it will have my full acquiescence; and I assure the Senators who so suddenly took the alarm, when the resolution was offered, that they much mistake my views and feelings, if they believe me unfriendly to their interests; but they must not claim the lands as their own. They shall have my hearty co-operation in any plan for encouraging emigration to their States, which shall secure the emigrant a solid good, and not hold out delusive prospects which can never be realized—a plan which shall promote the best interests of the United States, and, at the same time, the best interests of the new States—by securing to them a sound and healthful population, which shall make the “wilderness to bud and blossom as the rose, and the solitary places become vocal with the high praises of our God.”

Here I leave the subject involved in the resolution; but some other subjects which have been introduced on this occasion demand at least an expression of opinion on my part, since they have (in sailor language) been “spliced” upon this resolution; and the first is the power of the Federal Judiciary. Although, I have uniformly been the advocate of State rights, I never have, and never shall, claim for them those rights which have been vested by the constitution in the courts of the United States; and, in my opinion, no danger is to be apprehended, as long as we give to the constitution a fair construction. The judicial power is clearly defined in the second section of the third article, and extends to all cases arising under the constitution and the laws of the United States, &c.—to controversies in which the United States is a party, to controversies between States, between a State and citizens of another State, &c. It would seem as if no question could arise in relation to a power so clearly defined. I find no power given or reserved to a State to put its veto upon any decision of this court; and I am for strict construction; but, as this subject was introduced by the Chairman of the Judiciary Committee, and the members of that committee and others are more competent to discuss and decide that question than those who are not professional men, I leave this branch of the subject in the proper hands.

Another, and highly important question, and one in which the purity if not the very foundation of our Government rests, has been introduced by the Senator from Tennessee, [Mr. GAUNDY] viz. the power of the President on the subject of appointments to office. I use this language in preference to the language of the mover, “the power of removal,” because it embraces (in my view) the whole case, and does not restrict me to a proposition which, in my judgment, begs at least half the question. The constitution declares, the President shall nominate, and, “by and with the advice and consent of the Senate, shall appoint, &c. But Congress may, by law, vest the appointment of certain officers in the President alone, &c. He shall have power to fill up all vacancies that may happen during the recess, by granting commissions, which shall expire at the end of the next session; officers may be removed by impeachment.” This quotation embraces every provision of the constitution on the subject of appointments and removals. It never has been contended that the President has the sole power of appointment, unless authorized by special law. Congress has authorized the President in certain cases of temporary inability, by vacancies in certain offices in the departments, to assign some person to discharge the duties

for six months. It is admitted that the constitution does not authorize the President to remove from any civil office. But, it is contended that, by virtue of his executive powers, and to enable him to comply with his oath, “to see that the laws are faithfully executed,” he must of necessity possess the power of making removals, and that this power has been exercised by every President. In my opinion, the necessity does not exist; for certainly the exercise of a greater power cannot be necessary, when a less power is sufficient to meet the exigency of the case. Nor do I admit that, in making removals by former Presidents, any such power has been claimed, as has been advocated on this floor—the power of making removals “at his pleasure.” Certainly no necessity exists for removing a faithful officer; his oath, to see that the laws are faithfully executed, cannot require it. In addition to this, if it becomes necessary to suspend the functions of an officer, for malfeasance, as the laws have made provision for assigning another to perform temporarily the duties of an incompetent officer, it would seem that suspension would be sufficient, and was contemplated by the act of Congress making such provision.

The act of July 27th, 1789, has been relied on as giving the power of removal to the President in all cases: my inference from this act is entirely different. If the President possessed the power by virtue of his office, surely it was not necessary to insert this provision in the act; and, as it is not provided for in any other act of Congress, the fair inference is, that the intention of Congress was to vest in the President the power of removing this officer for special reasons, which do not apply to any other case. This officer, the Secretary of State, was, in fact, the Private Secretary of the President. The law specified his duties, and to be performed in such manner as the President should direct; and it was considered reasonable to give the President the power of removing him; but no such reasons exist in other cases. This case, unsupported by any other, is therefore to be considered as a special exception to a general rule, and more fully establishes the general principles; for, surely, no exception could be necessary, if there was no established rule; and when an express exception is made, so far from impairing the general principle, it greatly strengthens it. It is to be construed literally, and the language is clearly this: this shall be the only exception.

In my opinion the President has not the power of removal from office, because he has not the power to appoint, and a lesser power cannot remove an officer appointed by a greater power, without that power is specially granted by a power equal to the appointing power. I admit that the President, during the recess of the Senate, by virtue of his general executive power, and his obligation to see the laws faithfully executed, may suspend an officer in cases of extreme necessity, until the Senate are convened; but this is a mere suspension—no vacancy “happens,” within the meaning of the constitution, by such suspension, and it is not in the power of the President to fill such vacancy under the constitution; it becomes his duty to inform the Senate of the misconduct of such officer, and, “by and with their advice and consent,” to make the removal and fill the vacancy; and no officer is removed from office, and no vacancy exists, until the Senate, by their vote, “advise and consent to the appointment of a successor, agreeably to the nomination,” by which act, they approve of, and make the removal and create the vacancy, by the joint act of the President and Senate, which is made the appointing power by the constitution. Will it be claimed that the Senate alone can remove from office, except by impeachment? And if one branch of the power cannot do it, is it in the power of the other branch to do it, except by a special grant of that power by Congress?

With respect to vacancies in the recess of the Senate, the sole power of the President “to fill such vacancies,

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to the end of the next session," depends upon the construction of the word "happen." What is its meaning? "To come by chance or accident." Does a forcible removal by the President come within this definition? It will not, and cannot be claimed. It is not a vacancy which "happens" within the meaning or the letter of the constitution. This point has been settled by the Senate in the case of Mr. Lanman, a Senator from Connecticut, whose term expired on the 3d March, 1825. The Senate was convened, by special call of the President, on the 4th March. The Legislature of Connecticut, not being in session, the Governor of Connecticut made a temporary appointment, and forwarded a commission, under this provision of the constitution—"If vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments, until the next meeting of the Legislature, which shall then fill such vacancies." After full debate, the Senate decided, by a large vote, that Mr. Lanman was not entitled to a seat, upon the ground that, although there was a vacancy, the vacancy had not "happened" within the meaning of the constitution. This appears to me to be a much stronger case than the one under consideration. In the case of Mr. Lanman, the vacancy occurred by the expiration of the term of his office. A vacancy actually existed, and the only question was, how this vacancy had occurred; and, although there was a vacancy, the Senate would not permit the vacancy to be filled by the Executive, on the ground that the vacancy did not "happen." What is the present case? Had these vacancies "happened" by casualty or accident? No. There was no vacancy; but the President endeavors—yes, he attempts to make a "vacancy happen," by a forcible removal of the officer!!! Comment cannot be necessary; the bare statement is sufficient to satisfy every unprejudiced mind that such vacancy does not "happen," and, of course, by the decision of the Senate in the other case, it is not in the power of the President to fill such vacancy, under the provision of the constitution, viz. "The President shall have power to fill up all vacancies that may happen during the recess of the Senate, &c." being precisely the same language as in the case of Mr. Lanman; and, sir, among those who voted in the negative, on the resolution to permit Mr. Lanman to take his seat, there appears the name of General Jackson, the present President of the United States!! The doctrine contended for by the Senator from Louisiana, [Mr. LIVINGSTON] has, I believe, met with few supporters. There are but few even of his own political friends, I trust, who are willing, by such concessions to the Executive as he has made, to surrender at once all the rights of the Senate. He contended that the President has the "perpetual power of appointment"—that when the Senate has rejected his nominations, he can fill the vacancies existing after the expiration of the session of the Senate. Such a doctrine leads at once to absolute and despotic power in the President, and can never be tolerated by a republican people. With my impressions, it certainly cannot be expected that I should vote for the confirmation of any nomination, made in place of any one who is declared by the President to have been removed, unless information is given of the causes for which, in the opinion of the President, a removal has become necessary; as I hold it to be the duty of the Senate to inquire into those causes, to enable it to decide correctly whether the public interest requires a removal. And, further, that the President cannot create, or cause a vacancy to "happen," by removing an officer appointed by and with the advice and consent of the Senate; and, more especially, immediately after the adjournment of the Senate; or, under any circumstances, without the advice and consent of the Senate for the removal; since the same power is necessary to remove as to appoint.

The Executive Journal, which has been published,

shows the mode of nomination, as well as the manner in which the Senate advise and consent to nominations. To illustrate my position, the President sends a nomination to the Senate in these words: "I nominate A to be Collector of the Port of —, in place of B, removed." The question is, will the Senate advise and consent to the appointment of A, "agreeably to the nomination?" If the Senate advise and consent to the nomination, in these terms, do they not advise and consent to the removal of B, as well as confirm the nomination of A? And can we do this with any propriety, or consistently with a due regard to the rights of B, without knowing the reasons why B ought to be removed? For one, I answer in the negative. I cannot (with some Senators) "presume that the President had good reasons," and vote in the dark. It is wholly inconsistent with my sense of duty. I am not willing to assume the responsibility of removing an officer, upon the presumption that the President has good reasons for the removal. If the reasons are good, what objection can he have to communicate them to the Senate? If no reasons are assigned for the removal, my inference would be entirely different from that of the Senator from Tennessee, [Mr. GRUNDY.] I shall presume there is no good reason for the removal; and shall vote against the removal and the nomination, until information is obtained on which reliance can justly be placed; and, in my opinion, self-respect and the rights as well as the duty of the Senate demand it. The constitution has not made the Senate the mere recorder of the Executive will, but a part of the appointing power, and responsible for the faithful discharge of this high trust.

I am aware of the decision, in 1789, in relation to the power of the President to make a removal; but, under the peculiar circumstances of that case, it certainly ought not to have any force as a precedent. The utmost confidence was reposed in General Washington. No suspicion or jealousy existed, that he could abuse the power thus granted. The question was decided by the casting vote of Mr. Adams, the Senate being equally divided; and most of the framers of the constitution voted against it. And were they not qualified to expound the constitution which themselves had made? And Mr. Madison, in debate, declares, if any President shall presume to remove, without cause, or to reward his favorites, he would be liable to impeachment; but "he cannot conceive how any President could be guilty of such a gross violation of duty." But has he not lived to see it?

But, suppose it be decided that the President has this power, no doubt exists but that he is responsible for the abuse of it. It is certainly a most responsible and delicate trust, and never to be exercised except in extreme cases, where the public interests imperiously demand it. And is it not the duty of the Senate, if possible, to check every abuse of this power?

There is not a Senator on this floor, nor an individual in this nation of any respectability of character, and a friend to the country, who will say that the President has the right to use this power to gratify his malice or caprice, or to purchase "golden opinions." But there are some, and I regret to see it, who have advanced sentiments on this subject which are well calculated to encourage the most monstrous abuse of this power. The Senator from New Hampshire [Mr. WOODBURY] was understood to say "that every officer who differed in political sentiment, or opposed the election of a Chief Magistrate, from a sense of decency, ought to retire; and if he did not, he had no reason to complain if he was turned out of office." This, I believe, was at one period the New York doctrine, but certainly a doctrine inconsistent with the rights of private opinion, hostile to the best interests of the country, and dangerous, if not wholly destructive of civil liberty. I pronounce, without hesitation, that any citizen who dares not exercise his elective franchise, independently, is a

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slave! and any one who would punish a man for the free exercise of this right, is a tyrant! It matters not by what name he is called. If this is republican doctrine, I have not yet learned it in more than thirty years' experience. Let us examine this doctrine fairly and candidly, and see its results. The picture is before us. Look at the hordes of hungry office-hunters, surrounding the quarters of General Jackson on his arrival in this city, previous to his entering on the duties of his office. In the front rank, marshalled, the hireling editors of newspapers! retailers of slander! pressing on with their bills, and demanding payment; and threatening to turn their tremendous engines against the successful candidate, if their bills are protested, or are not promptly paid! About fifty of this class have received their reward!! In the dark ages, the purse and the sword were considered amply sufficient to secure the "sceptre." In modern times, the press must be subsidized! Why this tremendous rush of hungry leeches, and desperate fortune-hunters, to the city of Washington, during the last winter? Nothing of this kind was ever witnessed on any former occasion! Could these creatures produce the bond? Did they labor for hire? Were they promised their reward? The laborers on a canal were never more punctual in their attendance on Saturday evening, to receive their wages for their week's labor.

Such a system of rewards and punishments is calculated to debase the moral sense of the community! It is a regular system of bribery and corruption! If proscription for the free exercise of the elective franchise, and the distribution of the offices as rewards, is to be the order of the day—farewell Liberty—she soon takes her flight from the abodes of men.

Some removals made by Mr. Jefferson have been quoted, to justify the system of proscription for difference of opinion. Mr. J. disclaimed the principle: he expressly declared, "the right of private opinion shall never be invaded by me"—and when several attempts were made, in Connecticut and in Delaware, to procure the removal of his political opponents, he declined: the reasons for removal were expressly assigned by him. Let the parallel be drawn between the administration of Mr. Jefferson and the present administration—between the present and all preceding administrations—and view the contrast! In one year, more removals have been made than within the fifty preceding! And the worst and most dangerous feature in this case is, that they have been without any cause assigned; and when the causes have been sought, none have been found—they have been refused, except in one or two cases. Where a cause has been assigned, (in one instance,) it has been of a character, which, in my judgment, might have been refused with much more credit to the person making the removal, viz. "that the head of a department, and one in which large sums of money are disbursed, should have those about him in whom he could place perfect confidence," that they would not keep a vigilant watch over his official conduct—and is it come to this? Where are your guards about the public treasury? Must every clerk in the offices be your political and personal friend—your menial servant, who breathes by your permission? Sir, this is a very dangerous doctrine! It is the doctrine of the midnight assassin—the highway robber! He selects his friends in whom he can place confidence, that he shall not be betrayed! And must the same selection be made in your departments? Under such a system, how long can public confidence be retained? If the sword is suspended by a thread over the subaltern officer, who dares expose malfeasance in the head? Where is the difference between such a system, and the *Lettres de Cachet*, or the *Inquisition*? Your liberties are gone for ever!

But removals of clerks in the departments are without precedent in this or any other country. In the highest party times, no such removals have heretofore been made!

And, although much individual distress has been produced by other removals—widows and orphans left destitute and without bread, yet such cases of distress are light compared with some of these—but an appeal to sympathy is useless.

Although great confusion has been produced by the removal of postmasters, and the public interest may be not a little jeopardized by the changes in the collectors and other receivers of public moneys, the most palpable loss to the public has accrued from the removals in the public offices. The Retrenchment Committee verily believed some of these departments might be reduced! What answer do you receive from the Reformers? Oh, no! We want more clerks! We cannot keep our accounts without "the aid of Congress." No talents or skill can adjust them "without the interposition of Congress," says your Fourth Auditor. And, further, this same auditor, lately editor or printer of a newspaper, in speaking of one of his brother editors, says, "it is just to the present Comptroller to state, that he is devising means to change the mode of keeping his books, to make them present the truth." Here we have, in a document accompanying the President's message, the important and interesting fact, that a new officer, late editor, is very gravely and seriously puzzling his wits to make his books "present the truth." "No talents or skill (of editors probably, as he speaks of his own knowledge) can adjust their accounts without the aid of Congress." Do they calculate that Congress has the power to make an editor a good accountant?

But the evil resulting from the removal of experienced accountants in their offices, to give place to favorites, is manifesting itself in the loud and incessant complaints of those who come to settle their accounts at these departments. Confusion and loss of papers and vouchers, long and tedious detentions, have disappointed many, who have settled their accounts before without embarrassment or delay. And there is good ground to fear that this prophecy of the Fourth Auditor will soon become matter of history, and such confusion ensue in these offices, as to require the aid of Congress, if not the "sponge," to restore order.

One word, on the right of removing faithful officers. Has not the officer in your department a right to presume, when he receives an appointment to an office, not limited by any law, that he shall be continued during good behavior, when no removals have ever been made except for cause? And is it not a violation of good faith to remove a faithful and competent officer without cause?

By the act limiting the term of office to four years, a provision is indeed made, "removable at pleasure;" but can it be claimed that this power is vested in the President alone? Why was not the power given in express terms? It can only be construed, at the pleasure of the appointing power. The principal object of that law was to secure a faithful accountability in the officers, as is evident from its embracing those officers only to whom the public moneys were entrusted. The effect, however, is to limit the term of office—to leave a vacancy in every office during each Presidential term, and certainly supercedes any necessity of removals, for the purpose of filling such vacancies with the political friends of the President, if such be his object. And, under this act, the term of the office being fixed, the incumbent can have no claim to re-appointment, over any of his fellow-citizens, except from his faithful discharge of duty. But, sir, a removal (except for misconduct) cannot but be viewed as a breach of good faith on the part of the Government; it is in the nature of a contract for four years' service; and, on the faithful performance by the officer, the Government is bound in good faith to fulfil on its part.

But there is one view of this case which is of serious import, as involving the power, the right, and duty of the Senate. Take, for example, the cases of the Treasurer

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of the United States, the District Attorney in Connecticut, and the Collector of the port of New Orleans. These officers were nominated to the Senate, and confirmed during the last session of Congress. Two of these officers were appointed for four years. An attempt was made to postpone the nominations until the fourth of March, which failed; and the nominations were confirmed by a full, if not unanimous vote. The Senate continued in session until informed by the President he had no further communication to make; and, almost immediately after the adjournment, these officers are removed. I leave this subject, by proposing the following questions, which I shall leave for the Senate and for the public to decide. Was it competent for the President to make these removals without cause? Was it respectful to the Senate? What check has the Senate over appointments, if the President can remove all the officers appointed under the constitution immediately after adjournment? Let these questions be duly considered by the Senate. Has the honest and faithful discharge of duty no claim on public confidence? Are two live thousand offices, in the gift of the President, to be used as bribes, or rewards for political panders? Are the little knots of self-created committees to single out the objects of Executive proscription and vengeance, and divide the spoils among themselves and their associates? Is it matter of surprise that so many appointments should be made of those who are bankrupt in fortune and in character? How long can you expect men of integrity and moral worth to fill responsible stations? Have such been selected for office? Has the question been, "Is he honest? Is he capable? Is he faithful to the constitution?" Or is the question, what service has he rendered, or can he render, to the dominant party? And, what compensation does he deserve in payment for the past, or to ensure his aid in future?

Are these the principles upon which the American Government is to be administered? Are the rights and liberties of twelve millions of people in no danger? Is there not a redeeming spirit in the people? Must the tree of liberty, planted by our fathers, and watered and nourished with their tears and their blood, which has so long flourished, and overshadowed this happy country, wither and die in our hands, without one effort for its protection?

[Here the debate closed for this day.]

FRIDAY, MAY 21, 1830.

The Senate resumed the consideration of the resolution heretofore submitted by Mr. FOOT, as modified by him on the 20th January, in relation to future sales of public lands, with the motion to postpone it indefinitely.

Mr. BENTON threw himself upon the indulgence of the Senate for a few minutes, [he said] while he endeavored, with proof in hand, to vindicate the truth of history, and to check the progress of a great and mischievous error, which had engrafted itself on the preceding part of the debate, and obtained a wide circulation through multiplied editions of a printed speech. This error, or rather this set of errors, for there was a system of them, related to the question of relative merit between the two great sections of the Union, the North and the South, in reference to the passing of the famous ordinance of 1787, for the exclusion of slavery, and general good government of the Northwestern Territory. He [Mr. B.] had flattered himself, at the time of the spoken debate, that the problem of this disputed merit had been solved by the reading of some passages from the Journals of the old Congress; and that the claims of the South to the merit of passing, as well as conceiving it, having been established, no further use would be made of that ordinance for the purpose of poisoning the West against the South. In this hope and belief he had found himself mistaken; and the publication of the printed de-

bate had shown him that the original error, after full detection and clear exposure, was still adhered to; and its dissemination zealously promoted by new and profuse editions of the speech which contained it. Seeing all this, and knowing it to be the obvious effect of this error to create unfounded prejudices in the West, and thereby to aid in bringing about a state of things to enable one-half of the Union to govern and oppress the other, he felt it to be his duty to come forward again in defence of the South, and to do his work, on this occasion, in a way to save future trouble to himself, and to prevent a great mischief to the Union. For this purpose, he would have recourse to plain language and strong facts; to proofs which could not be denied, and authorities which could not be questioned; and would begin by reading the erroneous passage, and end by proving it to be erroneous.

THE PASSAGE.

*Extract from Mr. Webster's Speech in reply to Mr. Hayne.*

"An attempt has been made to transfer from the North to the South the honor of this exclusion of slavery from the Northwestern Territory. The Journal, without argument or comment, refutes such attempt. The cession by Virginia was made, March, 1784. On the 19th April following, a committee, consisting of Messrs. Jefferson, Chase, and Howell, reported a plan for a temporary government of the Territory, in which was this article: 'That, after the year 1800, there shall be neither slavery nor involuntary servitude in any of the said States, otherwise than in punishment of crimes whereof the party shall have been convicted.' Mr. SRAIGHT, of North Carolina, moved to strike out this paragraph. The question was put, according to the form then practised: 'Shall these words stand as part of the plan, &c.' New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania, seven States, voted in the affirmative. Maryland, Virginia, and South Carolina, in the negative. North Carolina was divided. As the consent of nine States was necessary, the words could not stand, and were struck out accordingly. Mr. Jefferson voted for the clause, but was overruled by his colleagues.

"In March of the next year, [1785] Mr. King, of Massachusetts, seconded by Mr. Ellery, of Rhode Island, proposed the formerly rejected article, with this addition: 'And that this regulation shall be an article of compact, and remain a fundamental principle of the constitutions between the thirteen original States and each of the States described in the resolve, &c.' On this clause, which provided the adequate and thorough security, the eight Northern States at that time voted affirmatively, and the four Southern States negatively. The votes of nine States were not yet obtained; and thus the provision was again rejected by the Southern States. The perseverance of the North held out, and two years afterwards the object was attained."

Mr. B. said, this passage contained a set of small errors, which appeared to be subordinate and subsidiary to the main one. These he would specify, without taking the trouble to disprove, knowing that they would fail of themselves when the superior planet, of which they were satellites, was expunged from the system. The first of these subaltern mistakes was the statement that New Jersey voted for retaining the non-slavery clause, reported by Mr. Jefferson, in April, 1784. It was not so. New Jersey did not vote upon that occasion. She was not present as a State, having but one member in the hall, [Mr. Dick] and although he was indulged in putting his individual vote upon the Journal, to show his sentiments, according to the courtesy of the old Congress, yet that vote was the act of an individual, not of a State, the vote of which could not be counted without the presence and concurrence of two members, and the vote of Mr. Dick

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was not counted. The second of these errors is, in saying that seven States voted in the affirmative on that occasion. There were but six so voting. The third, in saying that the consent of nine States was necessary to retain this clause—a mistake which grows out of a confused understanding of the powers of the Congress of the Confederation, which required different numbers to transact different degrees of business. Business of the highest order, as the declaration of war, the conclusion of peace, the negotiation of treaties, levying taxes, borrowing money, &c. required the consent of nine States; but the act of seven was sufficient for ordinary legislation, and of this character was the ordinance in question. The fourth mistake, and the most material of the smaller ones, was, in saying that Mr. King's proposition was rejected by the vote of the Southern States. The fact is, it was not rejected at all. It was adopted, and so stated in the Journal, (vol. 4, p. 482.) The fifth error is, in ascribing to Mr. King the merit of providing the adequate and thorough security for the exclusion of slavery by compact, and making it a fundamental principle in the constitutions of the new States, unalterable but by the consent of the old ones; that identical provision being a part of the ordinance reported by Mr. Jefferson, in the preceding year, not as an adjunct to the non-slavery clause alone, but as a security for all the articles in the ordinance, placed at the end of the ordinance when first drawn up, and now standing at the head of the six articles of compact, in the ordinance, as passed in 1787, (vol. 4, p. 380, 753.) A sixth error of this brief paragraph is, in supposing that the ordinance reported by Mr. Jefferson did not pass into a law, when the fact is that it did pass, and that, in five days after, the non-slavery clause was rejected, and without any motion to reinstate that clause, although eleven States were then present, (Mr. Beatty, of New Jersey, having joined his colleague,) and, of these eleven States, eight were from the north of the Potomac, and three from the south; seven were non-slaveholding, and four otherwise. The competent number of non-slaveholding States were present, to do what they pleased with the ordinance; and they pleased to let it pass without an effort or a motion to reinstate the non-slavery clause. The votes were—New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, and North Carolina, in the affirmative; South Carolina in the negative; Georgia and Delaware absent.—(Same page.)

Having passed rapidly over the enumeration and detection of these subaltern mistakes, Mr. B. proceeded to the great and cardinal error—the supreme mischief-maker of the whole set—which had put him upon his feet, viz. the reiterated assertion that the ordinance of '87 was the work of the North, and not of the South, and was passed into a law by the perseverance of the former. This was the great mistake which it was his business to overthrow, and overthrow it he would; for the naked, undeniable, and unimpeachable truth was, that the merit of passing, as well as of conceiving, this ordinance, belonged to the South, and so the journals would prove to the conviction of every mind that was capable of receiving the impressions of truth. The parts of the journal already quoted show that the non-slavery clause, and the original idea of laying the security, for all the stipulations in the ordinance, in the deep and immovable foundation of compact, originated with Mr. Jefferson. The parts which remain to be quoted, will show, that, in July, 1787, when only seven States were present, and five of these slaveholding, and four of them from the south of the Potomac, the ordinance, as it now stands, was reported by a committee of five members, of whom three were from slaveholding States, and two from Virginia alone, and one of them the chairman; that it received its first reading the day it was reported; its second the next day, when one other State

had joined; its third on the day ensuing; having gone through all the forms of legislation, and become a law in three days; receiving the vote of the eight States present, and the vote of every individual member from each State, except one, and that one from a free State north of the Potomac. Mr. B. then read the Journal of the Congress of the Confederation, to prove the truth of this decisive and overwhelming statement.

## THE JOURNAL.

"Wednesday, July 11th, 1787.

"Congress assembled: Present, the seven States above-mentioned." (Massachusetts, New York, New Jersey, Virginia, North Carolina, South Carolina, and Georgia—7.)

"The Committee, consisting of Mr. Carrington, (of Virginia,) Mr. Dane, (of Massachusetts,) Mr. R. H. Lee, (of Virginia,) Mr. Kean, (of South Carolina,) and Mr. Smith, (of New York,) to whom was referred the report of a committee touching the temporary government of the Western Territory, reported an ordinance for the government of the Territory of the United States northwest of the river Ohio; which was read a first time.

"Ordered, That to-morrow be assigned for the second reading."

"Thursday, July 12th, 1787.

"Congress assembled: Present, Massachusetts, New York, New Jersey, Delaware, Virginia, North Carolina, South Carolina, and Georgia. (8.)

"According to order, the ordinance for the government of the Territory of the United States northwest of the river Ohio, was read a second time.

"Ordered, That to-morrow be assigned for the third reading of said ordinance."

"Friday, July 13th, 1787.

"Congress assembled: Present, as yesterday.

"According to order, the ordinance for the government of the Territory of the United States northwest of the river Ohio, was read a third time, and passed as follows:"

[Here follows the whole ordinance, in the very words in which it now appears among the laws of the United States, with the non-slavery clause, the provisions in favor of schools and education, against impairing the obligation of contracts, laying the foundation and security of all these stipulations in compact, and repealing the ordinance of 23d of April, 1784—the one reported by Mr. Jefferson.]

"On passing the above ordinance, the yeas and nays being required by Mr. Yates—

Massachusetts—Mr. Holten, aye; Mr. Dane, aye.

New York—Mr. Smith, aye; Mr. Yates, no; Mr. Haring, aye.

New Jersey—Mr. Clarke, aye; Mr. Schureman, aye.

Delaware—Mr. Kearney, aye; Mr. Mitchell, aye.

Virginia—Mr. Grayson, aye; Mr. R. H. Lee, aye; Mr. Carrington, aye.

North Carolina—Mr. Blount, aye; Mr. Hawkins, aye.

South Carolina—Mr. Kean, aye; Mr. Huger, aye.

Georgia—Mr. Few, aye; Mr. Pierce, aye.

So it was resolved in the affirmative." (Page 754, volume 4.)

Mr. B. resumed, saying, look into this vote, and analyze it. How many slave States were present? Five. How many free ones? Three. How many slave States absent? None. How many free ones? Five. How many States present from the south of the Potomac? Four. How many from New England? One. How many absent from each? None from the South; all but one from New England. Which gave the greatest number of individual votes? Virginia—that same Virginia which fur-

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nished the first and the last chairman which reported the ordinance, and was always foremost in justice and generosity to the West. She gave three individual votes for the passage of this ordinance, no other State giving but two.

Such is the history of the conception, the progress, and final passage of this ordinance; such the evidence of the Journal, which for ever establishes it as a Southern measure. The South conceived it, matured it, and passed it. She gave it to the West for the government of the territory which she had given to the confederacy; and she gave it as it now stands, filled with all the meritorious provisions which have been so highly extolled upon the assumption that the honors of the act belonged to the North. And now, what is the reward which the South is receiving? Unqualified reproach and reprobation, as the opposer of that measure! Unqualified and persevering assertion that she was the enemy, the North the friend of that measure! When this vast mistake, big with so many evil consequences, was first committed, it was heard with surprise and amazement, but with the charity and indulgence which is due to unintentional error. As such, it was treated; as such, rectified, or attempted to be rectified. The journals were produced and read; and an acknowledgment of the mistake, with a restitution of its usurped honors to the South, were looked for as a natural and regular consequence. Instead of this, so just and so reasonable reparation, so indispensable, indeed, to the honor of all concerned, we see the detected error still persisted in—the usurped honors still retained and worn. We see the reading of the journal, which establishes the rights of the South, contemptuously referred to, as an “attempt to transfer” these honors from their true owner to a false pretender; and we are told, in the most compendious style of contradiction, that this same journal, “without argument or comment, refutes such attempt.” Instead of retraction and amends, we see repetition and insult. We see all the arrangements for overpowering the truth, and expelling it from the land. We see the speech which contains the planetary error, and all its inferior satellites, reprinted over and over again, multiplied into a myriad of copies, poured into the country under the franking privilege, placed as a manual in every hand, to inculcate a cruel misrepresentation upon every mind, to give a false direction to the gratitude and resentment of the West; and, under the influence of passions thus excited, to bring that great section of the Union into the political field under the guidance of a Massachusetts lead, for the restoration of a defeated and repudiated party. This is too much. It is carrying the privileges of error far beyond their lawful bounds. It is a fight into that region in which the assertions are to be limited, not by the boundaries of truth and honor, but by the capacities of invention and the limits of credulity.

Having disposed of this great error, and all its auxiliaries, Mr. B. took up another part of the same printed speech, which he would not have risen to notice, but, being on his feet, and having the speech in his hand, he would read the part referred to, and extend a remark upon it.

## THE PASSAGE.

“In the course of my observations the other day, I paid a passing tribute of respect to a very worthy man, Mr. Dane, of Massachusetts. It so happened, that he drew the ordinance of 1787, for the government of the Northwestern Territory. A man of so much ability, and so little pretence; of so great a capacity to do good, and so unmixed a disposition to do it for its own sake; a gentleman who acted an important part forty years ago, in a measure, the influence of which is still deeply felt in the very matter which was the subject of debate, might, I thought, receive from me a commendatory recognition.

“But the honorable member was inclined to be facetious on the subject. He was rather disposed to make it matter of ridicule, that I had introduced into the debate the name of one Nathan Dane, of whom he assures us he had never before heard. Sir, if the honorable member had never before heard of Mr. Dane, I am sorry for it. It shows him less acquainted with the public men of the country, than I had supposed. Let me tell him, however, that a sneer from him, at the mention of the name of Mr. Dane, is in bad taste. It may well be a high mark of ambition, sir, either with the honorable gentleman or myself, to accomplish as much to make our names known to advantage, and remembered with gratitude, as Mr. Dane has accomplished. But the truth is, sir, I suspect, that Mr. Dane lives a little too far north. He is of Massachusetts, and too near the north star to be reached by the honorable gentleman's telescope. If his sphere had happened to range south of Mason and Dixon's line, he might, probably, have come within the scope of his vision!”

“Sir, I thank God that, if I am gifted with little of the spirit which is able to raise mortals to the skies, I have yet none, as I trust, of that other spirit, which would drag angels down. When I shall be found, sir, in my place here, in the Senate, or elsewhere, to sneer at public merit, because it happened to spring up beyond the little limits of my own State, or neighborhood; when I refuse, for any such cause, or for any cause, the homage due to American talent, to elevated patriotism, to sincere devotion to liberty and the country; or, if I see an uncommon endowment of Heaven—if I see extraordinary capacity and virtue in any son of the South—and if, moved by local prejudice, or gangrened by State jealousy, I get up here to abate the tithe of a hair from his just character and just fame, may my tongue cleave to the roof of my mouth!”

Mr. B. proceeded to remark upon this passage. He said, the meaning and import of it was perfectly apparent, and reduced its object to two points; the commendation of one person, and the condemnation of another. The favored object of applause was the orator's self, the subject of condemnation was the Senator from South Carolina, who had been his adversary in the debate, [General HARRIS.] The Senator from Massachusetts made a prayer of thanksgiving to his God, because he was not like the Senator from South Carolina, in this, that, instead of sneering at merit which displayed itself beyond the limits of his own State, he honored it wherever discoverable, in every part and section of the Union. This is the substance of the first prayer, for there are two of them; and its allusion and reference is to Mr. Dane. He is the mortal lifted into the skies, and made into an angel by one gentleman, and drawn down again and placed upon the earth by the other. The Senator from Massachusetts had exalted this gentleman [Mr. Dane] to the sphere of the demi-gods, deified by the ancients for the divine wisdom of their legislation; the Senator from South Carolina, by the simple process of reading a paragraph, restored him to the earth, and exhibited his person in the den of the Hartford Convention. This is called dragging the angel down, and is supposed to bespeak that “other spirit,” not named, but understood, which the Senator from Massachusetts is so thankful he does not possess; with how much reason, will presently appear.

The second prayer was the reverse of the first one—a prayer of imprecation—and invoked the Divine vengeance upon the offending organ, if, moved by a base passion, it should ever abate the tenth part of a hair from the just fame of any Southern man. Mr. B. admitted that the form of this prayer was fine; its words fine; its sentiments fine; but he presumed to say that something else besides finery was necessary to give value to words and sentiments, in prayers as well as speeches, and that this essential ingredient appeared to be lacking in the prayer referred to.



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The Senator from Massachusetts invoked a judgment upon his tongue if it should detract the smallest portion of merit from Southern men; the aforesaid tongue being so employed in the work of detraction, in the very time of making the invocation. For it was in the same point of time, and in the delivery of the same speech, that enough was abated from a Virginian's merit, and transferred to a New Englander, to rank the latter above all the legislators of antiquity; above Solon, Lycurgus, and Numa Pompilius. It was in this same speech that the merit of passing the whole applauded ordinance of '87 was taken from all the men of the South, and transferred to the men of the North. It was in this same speech that Mr. Danc, of Massachusetts, is reiterated as the author of the ordinance which was reported by Mr. Carrington, of Virginia, in '87, and chiefly copied from the one reported by Mr. Jefferson, three years before. It was in this same speech that the merit of securing the stipulations with the new States in the Northwest, by compact, was taken from Mr. Jefferson, and bestowed upon Mr. King, of New York. In fine, it was in this same speech (another part of it) that the merit of drawing the Declaration of Independence was disparaged, and abated, by repeating what another federalist had said before, (Mr. Timothy Pickens,) and what Mr. Jefferson had complained of in one of his last letters to Mr. Madison, that there was nothing new in that paper; that its sentiments had been resolved over and over again, in public assemblies, before they were embodied in the Declaration. Here is abatement, not of a hair, but of mountains of merit; not an abatement only, but a transfer of the abated merits to the North; not a transfer only, but a casting back of reproach and insult upon the South, and all this persisted in, after the error of it had been fully detected and clearly exposed. In the midst of these things—*flagrante delicto*—the judgment upon the tongue is invoked! Certainly it is a long time, something like six thousand years, since any miraculous affection of the tongue, either of man or beast, of fastening or loosening, has been exhibited to the world. Certainly there was no need for any new or modern instance to illustrate the great impunity with which these sudden and miraculous chastisements may be invoked by offending mortals; and, therefore, it was, that no one felt any surprise at seeing the gentleman's tongue still unfettersed to the roof of his mouth, and going on just as loosely after as before his prayer.

Mr. B. then turned to one of the Senators from Maine, [Mr. SPRAGUE] and said there was something in his speech, in the same debate, which he wished to set right; it related to the navigation of the Mississippi, and the imputed willingness of the Southern States to abandon it for ever to the Spaniards, and pay them an export duty for the privilege of sending western produce from New Orleans to foreign countries, and the prevention of all this by the resistance of the Northern States. (Here Mr. S. made some disclaimer, and stated something else as being what he actually said.) Mr. B. rejoined, saying that he recollected what he now alleged, but it was not the point of his reference; that he was attending to a different part of the gentleman's speech, and would adopt it as printed. The following is the part:

## MR. SPRAGUE'S SPEECH—Extract.

"But the delegation from that State, (Virginia,) in the same year, 1786, themselves, proposed to enter into permanent stipulations with Spain, by which we should relinquish, for ever, all right of transporting any articles up the Mississippi from its mouth; and New Orleans should be made an entrepot, at which our produce carried down the river should be landed, and pay duties to the Spanish crown; and a consul of the United States there should be responsible for every violation of these engagements. Now, sir, compare these renunciations and sacrifices, to

endure through all time, with the mere temporary relinquishment, for twenty-five or thirty years, and let the candid and intelligent declare which would have been most wise, and have best secured the true and permanent interest and safety of the Western country."

Mr. B. resuming, said the fact was the reverse of what the Senator from Maine had supposed; that the Northern States had done what he had imputed to the South, and this the journals would show.

Mr. B. then read, from the secret journals of the Confederation, the history of the transaction in question.

THE JOURNALS, vol. 4, p. 120-123.

"That the Secretary of the United States for the department of Foreign Affairs [Mr. Jay] be, and hereby is, instructed to propose, and, if possible, obtain, the following stipulations: That the citizens of the United States shall not be interrupted in transporting the *bona fide* productions of the United States upon the Mississippi river, from thirty-one degrees north latitude to the city of New Orleans, where they shall be allowed to land the same, and permission shall be granted them to occupy store-houses and other necessary buildings for the reception thereof. That the boats or other vessels, on board of which the said productions shall have been transported, shall have free leave to return up the Mississippi, provided that so far as they navigate below thirty-one degrees north latitude, they shall not load any species of goods, wares, or merchandise whatsoever, but by permission of the Spanish Government of Florida. That the American merchants or factors shall have free leave to reside at New Orleans, for the purpose of receiving such American productions as may be brought down the Mississippi; and for exporting the same from thence in American or Spanish bottoms, under the regulations of the respective countries. That a duty not exceeding two and a half per cent. *ad valorem*, shall be paid to the crown of Spain, upon all American produce shipped from the same city of New Orleans, in American bottoms, within six months after such exportation, for which good and sufficient bonds shall be given, previous to the departure of any vessel on board of which such produce shall be laden. That American vessels may freely navigate up the said river Mississippi, from the mouth to the said city of New Orleans, but shall not carry any species of goods, wares, or merchandise whatever, contrary to the regulations of the crown of Spain, under the pain of seizure and confiscation. That, if, in the course of this negotiation with the *Encargado de negocios* of his Catholic Majesty, it shall be found indispensable for the conclusion of the same, that the United States and their citizens, for a limited time, should forbear to use so much of the river Mississippi as is south of the Southern boundary of the United States, the said Secretary be, and hereby is, authorized and directed, on behalf of the United States, to consent to an article or articles, stipulating, on their part, and that of their citizens, a forbearance of the use of the said river Mississippi, for a period not exceeding twenty years, from the Southern boundary of the United States, to its mouth in the ocean." &c. &c.

On the question to agree to this resolution, the vote was, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania, in the affirmative; Maryland, Virginia, North Carolina, South Carolina, and Georgia, in the negative.

Upon this reading of the Journal, Mr. B. went on to remark, that the facts turned out to be precisely the contrary of what the gentleman had supposed, that the Northern States had done the identical thing which he had charged upon the South; but he did not impute to him any intentional error; on the contrary, he saw the source of his mistake in a counter proposition, submitted by the Southern delegation, differing from the one adopted, in

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the important particular of making it a *sine quâ non*, and thereby defeating the whole; on which the vote was as supposed by the Senator from Maine. In saying this much, and in absolving the Senator from Maine from intentional mistake in this particular, Mr. B. added that he was acting upon a sense of what was due to himself—he was acting as became him—with reference to what might be merited from him.

Mr. B. said, he was now done with rectifying mistakes in the speeches of others, but he had the same office to perform upon his own speech. He had, in the speech which he delivered upon this resolution, in the early part of the debate, paid the homage of his poor respect to the good intentions of the mover, [Mr. Foote.] He believed at that time that the intentions of the gentleman were innocent and benevolent, but mistaken and injurious. Since that time, the gentleman had submitted a motion to prevent settlers from going on the public lands; and another to refer the graduation bill to the Commissioner of the General Land Office, when at its third reading, and on the point of passing. He had also voted against letting settlers having the refuse lands at seventy-five cents per acre, after moving to amend his own resolutions, by granting them donations of land; and he had seen him submit to the virtual rejection of his resolution in the shape of indefinite postponement, when moved by the Senator from Massachusetts, [Mr. WILKINSON] without any expression of opposition, while he had betrayed successive sensibility at his [Mr. B.'s] attempts to reject it in plain terms. These things, and some others, convinced him that he was mistaken as to the gentleman's good intentions; and he now acknowledged his error in the face of the Senate, and retracted it.

Before he resumed his seat, [Mr. B. proceeded to say] there was one point in the debate on which he would say something; it was the point which related to the Supreme Court, and which asserted its authority to bind the States by its decisions. He had observed some signs in the political zodiac before that debate came on, and he had, in consequence, kept a sharp look out for the corresponding events. He had read something in certain newspapers, the editors of which, the real editors, were *au fait* in the business to which it related. He spoke of the Lexington (Kentucky) Reporter, and the Massachusetts (Boston) Journal, and would read the article which had arrested his attention, and prepared him to witness some extraordinary movement.

*From the Kentucky Reporter.*

"GEORGIA INDIANS.—An intimation has been given, that they (the Georgia Cherokees) ought to take the best legal advice, and carry their cause before the Supreme Court of the United States, where they would have justice done them. A writer on this subject says, if they once obtain a decree in their favor, hands enough will be found to carry it into execution. At least, says the editor of the Massachusetts Journal, we know of one pair which is ready."

This [said Mr. B.] looked like a preparatory note for a civil war with Georgia, and as such he endorsed it, and put the paper into his portfolio, and waited the fulfilment of the sign. The first thing that struck him, was the argument in this chamber, on the part of the Senator from Massachusetts, [Mr. WILKINSON] on a motion made by himself to postpone a land debate, to establish, in the Supreme Court, an authority to bind the States of this Union by their decisions, and to subject them to the penalties of high treason if they refused to obey them. This corresponded precisely with the scheme disclosed in the newspaper, of getting a question between the Georgians and the Indians into the Supreme Court, and did what was necessary to sustain the validity of the decision, which the two newspapers anticipated with so much certainty. The

court was then in session at this place, and had the immediate benefit of the argument.

The next thing that struck him was the regular party opposition to the voluntary removal of the Indians from Georgia. This removal had been going on for many years, and it was clear that, if they continued going, they would soon all be gone, and there would soon be no chance for the "best legal advice," to get a question between them and the Georgians into the Supreme Court. If, on the contrary, the Indians could be detained, there would be no difficulty for "legal advice" to take up a case, either under the laws and treaties existing, or under laws to be made for the purpose. This opposition, then, to the removal of the Indians, which has developed itself as a party measure, refers its origin to Lexington and Boston, and connects itself with a great catastrophe, to be produced through the instrumentality of the Supreme Court. Mr. B. said, this was the exact process which had been followed in breaking up the Grecian confederacy. A quarrel was sought with a member of the confederacy, the Locrians of Amphissa, and a trespass upon grounds dedicated to the heathen god Apollo was the pretext seized upon. The Council of Amphycions was made the instrument; the "legal advice" of Eschines having carried the case before that tribunal, and obtained a decree against the Locrians. The decree was resisted—that resistance was treason: and an army was raised to enforce the decree, and chastise the rebels. The battle of Cheronea grew out of all these measures, that battle of which the Oracle had foretold: "The Vanquished weeps; the Victor dies." And so was the issue. The Thebans and Athenians, joining the people of Amphissa, were vanquished with them, and wept the downfall of liberty in Greece; the other cities, with Philip of Macedon, executed the decree of the Amphycions, and died in the conquest. The Grecian confederacy expired; and so will it be with the American confederacy, if the plan signified from Lexington and Boston can be carried out; if the Indians can be prevented from leaving Georgia, a case got into the Supreme Court, the decision pronounced which is anticipated, and an armed force sent to execute it.

Mr. SPRAGUE said, that, after this subject had slumbered for two months upon the table, under a mass of other matter, nothing could have been more unexpected than this, its sudden revival. The gentleman from Missouri, [Mr. BAXTON] at this late hour, in almost the expiring moments of the session, has undertaken to point out certain supposed mistakes of mine, in relation to the navigation of the Mississippi. I shall not, sir, protract this untimely discussion further than to re-affirm my former statements. The errors upon this subject are on the side of the gentleman, not mine. I said nothing that is not fully sustained by the highest authority, by the speeches of Mr. Madison, Mr. Monroe, Mr. Lee, and Mr. Grayson, in the Virginia Convention, and the journals of the Continental Congress. I then had the books in my hand, and read from them to the Senate.

I stated, sir, that the delegation from Virginia, (not the South generally, but the delegates from that State,) in the year 1786, proposed to enter into permanent stipulations with Spain, by which we should relinquish, for ever, all right of transporting any articles up the Mississippi from its mouth; and New Orleans should be made an entrepot, at which our produce, carried down the river, should be landed, and pay duties to the Spanish crown; and a consul of the United States there should be responsible for every violation of these engagements! Now, sir, compare these renunciations and sacrifices, to endure through all time, with the mere temporary relinquishment for twenty-five or thirty years, and let the candid and intelligent declare which would have been most wise, and have best secured the true and permanent interests and safety of the Western country.

Notwithstanding the gentleman's assertion, that the reverse of this was the fact, I maintain that such a proposition was made by the delegates from Virginia, in 1786, and it will be found in the fourth volume of the secret journals of Congress, published in 1821, p. 105 and 106.\*

Let it be remembered that my statement was, that such a proposition proceeded from the Virginia delegation; not, as the gentleman's remarks indicate, from the South generally.

But I proceed, in addition, to say: There was a time when the Southern States, and Virginia with the rest, were disposed to make an absolute and perfect surrender of all right to the waters of the Mississippi, but the Northern and Eastern States opposed it. It was at the period of their greatest distress, and for the purpose of obtaining succor from Spain. For this I produced the speeches of Mr. Madison and Mr. Monroe, and might have referred to other distinguished names; but their authority is too strong to be shaken, and too elevated to be reached by that gentleman. Indeed, he has not even adverted to their unequivocal and decisive testimony.†

\* The Virginia proposition was made August 29th, 1786, and is to be found extending from page 87 to page 108 of the 4th volume of the secret journals. In pages 105 and 106, in the following resolution:

*Resolved*, That the *Chargé des Affaires* of the United States at the court of Spain be instructed to assure his Catholic Majesty of the high regard the United States entertain for his friendship, and of their earnest desire to cultivate and preserve always the best understanding between his Majesty and the said States; that, as an evidence of this disposition, they are willing to settle their interfering claims respecting the Mississippi, and the boundaries, upon the following principles: 1st. That New Orleans be made an entrepot, for the reception of the bona fide produce of the United States brought down the river Mississippi by the citizens of the said States; such produce to be landed at said port for exportation. That the said citizens be at liberty to return with their boats empty, or with passengers only, up the Mississippi, to the places from whence they came. 2d. That such produce aforesaid shall pay there, or the merchants exporting it give bond for the payment, within six months from the date, of a duty not exceeding per cent. *ad valorem*, at the time of exportation, to the crown of Spain. That such produce aforesaid shall be exported thence, in Spanish, American, or French vessels: those in the bottoms of Spain, under the regulations of Spain; and those in the bottoms of America and France, under the regulations of the two countries, by treaty or otherwise. That imports of every kind and country to the said port, and up the said river, in American and French bottoms, be prohibited; and that all vessels engaged in transportation of said exports shall come to such ports in ballast only. That the United States shall be authorized to appoint a consul, to reside at New Orleans, who shall be responsible for any violation of these stipulations by the citizens of the United States."

† Extract from Mr. Madison's speech in the Virginia Convention:

"It was soon perceived, after the commencement of the war with Britain, that, among the various objects that would affect the happiness of the people of America, the navigation of the Mississippi was one. Throughout the whole history of foreign negotiation, great stress was laid on its preservation. In the time of our greatest distresses, and particularly when the Southern States were the scene of war, the Southern States cast their eyes around to be relieved from their misfortune. It was supposed that assistance might be obtained for the relinquishment of that navigation. It was thought that, for so substantial a consideration, Spain might be induced to afford decisive succor. It was opposed by the Northern and Eastern States. They

The gentleman has chosen this moment to introduce, for the first time, into this debate, the subject of the removal of the Indians, upon which he has dilated in most extraordinary terms. Having presented my views in relation to it, at the proper time, I have no inclination now to obtrude upon the Senate any further remarks; nor is there any necessity for doing so. The whole cause of the alarm we have just heard, is the statement, by one newspaper editor, of what another newspaper editor has said; from which the gentleman's prolific imagination has conjured up

"Gorgons, Hydras, and Chimeras dire."

[Here the debate on Mr. FOOT'S resolution was finally brought to a close.]

SATURDAY, MAY 22, 1830.

### THE TARIFF.

The Senate took up for consideration the following bill: "*Be it enacted, &c.* That, in all cases where any merchant of the United States shall have given an order on a foreign manufacturer or merchant, or his agent or supercargo, for foreign merchandise, previous to the first day of May, one thousand eight hundred and twenty-eight, and shall make it appear, to the satisfaction of the Secretary of the Treasury, that the said order was given in the regular course of his business, and that it was not in the power of such merchant to countermand the said order subsequent to the passage of the act of the nineteenth day of May, one thousand eight hundred and twenty-eight, entitled 'An act in alteration of the several acts imposing duties on imports;' and where it shall be further made to appear, in like manner, that the said merchandise was imported previous to the first day of September, one thousand eight hundred and twenty-eight, the merchandise so imported shall be exempted from the operation of the act aforesaid, and be subject only to the duties to which it was liable previous to the passage of that act.

"*SEC. 2. And be it further enacted*, That the Secretary of the Treasury be authorized and directed to carry this act into effect, by refunding, out of any moneys in the treasury not otherwise appropriated, the duties imposed by the act aforesaid; provided the said duties have not been returned by drawback on exportation."

Mr. DICKERSON opposed the passage of the bill. He was disposed to afford relief to merchants who actually suffered from unforeseen legislation, but he was opposed to the passage of a bill, general in its nature, and embracing in its provisions a number and variety of cases which might affect the finances of the country to a very great amount.

Mr. SMITH, of Maryland, advocated the passage of the bill, and represented the distress and ruin which the tariff law of 1828 had brought on the importers of dry goods, in consequence of the period at which it passed. Orders had been issued for the fall goods, and arrangements made for their disposal, without anticipating the operation of the law of 1828. The consequence was immense loss, and overwhelming ruin to the importers.

Mr. DICKERSON replied. He said that it was well known to importers, previous to sending out their orders, that such a bill was before Congress, and that its passage was expected. Speculation followed; and orders, to an immense amount, were sent forth, and the country innum-

were sensible that it might be dangerous to surrender this important right, particularly to the inhabitants of the Western country. But so it was, that the Southern States were for it, and the Eastern States opposed it."

And Mr. Monroe, after speaking of the constant efforts of Virginia to preserve this navigation, says:

"There was a time, it is true, when even this State, in some measure, abandoned the object, by authorizing this session to the court of Spain."

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*Baltimore and Ohio Railroad.*

[SENATE.]

dated with foreign goods, to the ruin of the importers, and injury of domestic industry.

Mr. SPRAGUE moved an amendment to the bill, which will extend its provisions to those merchants who gave their orders to the captain or supercargo of a vessel, and not immediately directed to a foreign merchant or manufacturer; which was agreed to.

Mr. WOODBURY had no objection either to the amendment proposed by the gentleman from Maine, [Mr. SPRAGUE] or to the passage of the bill. He thought it was only an act of sheer justice to the mercantile community. In reply to the observation of the gentleman from New Jersey, [Mr. DICKERSON] he said that it was impossible for the importer to have known that the bill of 1828 would pass, previous to issuing their orders, because it ought to be recollected that the passage of the tariff law of 1828 was not anticipated until a few days before it actually took place, on the 19th of May; and orders for merchandise were usually issued in the months of February and March.

Mr. HAYNE was opposed to the doctrine advanced by Mr. DICKERSON, that we ought, on this subject, to legislate for isolated cases, and not for a whole class of cases. He thought it always the most judicious mode of legislation to be governed by general principles as long as they would enable us to provide for general evils; and when general rules could not embrace isolated and meritorious cases, it was then time enough to resort to individual legislation.

Mr. DICKERSON differed with the gentleman from South Carolina, [Mr. HAYNE] that this bill provided for a general class of cases. He believed that it embraced a variety of cases, widely different in their character; and he was unwilling to open a door that would enable gambling speculators to avail themselves of a law which ought to extend its provisions only to those whose cases were carefully examined, and found to be worthy of the consideration and relief of the Government.

Mr. MCKINLEY opposed the passage of the bill, because it was impossible to anticipate the extent to which it would expose the treasury of the United States. He said it might turn out to be the largest appropriation bill which has been passed during the present session; and he was unwilling to open a door that would dispose of revenue which had been fairly and legally collected, until it was ascertained to what extent it would involve the finances of the country. He moved that it be laid on the table; which motion was negatived, as follows: yeas 16, nays 26.

Mr. SMITH, of Maryland, in reply to the remarks of Mr. DICKERSON, said, that, instead of the anticipation of the tariff of 1828 operating on the merchants, and producing a species of "gambling speculation," which inundated the country with goods, as had just been represented, a reference to the importations of that year would show that the arguments and assertions of the gentleman from New Jersey were totally unfounded in fact. The imports of that year sank several millions under what they were in previous years, and this bill would only extend justice to the honest merchant engaged in lawful commerce.

Mr. DICKERSON thanked the Senator from Maryland for putting him right; but he was not so far wrong as he imagined. In the article of iron, the importation of 1828 was ten thousand tons greater than it ever had been in any previous year; and the reduction in the importation on woollen goods was to be attributed to the great woollens bill that was agitated in 1827, and which urged the importers to issue larger orders than usual. This was the reason why the imports of 1828 fell below those of 1827.

Mr. JOHNSTON, of Louisiana, argued in favor of the bill.

Mr. HAYNE said he agreed with the gentleman from

Louisiana, [Mr. JOHNSTON] that it is better to legislate on general principles; and whether the bill would involve a great or a small amount of the public treasure, he thought it preferable to pass it, than to take up the several cases embraced in its provisions, and legislate upon them in an isolated form.

On motion by Mr. SANFORD, the word "supplies" was stricken out of the fifth line.

Mr. LIVINGSTON moved to amend the bill by adding a proviso excluding those who had been refunded the duties by drawback on exportation; which was agreed to.

The question was then put on ordering the bill to be engrossed, and read a third time; and it was rejected—yeas 20, nays 22, as follows:

YEAS—Messrs. Barton, Bell, Brown, Burnet, Chambers, Dudley, Ellis, Foot, Frelinghuysen, Iredell, Johnston, Holmes, Livingston, Sanford, Seymour, Silbee, Smith, of Maryland, Sprague, Webster, Woodbury—20.

NAYS—Messrs. Barnard, Benton, Bibb, Chase, Dickerson, Forsyth, Hayne, Grundy, Kane, King, Knight, McKinley, Marks, Naudain, Robbins, Ruggles, Smith, of South Carolina, Troup, Tyler, White—22.

#### BALTIMORE AND OHIO RAILROAD.

The bill authorizing a subscription to the stock of the Baltimore and Ohio Railroad Company, was taken up as unfinished business.

Mr. GRUNDY said he would like to know the price which the stock of that company would command in market; and, previous to his voting on the subject, he would make an inquiry to that effect of the Senators from Maryland.

Mr. SMITH, of Maryland, said he did not know that he could give the gentleman from Tennessee a satisfactory answer to his query. The stock was now at par, but if forced into the market, he did not, and could not, with any degree of certainty, say what it would sell for. The company was certain of success. It was calculated that the annual proceeds would amount to eighty thousand dollars; but, from the most moderate and reasonable calculation, it would produce an annual income of forty thousand dollars, which must be divided among the stockholders.

An amendment having been proposed by Mr. LIVINGSTON, which required that the funds to meet the subscription on the part of the United States should be drawn from the sales of other stocks invested in works of similar character, Mr. L. urged the propriety and necessity of such a course, in a speech of great force and eloquence. He said that the numerous and heavy calls on the Government for aid in works of internal improvement, in different sections of the country, admonished him that nothing could save the system of internal improvement from destruction, but the adoption of some such measure as that which he had proposed. When the applications, now before Congress, for aid in the execution of works of internal improvement, were contemplated, and the amount of money which they would require enumerated, and viewed in connexion with the numerous claimants who are now calling upon the country for debts which were justly due them, he saw no alternative left but the adoption of this measure. The treasury of the Union would otherwise prove utterly inadequate to meet the calls of the different companies engaged in works of internal improvement, most of which had equal claims on the aid of the Government to carry their design into effect. Unless this system was adopted, and the funds of the General Government transferred from the one to the other, as soon as the works in which they were invested shall have been completed and in full operation, the best friends of internal improvements would be forced to abandon them, and the whole system would fall into disrepute. He was one of the most devoted friends of the system, and it was

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therefore that he took this means of endeavoring to preserve it.

Mr. WEBSTER said he agreed with the Senator from Louisiana, in the principles laid down in his amendment heretofore offered to this bill. He thought that the funds of the General Government in works of internal improvement ought to be a circulating fund, to be applied as circumstances might demand, for the purpose of encouraging and promoting those works in different sections of the country; and when the works have been effected, the stock should be sold out, and again applied to the encouragement of similar works. But he thought that the disposal of these stocks required the exercise of great prudence and discretion; because, if the market was glutted with funds of this character, it would produce depreciation in the price of these stocks, at once injurious to the Government and the other stockholders.

Mr. CHAMBERS said he had already expressed to the Senate his views of the merits of the bill, as also the reasons why its passage should not be delayed; and he rose at this time to make a few remarks exclusively on the amendment now proposed. He did not mean to oppose the principle which the amendment assumed, of returning to the Government the sums which might be advanced to promote various schemes of internal improvement. He did not suppose the idea had any where been entertained, that the Government was to remain permanently a stockholder in the numerous corporations to which, from time to time, it had contributed, or should hereafter contribute aid. At a proper period, and under a judicious system, he thought it was fit that the capital, so often necessary to bring into existence an improvement highly useful in itself, and which, in its incipient stage, might fail without our patronage, should be re-occupied, after its purpose was accomplished, and re-invested in some other improvement, equally useful, and equally requiring aid. In these general views, he concurred with the Senator from Louisiana; and if he would lay a foundation for this system, by procuring such information of the value and peculiar character of the various items of our property thus engaged, he would unite in adopting and protecting it. But was it wise to begin at the point whence the Senator proposed to start his project? Could we be asked first to offer our property in the market, and afterwards inform ourselves of its value? The question asked by the Senator from Tennessee, [Mr. GAYNOR] and the answer of his colleague, [Gen. SMITH] fully illustrated this matter. Neither of these Senators knew any thing of the value of the stock of the Ohio canal; and probably every other Senator on this floor was as uninformed on the subject. The same remark would, no doubt, apply to nearly all stocks of the kind owned by the Government. The time had not yet arrived when these various works of internal improvement had been prosecuted to an extent to give them the value they must ultimately command, as articles of sale; nor could it be otherwise. It was only at a comparatively late period that the finances and engagements of the Government had placed in its control the pecuniary means of aiding in the accomplishment of great national improvements, involving more expenditure than individual wealth could furnish. The character and nature of these operations necessarily made the day of return too distant from the day of expenditure, to justify the expectation of their being now in a state of maturity, either to prove the actual value of the investment, or to command that value if offered for sale. The most striking evidence of this truth is to be found in the history of one of these improvements, which had been alluded to in debate a few days ago. It was then said, the stock in the Chesapeake and Delaware canal was worth, in the market, one hundred and eighty-seven dollars per share, on which two hundred dollars had been paid. Now [said Mr. C.] it is a matter within my personal knowledge, that, five or six years ago, shares in

this Canal Company, on which one hundred dollars had been paid, were sold for twenty dollars; and at a period very shortly prior to the commencement of its operations, the price was merely nominal, and it could not, probably, have been sold at a discount of twenty-five per cent., or perhaps fifty. It had scarcely commenced its operations, impeded as it is with difficulties, for the removal of some of which you have, within a few days, provided, and it already yields, we are told, a fair interest on the capital, and a price less only by five or six per cent. than par. To construct an immense canal or railroad is a work of much time, and while in progress it is necessarily unproductive. Few individuals have the ability to invest their funds in an enterprise which places them for so long a period out of active circulation, let the ultimate prospect of profit be what it may. But, whenever the enterprise is so far completed as to return a prompt and punctual interest or dividend, it becomes at once a saleable property. The various improvements to which the Government has contributed its aid, are not advanced to this state of maturity, and, least of all, the Ohio and Chesapeake canal, the one indicated by the Senator from Louisiana, [Mr. LIVINGSTON.]

These considerations had convinced him that this was not the period at which our stocks could be sold to advantage. He believed no prudent individual, owning such property, would, under such circumstances, think of selling it; being himself uninformed of its amount, its probable future value, its present current price, and the contingencies on which depended the period and the degree of its increase in value.

But [said Mr. C.] the amendment is still more objectionable on other grounds. This system of internal improvement can only be sustained by a fair and equal distribution of the favor and assistance of the Government, in the proportion which the several objects may bear to the great interests of the country. The friends of this bill present to your notice an object of vast importance in its relations to the Government, as well as to an immense mass of individuals, and to many of the States. No scheme so grand, none of so great practical benefits, in a season of war or in years of peace, has ever suggested itself as practicable since the days of the "Father of his country," who first suggested this mode of connecting the Western waters with the Atlantic by an interior communication; and yet to the bill granting to this object the comparatively small contribution of two hundred and seventy-five thousand dollars, in the way of subscription to its stock, it is proposed to annex a limitation, a condition, a restraint, which has never before been annexed to any, the least of all your improvements. The Senator who offers this provision, says he is a friend to this bill. He is, certainly, a firm and well known friend to fair and equal justice. Now I put to him [said Mr. C.] and to the Senate, the question, whether it be fair and equal justice to impose on this grant a condition or restraint which has never been imposed on any similar grant to others, either at a former session of Congress or during the present. We have for years past bestowed our patronage on works of internal improvement; the beneficent arm of the Government has been extended to sustain and cherish these objects in various sections of the Union, and often when no other power could have preserved them from destruction; but to all we have given our aid without this condition or restraint. During the six months to which the present session has extended, we have again exerted this beneficent power of the Government; and in one case—the Maysville and Lexington road—of a character so doubtful in the view of some gentlemen, that the President of the United States is said to hesitate whether he will approve the act of the two Houses of Congress; yet we have seen no condition or restraint imposed or attempted. Then, why, he again asked, why select this bill, and make it the victim of this new

MAY 24, 25, 1830.]

Impeachment of Judge Peck.

[SENATE.]

conception, never before suggested or even thought of as a rider to such a bill. The grant asked for is moderate in amount; estimating it by the object to be effected, the bill asks that it may be made on the terms on which all others, without exception, have obtained it. The demand then is for equal and exact justice. If the object is not meritorious, give nothing. But if the object be such as deserves your countenance and assistance, (and the amendment assumes this to be the case,) surely you cannot gratify this reasonable demand for equal and exact justice, by qualifying this grant with conditions and restraints never before imposed. In all other cases a free and full authority has been given to your disbursing officer to pay from the treasury the amount subscribed; and it is not fair, it is not equal, it is not just, to restrain him, in respect to this particular case, to the proceeds of stock to be sold. What particular stock, we know not; where to be sold, we know not; and at what sacrifice it will be sold, we know not.

Sir, [said Mr. C.] the Senator from Massachusetts [Mr. WILKINSON] has suggested the propriety of preparing for the introduction of a system of selling our stocks, by asking information to be furnished at the next session. The only possible exception to it which could be urged by gentlemen who advocated this amendment, was the delay in bringing the system into actual execution. To remedy this objection, and to gratify the wishes of those who were anxious for its immediate commencement, he would suggest a perfectly practicable mode of effecting their object. Let a resolution be now submitted, directing that the Secretary of the Treasury shall sell our stocks at such periods, in such parcels, and on such terms, as in his judgment, or in the judgment of the Executive officer of the nation, will best promote the interests of the country. This will at once, instantly, create the system, and the sales will be made as soon as a due regard to the public interest shall furnish, which he supposed was as soon as any one desired. But this, he contended, should be a substantive and separate legislative act. There is no more propriety in its being connected with this railroad bill, than the Maysville bill, the Louisville and Portland canal bill, the Chesapeake and Delaware canal bill, or even the light-house bill, or, in truth, any other bill. Those had been discussed, and decided on the abstract merits of their respective claims, on considerations arising out of their connexion with the great interests of the nation, their practicability, their general utility, their cost, and the amount asked for. The friends of this bill are content to place their claim to your notice upon these considerations, and will fearlessly and confidently abide the result of such an issue. But in their name, in the name of fair and equal justice, he protested against uniting with these considerations, others growing out of a new and undigested system, touching a general policy of the Government, and in relation to a large amount of its funds having no affinity to this subject, a policy now started, for the first time, when less than ten days remain of a session of six months.

Mr. GRUNDY said, the amendment of the gentleman from Louisiana had produced some difficulty. He could not agree with the gentleman from Maryland, [Mr. CHAMBERS], nor concur in the force of his reasoning against the propriety of attaching the amendment to the bill at present under consideration. If the principle be a correct one, that the fund applied to the encouragement of internal improvement ought to be transferable or circulating, he saw no good reason why this bill should not be selected as the foundation on which this system shall be commenced. He went into an examination of the different stocks which the Government had invested in works of this character, the price of the stock of the great canal in the State of New York, and the depreciation it had undergone in value since that work went into operation, the demands that were now pressing upon our treasury, from the ex-

tensive appropriation bills that had passed already, besides the numerous applicants that were calling upon the country for their just claims. He thought the nation ought to pay its just debts before it enters into further speculations and appropriations of money, that it was not known what would remain in the treasury. If a transfer of the stock from the Chesapeake and Ohio Canal Company would answer the purpose, he would make no objection; but if the money for this project was to be drawn from the treasury, he would vote against it.

Mr. LIVINGSTON said, that he rose to exonerate himself from the charge of hostility to the bill, made by the Senator from Maryland, [Mr. CHAMBERS.] He seemed to think it a great hardship that this bill should be selected as the base on which this system is to be founded. Now he could not see what difference it would make to that company, whether the General Government paid for the stock out of the Treasury of the Union, or by a transfer of the sales of other stocks, invested in similar projects. The gentleman from Maryland must have been led into this error, from supposing that the Secretary of the Treasury was only authorized to make the subscription, in the event of his being able to dispose of other stocks at par: but this is not the fact. The Secretary of the Treasury is required to sell that stock which would command the highest price in market, and prove most conducive to the public good. He would tell the gentleman from Maryland why he was led to the introduction of the amendment to this bill. It was from a careful examination and enumeration of the different applications that are now before Congress for similar investments of stocks: they extended to a most alarming amount; and if the Government were to go on subscribing to these stocks, all recommended and supported by the same principles, the treasury would be utterly unable to meet the demands that should thus be created. The whole system would be rendered unpopular, and its warmest friends would be reluctantly compelled to abandon it. He, for one, would be forced to abandon it, if this plan of appropriating the public money to every work of internal improvement that may be presented to Congress, were persevered in. It was, therefore, because he was anxious that the system of internal improvement should prosper, that he introduced the amendment, believing that it was the only mode left to save it from ruin.

Mr. McKINLEY moved that the bill be laid on the table, which was agreed to, yeas 21, nays 19, as follows:

YEAS—Messrs. Adams, Benton, Bibb, Brown, Dickerson, Dudley, Forsyth, Grundy, Hayne, Irell, Kane, King, McKinley, Ellis, Sanford, Smith, of South Carolina, Sprague, Troup, Tyler, White, Woodbury—21.

NAYS—Messrs. Barton, Bell, Burnett, Chambers, Chase, Foot, Frélinghuysen, Hendricks, Holmes, Johnston, Livingston, Marks, Naudain, Robbins, Ruggles, Silsbee, Smith, of Maryland, Webster—19.

MONDAY, MAY 24, 1830.

[The Senate spent the best part of this day in the consideration of private bills.]

TUESDAY, MAY 25, 1830.

#### IMPEACHMENT OF JUDGE PECK.

Seats having been arranged on the right and left of the Chair, for the accommodation of the Senators, and their seats assigned to the managers and members of the House of Representatives, and the accused and his counsel,

At the hour of 12 o'clock, the Court was opened by proclamation in the usual form.

On motion by Mr. WEBSTER, it was

Ordered, That the Secretary give notice to the House of Representatives that the Senate are now in their chamber, and are ready to proceed on the trial of the impeachment of JAMES H. PECK, Judge of the District Court of

[SENATE.]

Removal of the Indians.—Close of the Session.

[MAY 26 to 31, 1830.]

the United States for the District of Missouri; and that seats are provided for the accommodation of the members of the House of Representatives.

Judge PACE then appeared, accompanied by Mr. WIRT and Mr. MARSHALL as his counsel, and occupied seats assigned to the right of the Chair; a short time after,

The managers and members of the House of Representatives appeared, and took the seats usually occupied by the Senate.

The VICE PRESIDENT then asked Judge PACE whether he was prepared to answer the article of impeachment exhibited against him.

Judge PACE replied, that his answer and plea were prepared, and desired that they might be read by his counsel.

The VICE PRESIDENT asked Judge PACE whether the answer now to be made was to be considered as his final answer; and the Judge having answered in the affirmative, the counsel was directed to proceed to read it.

Mr. MARSHALL read the answer, (which occupied upwards of two hours,) concluding with the general plea of "not guilty."

Mr. STORRS, in behalf of the managers, moved That they have time to consult the House of Representatives on a replication, and that they be furnished with a copy of the answer of the respondent; which was agreed to.

On motion by Mr. WEBSTER, it was Ordered, That when this Court adjourn, it adjourn to meet again on the second Monday of the next session of Congress, at 12 o'clock, then to proceed with the said impeachment.

Mr. WIRT desired to know whether blank summons as for the attendance of witnesses would be allowed to the respondent.

The VICE PRESIDENT replied that they would. The Court then adjourned to the second Monday of the next session of Congress.

On motion by Mr. KING, it was Ordered, That the articles of impeachment against Judge PACE, with his answer and exhibits, be printed for the use of the Senate.

### WEDNESDAY, MAY 26, 1830, REMOVAL OF THE INDIANS.

The amendments from the House of Representatives to the bill "to provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the river Mississippi," was received, and, being read—

Mr. CLAYTON moved that they be postponed until tomorrow; which motion was rejected—yeas 19, nays 24.

The first amendment being concurred in,

Mr. FRELINGHUYSEN moved to amend the second amendment, by inserting at the end thereof, "and that, until they shall choose to remove, the said tribes be protected from all State encroachments, according to the provisions of such treaties."

Mr. FRELINGHUYSEN moved to amend his motion by striking out the word "State," which was disagreed to by yeas 18, nays 25.

The question recurring on agreeing to the amendment as originally proposed by Mr. FRELINGHUYSEN, it was rejected—yeas 17, nays 26.

Mr. FRELINGHUYSEN moved to insert at the end of the second amendment of the House of Representatives, "and that all such tribes be protected, according to the provisions of said treaties, until they shall choose to remove;" which was rejected—yeas 16, nays 24.

On motion by Mr. SPRAGUE, to insert at the end of the said second amendment, "but such treaties shall be executed and fulfilled according to the true intent and meaning thereof"—it was rejected—yeas 18, nays 24.

On motion by Mr. CLAYTON, to insert at the end of the said second amendment, "Provided also, that the provisions of this act shall extend only to the Indians residing within the State of Georgia"—it was rejected by the same vote.

The said second amendment was then agreed to. So it was

Resolved, That the Senate concur in the said amendments of the House of Representatives.

[Thursday and Friday were almost wholly spent in the consideration of private bills and executive business.]

### SATURDAY, MAY 29, 1830.

The VICE PRESIDENT being absent, the Senate proceeded, by ballot, to the election of a President *pro tempore*; and when the ballots were collected, it appeared that twenty-six members had voted.

Of these votes, Mr. SMITH, of Maryland, having received fifteen, was declared to be duly elected.

The Senate having disposed of every bill before it from the House of Representatives, proceeded to consider executive business before ten o'clock P. M. and remained so engaged until the adjournment, interrupted only by messages from the other House, and from the President of the United States.

About four o'clock A. M. the Senate adjourned.

### MONDAY, MAY 31, 1830.

A message was received from the President of the United States, and read, as follows:

WASHINGTON, 31st May, 1830.

To the Senate of the United States:

GENTLEMEN: I have considered the bill proposing "to authorize a subscription of stock in the Washington Turnpike Road Company," and now return the same to the Senate, in which it originated.

I am unable to approve this bill; and would respectfully refer the Senate to my message to the House of Representatives, on returning to that House the bill to authorize "a subscription of stock in the Mayville, Washington, Paris, and Lexington Turnpike Road Company," for a statement of my objections to the bill herewith returned. The message referred to bears date on the 27th instant, and a printed copy of the same is herewith transmitted.

ANDREW JACKSON.

The bill referred to in the foregoing message having originated in the Senate, that body proceeded to reconsider said bill, in the manner prescribed in the seventh section of the first article of the constitution; and two-thirds of the Senators present not having voted for its passage, it was rejected by the following vote:

YEAS—Messrs. Barnard, Barton, Benton, Burnet, Chambers, Chase, Clayton, Hendricks, Johnston, King, Livingston, McKinley, Naudain, Noble, Robbins, Rugger, Seymour, Silsbee, Smith, of Maryland, Webster, Willey—21.

NAYS—Messrs. Adams, Bibb, Brown, Dickerson, Dudley, Ellis, Foot, Grundy, Iredell, Kane, Rowan, Sanford, Smith, of South Carolina, Sprague, Tyler, White, Woodbury—17.

Thirty-eight members present; necessary to pass the bill, twenty-six.

### CLOSE OF THE SESSION.

A message was received from the House of Representatives, stating that they had appointed a committee, to join such committee as might be appointed by the Senate, to wait on the President of the United States, and inform him that the two Houses, having finished the business before them, were prepared to adjourn, unless he have fur-

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ther communications to make; in which the Senate concurred, and Mr. WOODBURY and Mr. BURNET were appointed on the part of the Senate.

Mr. WOODBURY reported that they had discharged the duty assigned them, and had been informed by the President that he had no further communication to make, except that he has detained the act in relation to the sub-

scription for the stock in the Louisville and Portland Canal Company, and an act in relation to certain light-houses and harbors, for further consideration.

The usual messages were interchanged between the two Houses of their intention to adjourn.

The President then adjourned the Senate, *sine die*.

## DEBATE IN SECRET SESSION.

[The publishers have been furnished with the two following speeches, delivered in Secret Session.]

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### EXECUTIVE POWERS OF REMOVAL.

The question being upon a resolution calling on the President for the cause of removal of certain officers,

Mr. BARTON said, that, upon the important questions of the power of the President of the United States to remove from office, and of the Senate to restrain him in an abusive exercise of that power, depended the question whether we are to have, in each succeeding Presidency, a four years' despotism with an irresponsible tyrant, if he be so disposed, or a Republican Government of laws, with a checked and restrained Executive.

To the discussion of these questions, [said Mr. B.] involved in the calls for information of the causes of removals now pending before the Senate, I come avowedly as a gleaner after the Senator from Delaware, [Mr. CLAYTON] and if I can find any heads of wheat, worth notice, in this clean shorn field over which he has passed, I will endeavor to gather and preserve them; but if I find none, it will be no dishonor to rake and bind after such a cradler, in such a field.

It is no longer a dispute about names, such as Federalist or Republican; Ultra Federalist or Democrat; National Republican or State-veto Republican; or any other cant words or phrases, with which to deceive the public, and rally partisans around our respective standards. It is a dispute in which is involved the preservation of our republican institutions and our constitutional liberties. The issues are now fairly joined upon the great fundamental principles of the Government, without regard to party names.

The majority contend that the President has the power to remove federal officers of the class now before us, and that the Senate has no right to inquire into the cause of removal; but must presume the cause to have been lawful; and cannot restrain the President in an abusive exercise of that power, but must rely on impeaching him by the House of Representatives!

The minority deny all these positions except the removing power for cause; and claim that the settled practice of the Senate shall be adhered to. That the provisional power of removal from office by a President, when it exists at all, is a high legal trust, to be exercised only for the public benefit, in sound discretion, for cause relating to the official conduct or fitness of the incumbent; and should not be perverted from its high purposes to those of partisan warfare, or personal vengeance, for opinion's sake, or the exercise of the elective franchise, or to make room for rewards for votes, or influence in our Presidential elections—or, in a word, to purposes of tyranny and bribery combined.

We contend for the restraining powers of the Senate of the United States, as understood by the contemporary expounders of the federal constitution, in matters of

displacing as well as of appointing federal officers, in opposition to arbitrary Executive discretion, and servility to Executive will; and of rendering the Senate the real register of Executive edicts! For the freedom of inquiry into the exercise of Executive discretion and official trusts, in opposition to Executive irresponsibility, and screening the Executive from the light of truth by a suppression of free inquiry into our public affairs, as in the identical cases of removal now before the Senate. We contend for the freedom and purity of elections, unawed by official punishments, and uncorrupted by official rewards, in opposition to removals from office for such causes as those above stated.

Here are the issues joined between us: and from your decision, should it be against us, and against all your own former decisions of the same questions when other men were in power, we will appeal to the people of the United States, on whose behalf we contend, and who are always honest when rightly informed of the merits of a cause.

These questions are of vastly more importance to the permanency and purity of our liberties, and to the great cause of free governments of laws, as contradistinguished from arbitrary governments of Executive will, than either of the Presidential questions of themselves, that have agitated this republic since its foundation; and of more importance than any question of public policy, political economy, or expediency, that has divided the councils of the nation during the lapse of half a century. These are the only questions on which I felt any desire to address the Senate. My former remarks sprang out of the occasions that produced them; but on these I feel compelled, by the verbal and written injunction of some of the great minority in Mississippi, to present their views and my own.

With that minority I have had the honor to act for many years, through good and through evil report, in all the attacks made upon the constitution of the Union in that State, in the shape of relief laws; judge-breaking; stop-laws; and the loan office act—that bold attempt to issue bills of credit by the authority of a State, to retrieve the fallen fortunes of adventurers and speculators, in violation of the letter and spirit of that instrument!

In all attacks upon that best legacy of our ancestors, the act of Union, we have stood together, sometimes in majorities, and sometimes in minorities, against the powers of interest and ignorance; knowing that the preservation of its principles, checks, and restraints, chiefly distinguishes our government of law and liberty from those despotic governments of arbitrary Executive discretion that have so long despoiled the best rights of man over the greater portion of the earth. And in this most fearful of all attacks ever made upon the constitution—introducing a four years' despotism, if the President be so disposed, and striking at our elective franchise, the root of all our constitutional liberties, we will stand together again, whether in a majority or minority, and invite all who love the President much, but love their country more, to join with us, and rally around the standard of the constitution.



It is no question whether a President may remove, at his own will and pleasure, his Secretary of State. That was the very question before Congress in the great debate of 1789. Such an officer is the mere pen, in the hand of the President, to write with—bound to do just such things as are prescribed by the personal orders of the President, in matters for which the President himself is responsible as the head of the Executive Department; and consequently he must exercise his freedom of selections, or how could he be responsible? In such case, the act of July, 1789, settles the question, by acknowledging the lawful right in the President to dismiss this instrument when he pleases.

Nobody would wish to force a disagreeable member of the cabinet on the President. The public interest requires harmony between them. And the Senator from Tennessee [Mr. GARNER] might have spared himself all his argument to prove this; for no one had denied or disputed it. Still Mr. Madison, in the debate of 1789, expressed the opinion, that a wanton removal of this officer of the President, and not of the public, might subject a President to impeachment—although the law had given him the absolute power to make the removal—if the motive could be ascertained before human tribunals: as a mother would chastise her boy for breaking his rattle from a peevish or wicked motive, or for a bad purpose. And what does this opinion assert more than the great principle of our rights, that all powers conferred upon the Executive are but trusts for the public benefit, and cannot be perverted to other ends? There might be difficulty in ascertaining the motive or end of the act before human tribunals; but I see none in the abstract principle advanced by Mr. Madison. It is purely republican.

I do not admit, for one, that the Senate can, by law, or otherwise, renounce the restraining power which belongs to their organization; but I admit that, in practice, the President should have great freedom in choosing and rejecting his cabinet; and the act of 1789 cannot be considered as going beyond that line. But the class of officers now before the Senate, and their predecessors, attempted to be removed by the President, were not under consideration in the debate of 1789. This is a class of public officers—of officers of the law—whose term, tenure, and duties of office are fixed and prescribed by the laws of the land, and not by the Executive will, as in the other class. The first class are assistants to the President, and made removable at his pleasure by law. But this class of federal officers are public property, and not removable at the arbitrary will of a President. If good and faithful, the public is interested in their services; if bad and unfaithful, the public good requires their removal in the mode of proceeding required by the respective tenures of their offices, as prescribed by the known law. A dark and secret inquisition was never intended to be admitted into our institutions; nor was a refusal to tell the cause of objection and condemnation heretofore known to the genius of our republic; not even to the military, subject to orders; nor to the culprit, arraigned at the bar.

We admit the legal right and duty of the President to supersede, suspend the functions, or, if you prefer the term, remove District Attorneys, Marshals, Registers and Receivers of Public Money, and Custom House Officers, and more especially the whole class of our money gathering agents, and such others as are made removable by him for cause relating to their official conduct, or fitness for their stations; but such removal or suspension is subject to the restraining powers of the Senate, on cause shown. The public interest and safety require that it should be so; and our institutions are conformed to the exigency. This, like other powers, is a public trust; and to pervert it from its original purpose is an abuse, and not a lawful use of the power. The cause of removal generates and gives life to the power of removal, as the overt act of treason gives application and life to the power to hang for treason.

Will any Senator here avow the opinion that these officers and their emoluments, or the provisional removing power of the President, were designed as either the means of bribery, or instruments of punishment, in the hands of a candidate for the Presidency, or of a President in office, to buy votes, or punish the opposing votes in our Presidential contests? Not one man will avow this. That would be grossly abusing a power conferred for the public good, and corrupting the very sources of republican, elective, and representative government—the great elective franchise itself. A removal of this class of public officers is like a nomination for office, only provisional and inchoate, until it becomes absolute and definitive by the subsequent sanction of the Senate, to be given in our established and long practised manner of proceeding upon Executive business.

As in nominating to office, so also in removing or displacing from office, in this class of the public officers, the originating act is, and for the public convenience ought to be, with the President; and in ordinary cases and times the act of the President receives the undisputed sanction of the Senate. All past experience shows this to be the fact, either because the representatives or Senators of the person nominated or removed know his suitability or qualification for office, or the cause of his removal, or because Presidents are not ordinarily disposed to abuse their powers; but for the security of the public, if there be an allegation or suggestion of the unfitness of the nominee, or of the illegality of the removal, it becomes the duty of the Senate to inquire into the matter; and act accordingly, by an active exertion of their restraining power. One design of representation is to avail the public of the better lights from the scene of appointment or removal, than a President, pent up in the Metropolis, can have.

But let me examine the true nature and extent of the despotism now proclaimed by the majority; the arguments by which they attempt to sustain themselves in their new autocracy—contrary to all their arguments, reports, and votes heretofore; and, if possible, the causes and practical consequences of this astounding proclamation.

The founders of the republic, and the people of the United States, when they adopted the federal constitution, were especially jealous of the powers of the President, and the encroaching spirit of Executive will. To that point all their principal fears were concentrated; and the history of that day shows that it was with some difficulty the people of the United States could be induced to adopt the Union, lest the President, with the powers then accorded to him, should become the destroyer of their liberties. Their fears of Executive encroachment were not idle chimeras of the fancy; nor were they affected from mere impatience of regulated liberty and a government of laws. To them they were devoted. The histories of all nations which had lost their liberties lay open before them; and they saw on their pages that arbitrary Executive discretion and will, availing themselves of the spirit of discord among the people, and the want of firmness among their representatives, in governments where the representative principle was adopted, had been the destroyers of national liberty throughout the greater part of the world where wild anarchy had not supplanted them, and that they had effected their conquests by gradual approaches, and by corrupting the sentinels of liberty; and the fathers did intend, and the most of them have left this world in the paternal confidence that they had effected the object, to establish a government of law, and of checks and restraints upon Executive will, in which no case should exist in which the fate of the humblest citizen, whether in private or public life, could depend upon the arbitrary will of a single man. No, their fears were not idle; and with such lights before them, and the then recent claim to arbitrary power urged by the British crown thrilling in their bosoms, they never would have adopted the federal constitution without the restrain-

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ing power and duty of the Senate during the Presidential term, when, if ever, he would be disposed to violate the rights of the citizen.

The power is now boldly asserted on this floor by the majority, for the first time since the foundation of the republic, of removing this class of federal officers by the President at discretion, without the slightest restraint by the Senate, and without even the right of a culprit to ask the cause of condemnation, upon a blind and servile presumption, on the part of the Senate, that the cause was lawful and good! And traversing the line of their whole lives, and their recent course under the late administration, the majority have proclaimed over this subject an absolute despotism and right of dark and ex parte inquisition! It fell upon my ear like the anathema of the minority pronounced from the modern Vatican! It sounded like the knell of our constitutional liberties! And let not the Senator from Tennessee [Mr. GAYNOR] "lay the flattering unction to his soul," nor deceive himself, in the moments of the intoxicating victory of the combination, by supposing the public mind can be diverted from the great and vital principles at issue between us, by telling them the dispute is about the miserable offices of the country, or comparing the struggle for these great republican principles to an attempt to agitate the ocean by throwing pebbles into it, as he has done. We admit the people of the United States cannot be agitated—they ought not to be agitated—on account of the offices or the emoluments.

Was it the value of the tea tax, let me ask him, that induced some of the fathers of the revolution to throw the tea chests into the harbor of Boston, and commence the American revolution! Or was it the principle assumed by the British crown and Parliament, to bind the colonies, in all cases whatsoever, by an ex parte, arbitrary will, in which the colonies had no voice—for the British crown never advanced the claim to do so by a dark and secret inquisition. The victims might be present in the capital of England, and even in the House of Parliament, and know all the causes of their condemnation. Britons would not bear the tyrannical principle now advanced. The colonies would not bear one of a milder form. And if their posterity be not woefully degenerated from the spirit of their ancestors, since they drew the broad distinction between the value of the trifling tea tax and the great principle involved in it, they will exclaim with us, "take all the offices in the country during the term of your President, but restore to us our constitutional liberties, sacrificed to screen a rash President and cabinet from the light of inquiry, by this portentous declaration of Executive irresponsibility, and dark inquisition!"

Let me now examine the substance of the arguments by which this despotic principle is supported. And first in order is the President himself. In his first message, he labors to propagate the idea that offices, in this country, are not private property, but public trusts. We admit it. The President is right. Will he admit, in turn, our propositions, above laid down, and more especially that offices are not the private property of a President or cabinet, with which to buy popularity and votes, or to reward men for votes or influence, or as instruments with which to punish opponents for their votes and opinions? His argument is a two-edged sword, and cuts both ways with equal keenness and force; unless, indeed, it be sinful in the cardinal and bishop to eat pig and lamb, in order that his holiness the Pope may monopolize the market of Rome, and eat them all himself! The Senator from Tennessee [Mr. GAYNOR] has disappointed all my hopes in him upon those momentous questions. I had been taught—and I now discover greatly mistaught—to look to him as a star of constitutional liberty in the West. In our need I cast my eyes and hopes upon him; but he vanished like a meteor from my view, and left me standing disappointed and in the dark.

In the discussion of "Foot's resolution" he introduced the argument upon this topic of the removing power of the President, and restraining power of the Senate, and told us he was not, as a citizen, in favor of removals for opinion's sake, or for votes given, or to make room to reward followers, by the public offices of the country; and then my hopes were bright, and I drew the most favorable inferences; but—yes, then came the hope-destroying "but," that in the latter branch of a sentence has spoiled so many glorious promises, in this world, held out in the first member of it—"but you shall not inquire whether the removals were for such causes or not!" and then my hopes in him died within me. We asked bread, and he gave us a stone. We desired a fish, and he gave us a scorpion. We cannot eat either of them. Let this administration digest both, if it can.

Constitutional liberty, expelled from most governments upon earth, faint with wandering the desert, and scorched by the vertical rays of domestic tyranny, beheld the Senator afar off, like the broad top of an umbrageous tree, promising her shade and protection; she hastened, heated and fatigued herself the more, to approach him, and repose under his shadow; but she found his roots surrounded by many rods of impassable, pestilential morass of Executive will, so that she could not enter the circumference of his shade, and she looked in another direction.

In approaching the argument of the Senator from Virginia, [Mr. TAZEWELL] I will not permit myself to suppose that the late consul to Algiers, (Mr. Lee,) against whom I voted with reluctance, arising from an acquaintance in 1824, that gave me an exalted opinion of the splendor of his mind; and from the double expense of outfit, and customary present to the Dey of Algiers, represented to us by the Senator from Virginia, as if he would persuade us to vote for him; as well as from the arguments urged by the Senator from Tennessee, [Mr. WHITE]—I will not suppose this consul is to be made the scape-goat to bear away the sins of this administration; and that the majority, having established their reputation with the public by his rejection, are now about to turn round and swallow all that huge batch of nominations lying on your table—even all the hireling printers and editors of party papers, whose nominations were cautiously held back for the arrival of the Virginia Senators from the late convention—as if it were taken for granted that modern Virginia produces a race of men, good and true, with such elastic and distensible Senatorial guzzles, as to swallow down Camel's rump of the green mountains—*pinus nondum sectam nisi montibus*—with all its pines, oaks, and hemlocks unfelled upon its sides! Old Virginia did once produce a race of men capable of distinguishing between the value of a tea tax and the great principle of regulated liberty involved in the demand—a race apt to revolt at any arbitrary or improper use of Executive power, and jealous of the encroachments of Executive will.

The Senators from Virginia and Louisiana [Messrs. TAZEWELL and LIVINGSTON] have pointed out the power of impeaching the President as our only remedy for an abusive exercise of the power of removal—and the Senator from Missouri [Mr. BAXTON] concurs with the former in placing these matters upon "the high responsibility of the President!"—meaning impeachment as a remedy, or that "the King can do no wrong!" and the two former also urge auxiliary arguments, which I shall notice separately. Upon this common doctrine of the majority, that impeachment is our only remedy, we contend they are wrong upon the reason and utility of the thing, as well as upon the authority of the case.

Mark the gradual approaches of despotism. Under the last administration, all the majority, who were then in the Senate, held to a diametrically opposite creed; and now, within a few days past, there has been a great consolidation of phalanx among the faltering and oscillating ranks

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of the majority. Men who through their lives have taught and practised the reverse—men who have been doubting during the session, seem suddenly to have been converted, and confirmed in this new and monstrous faith of Executive irresponsibility, dark inquisition, and four years' despotism! Not hereditary as yet—the people are not ready for that. Not even for life as yet—the people are not prepared for that either. But a despotism for years, with no other restraint but to impeach the dominant party, in the person of their leader, whose popularity they abuse! Consul for years, with a servile Senate! Then Consul for life, with a more servile Senate! Then Emperor of France, with absolute power!

All history warns us that such are the regular gradations by which the liberties of mankind have been successfully assailed and overcome. They seldom fall by one grand *coup de main* on the first assault. The rampart of written constitutions is seldom overleaped at the first effort, as Remus overleaped the mimic walls of his brother Romulus at the rude foundation of Rome.

It is more usual and practicable to approach it by gradual undermining, or by taking sufficient distance, and planting a style of precedent two feet high, then four, six, eight, ten, until the assailants reach and surmount the wall, enter the fortress, and carry even the citadel itself. The usual process is for a combination, under some name or other, to rally around some popular leader, usually one dazzling the multitude with military fame; set him up for their head, to answer their own purposes; seize the Government, and gradually demolish, one after another, the last landmarks of constitutional liberty; and then taunt the slaves by telling them to go exercise the right of rebellion, and rescue themselves by victory if they can. If you succeed, it will be glorious revolution—if not, your chains can be riveted no closer!

The only redeeming feature in this four years' despotism of the majority, is the right of impeaching the President, to which we are pointed as a relief from our chains. That is to say, go put the majority down if you can; for never until then could you impeach their President; if there were cause. Was ever the miracle achieved of inducing a majority, in the spring tide of success, to impeach themselves, in the person of their leader, for deeds of despotism done to accommodate themselves and their friends? Impeachment indeed! As well might some philanthropist travel in the South, and there proclaim, trumpet-tongued, to the slaves of America, "Rise! impeach your masters before themselves, for holding your race in slavery for two hundred years!" And if the children of Africa should doubt the practicability of inducing the masters to impeach and condemn themselves, when made judges in their own cause, let him explain himself intelligibly—"Rise, turn the tables on your masters; enslave them for two hundred years in your turn, and make them raise corn, cotton, and rice, indigo, tobacco, and sugar cane, for you."

But suppose the miracle performed, of a majority, in the zenith of power, impeaching themselves in the House of Representatives, for the uses they have made of the President's popularity and military éclat. Is it quite sure we could persuade two-thirds in the Senate to condemn and punish him for cause, even if that were the preventive remedy against arbitrary will?

Mr. Hamilton, in writing his seventy-seventh number of the *Federalist*, was a prophet. In treating of the supposed danger of the Senate overruling the President, and assuming the Government, he said, "besides this, it is evident that the power that can originate the disposition of honors and emoluments, is more likely to attract than to be attracted by the power which can merely obstruct their course." And Mr. Hamilton, like another Elijah, seems to have shed his mantle upon his Elisha. A foreigner, supposed to be Mr. Poleticus, the late Minister from Russia to

this Government, in writing of the United States, says, the first term of an American President is always spent in securing his re-election to a second; and as to the restraining powers of the Senate, a little management in the disposition of offices can always secure a majority of that body. There was too much truth in that book, whether it be palatable or not.

No, sir, instead of a dominant party, such as the present triumphant combination, impeaching their President, the astonishing scene at this moment exhibited in this body shows the impossibility of that being the appropriate preventive against the abuse of power by the Executive. In the recess, a rash administration, surrounded and pressed by a mercenary host of office hunters, claiming the reward of their prostituted influence and votes, contrary to the known original design of the President, rushed into a course of proscription and rewards, that led them into an inextricable dilemma. The friends of law and the outraged elective rights of the citizen demanded the cause of the removals. If the administration should come out with the true causes, like conscious innocence unweaving herself, and acknowledge they had used the offices of the country as their own private property, as means of rewards and punishments, for the exercise of the right of election, the honest yeomanry of the United States, who had no sinister views in the late election, would condemn them. If the administration should shrink from the truth, fear to tell the people that their public offices had been used as bribes to buy popularity, or weapons of war upon opponents, and make a false return to our call, we could and would expose the falsehood of the return, and the cajoled public would give a verdict against them, and damn them for the double crime. Let the administration choose either horn of the dilemma, and public condemnation will be inevitable. There is no alternative but for the majority to refuse to allow the inquiry—the high and hitherto unalienable right of inquiry into the exercise of Executive discretion and official trust, which stands in republics in opposition to the maxim that "the King can do no wrong" in monarchies. And, with all the precept and practice of their lives staring them in the face, the majority has now resolved to exclude every ray of light from the causes of removal. This administration cannot bear the responsibility; but, if it be distributed among some twenty-five or six Senators, it may be less felt; and we need not be surprised if the most lucrative offices and splendid appointments should be thrown at their feet by the grateful administration; as the King would reward his parasite for saving the royal reputation at the hazard of his own; or, as Alexander, whose madness had rushed him into some inextricable ambuscade or dilemma, would reward old Parmenio, Philip's general, for covering him from the assaults, by risking his own life, and sacrificing the veteran phalanx! I appeal from the interested arguments of the dominant party, who are accused by the minority of this violation of our constitutional rights, to the venerable and disinterested authority of the illustrious dead, who founded the Government, and set it in motion; and in due time I will appeal to the past acts of the majority as good authority against themselves, and no more.

In the concluding paragraph of the same number seventy-seven of the *Federalist*, upon this very subject of appointment and removal, after showing the constant restraining power of the Senate to be the preventive remedy to save the republic from harm, by the encroachment of Executive will, Mr. Hamilton points out "his liability at all times to impeachment, trial, dismission from office, incapacity to serve in any other, and to the forfeiture of life and estate, by subsequent prosecution in the common course of law. But these precautions, great as they are, are not the only ones which the plan of the convention has provided in favor of the public security. In the only instances in which the abuse of the Executive

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authority was materially to be feared, the Chief Magistrate of the United States would, by that plan, be subjected to the control of a branch of the legislative body. What more can an enlightened and reasonable people desire?" Such was the exposition upon which the people adopted the constitution of government presented by its framers.

Thus we see that the high power of impeachment was intended only for punishment and disqualification, in extraordinary cases of corruption and crime; and, in party times, can never be used until after the dominant party is down, if at all. It was never intended as the common preventive remedy of restraint upon the encroachment of Executive will, pending the Presidential term, when, if ever, the mischief will be done. So in an attorney, receiver, collector, marshal, and the like, the mischief they do is not in the moment of transit from the end of one term to the beginning of another. Pending the term, as well with the President as with the inferior officers of the Government, is the mischief-doing season; and hence the restraint of the Senate on the President, and of the appointing power on the officers of the class before the Senate, during their terms. The highest and lowest may be subjected to impeachment, which was intended to be the arsenic of the State, to be administered only in extreme cases, and then with a careful and skillful hand, and not as the food of the body politic, and the milk and nasty pudding of the republic, to be taken as daily aliment. In other countries the impeaching and the attaining power have been employed upon minorities. Man is the same in America.

The Senator from Virginia taught us directly the reverse of this in the Panama report under Mr. Adams; he now tells us, that to inquire into, and determine the cause of removal, would be prejudging the cause of impeachment that may come before us! It is an unsafe and unsound notion to consider the withholding of the advice and consent to a nomination as a reflection even upon the nominee; much less could such withholding be prejudging the President guilty of corruption and impeachable offence. But pray, would it be prejudging the innocence of the President, when he informs us, as he is bound to do, how the vacancy happened, whether by removal, resignation, or death, to sanction all, and thus commit ourselves? Did the Senate prejudice Mr. Monroe and his cabinet guilty of impeachable corruption, in rejecting the military nominations in 1822, on the ground that others were lawfully in, or entitled to those offices? It is a new idea of the Senator, and has no soundness in it. The whole effect of our proceeding is to exercise our wholesome restraining power, and determine whether there be a lawful vacancy to be filled, without touching, either by consent or refusal, the higher and distinct question, whether there be corrupt and impeachable motives. Is every court that errs in judgment of law, guilty of impeachable motives, and prejudged by the reversal of the judgment? Or, does the Senator intend to assume that there was impeachable motive in the fell swoop of this administration? I shall not dispute with him upon that point at present. No, the President, pent up in this city, cannot possibly know the fitness of applicants, or the causes of removal, so well as the Senators from the State; and hence the wisdom of this representative plan, and the restraining power of the Senate in form of advice, and not of condemnation. It should be exercised in candor and charity towards the President, as the gentle and ordinary medicine of the State, even by those called the opposition, and not to harass and embarrass the Chief Magistrate, or as arsenic to destroy him. If there be cause of impeachment, it must arise, usually, in the obstinate perseverance in arbitrary Executive will, after the Senate has approved or rejected.

Another novel doctrine of the Senator from Virginia is, that if we should determine the removal to be unconstitutional

in the case of a marshal, for example, all the estates held under the sales of the successor would be void, and the proceedings in such cases, from the beginning, might be opened, and the property of the country unsettled! Suppose it be so, is not that a question for the Judiciary Department? Can any decision of the Senate, either way, on these calls for information on these nominations, change the legality of such titles? That matter is already fixed one way or the other for the past. Let us do our duty for the future. Would even the violation of our oaths, and of the constitution, secure such titles, if they be void?

The Senator from Louisiana, (Mr. LIVINGSTON) as a reason for excluding the light of inquiry from the deeds of the administration, points us, in addition to the power of impeachment, to the responsibility of the President to the people at the end of his term! and even says, that is better and more direct than the greatly divided responsibility of this more numerous body! So seem to think the powers that be; and hence the cabinet and President, being but a small body, shrink so modestly from this inquiry, and expect the majority to assume the responsibility of screening them at their own hazard, by excluding the light.

But let us examine this new security for the public, which looks very much like a new edition of the homely proverbs, of shutting the door after the horse is stolen, or administering medicine after the patient is dead. The President is responsible, to the extent of his re-election, at the end of his term; but does that either prevent or cure the harm done the republic during the term? So is the whole class of officers now before the Senate responsible, to the extent of a re-appointment, to the appointing power, at the end of the term: but has that been found efficient to prevent them from embezzling our funds and ruining our affairs, so far as they lie within their circle of action, during the term; and then escaping from the continent, through the mouths of our great rivers and estuaries, or going to Texas or Mexico, before that responsibility attaches?

So the President, if disposed himself, or if pressed, as I believe he has been, and still is, by a mercenary party, into a course of illegal and tyrannical proscription, must be restrained during the term when the mischief is about to happen: for no man can pretend that our ancestors, watchful of the rights of their posterity, were less jealous of the chief Executive, than they were of the little subordinate agents of the public, or less jealous of the constitutional liberties of the country, than of the paltry trash called money. Besides, the very point of our objection is, that if the officers of the country may be thus used as property—as means of purchasing support, or instruments of repressing opponents, a combination of ambitious men, using the martial fame of a President—the bauble that has always cajoled nations out of their liberty, or had much to do in it, will in time buy their way into a permanent possession of the Government; and, with the purse and the sword, compel the people to submit to the great change in the principles of the Government now proclaimed on this floor; and then run through the rapid gradations to absolute despotism, as so many republics have done before us.

We see that combination gradually raising their mounds towards the top of our ramparts. We object to their quietly approaching, and overtopping our walls. They lull us by their speeches, as Titus might have told the Jews at the siege of Jerusalem. "Behold! this is your Sabbath day! It is not lawful to make resistance to our works on this day." The Jews kept their Sabbath, and prosecuted their internal feuds; and Titus raised his mounds, and planted his battering rams and catapults. So the Senator tells us—behold, these four years are a Sabbath; use no preventive or restraining measures; let us raise, and approach with our mounds, until the end of the

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term; and then you may make a sally, and throw them all down if you can. History informs us that Titus took Jerusalem. And if this dark inquisition, unexamined proscription, and abuse of the offices and honors of the country, by using them as funds to purchase popularity, be tolerated by the public, (for this minority is powerless, save only to sound the alarm,) history will tell posterity that a combination of aspirants, of all political denominations, destroyed the constitutional liberties of the United States by the usual gradations of tyranny and bribery combined, as was feared and deprecated by the father of his country! Let him who doubts this final result of the principles now advocated here, reflect a moment upon only a few of the immediate practical consequences of those principles.

And, first, the present doctrine of the majority completely annihilates the appointing power of the Senate, as well as its salutary restraining power; and confers despotic discretion upon the President. It is true, this majority could turn around again to their old opinions and practice; but, in the mean time, the liberties of the country are in danger, when the sentinel has deserted his post upon the wall; and the four years' despotism may be, as with so many other republicans, but the prelude to one of a more permanent and dreadful character.

The Senator from Louisiana [Mr. LIVINGSTON] admits that his doctrine enables the President to keep a favorite in office, or turn the best man out, in spite of the Senate! And what is that but despotism? The admission is perfectly correct; and we thank him for so much development of the principles of this mosaic, tasselled administration. Look at the case of William Clark, Treasurer of the United States. I take it for its strength; for his high qualifications for the office; for his mild and spotless character, and because he has rendered more conspicuous services to his country in the late war, in his humbler sphere, than General Jackson did, in proportion to his more elevated and expanded theatre of action. The Senate, friends of Jackson and all, confirmed his nomination at the last session. No sooner were our backs turned, than he was struck from the roll of office, to make room to reward a favorite eulogist of the President. And, according to the doctrines now taught, the Senate cannot even ask for the cause; but a servile Senate must register the rescript in submissive humility! There is no other way of saving your administration from public reprobation, than by screening them from the light of truth; for we defy them to show any cause for this unlawful act but the opinion of General Clark, and to reward a partisan by rendering the offices the private property of the administration, to reward their friends and punish their opponents. Their corrupt and subsidized press has been employed all summer in assigning false causes for such removals; but when the Senate meets, and the minority demands the true causes, they shrink from the inquiry in conscious guilt. And no wonder. It is safer to stand mute, than to add a false return of the conversion of the offices of the country into the means of tyranny and bribery combined, as such a use of them would be. The causes of removal cannot bear the light. The ears of the American people must not hear them! Their eyes must never behold them on paper! The prime minister of the Ottoman Empire dare not dismiss a Turk from office, for the mere exercise of some privilege secured to him by the capricious edict of the Sultan, his master. Still less dare the head of an American department avow having struck an American citizen from the roll of official existence for his opinion of the fitness of candidates for public trusts, or the exercise of his sacred elective franchise, secured to him by the more permanent and august guaranty of the constitution.

What strange absurdity would it have been for ancestors to have reared this fair fabric of constitutional liberty—appointed a President and cabinet to guard it—and then

to have empowered them, like another Sampson, to pull down the very pillars on which it rests, and prostrate all in the dust. What strange madness in the father of a young family to hire a guard, at twenty-five thousand dollars per annum for the captain, and six thousand dollars each for the subordinates, to watch over his household; and then authorize them to strangle the mother or nurse, upon whose preservation depends the existence of his helpless offspring! The freedom and purity of elections are as essential to our liberties as the pillars to the dome they support, or the mother or nurse to the suckling infant.

But let us return, and see how completely the doctrine of this session annihilates the very appointing power of the Senate, renders them the mere servile registers of Executive rescripts, and breaks down the dykes that keep out the ocean of despotism and corruption! Suppose Clark appointed Treasurer to-day by an almost unanimous vote of the Senate, as the fact was. To-morrow A comes, and convinces this administration that he commanded at the last election, or can command at the next, a thousand more votes than the incumbent. A is made Treasurer, and a servile Senate advises and consents to their own degradation. Next day B shows the candidate for the next Presidency that he can command double the number, and B is appointed Treasurer in place of A, removed. A servile Senate advises and consents; and so on throughout the alphabet, from A to Z. Does not every one see that the appointing power of the Senate is surrendered and gone? The restraining power of the Senate, the high trust given us for public security, and not as a feather to decorate our individual caps, is surrendered and gone. Are we asked what is the remedy? It is plain. Ask the cause of the removal; and if the administration dare tell the truth, it will be, that it was for opinion's sake, or the exercise of the elective right, or to pay a bribe previously stipulated by contract, express or implied, for votes or influence. Tell the President, as the British barons told their King, "we are not willing to have the laws of" appointment and removal changed. Tell him the cause of the removal is itself unlawful, and the removal void—not only unlawful, but against the constitutional rights of the citizen and the Senate, and doubly void; and, consequently, there being no other objection, William Clark is still Treasurer of the United States of right, though ousted by superior force. But if a false return be made, let the people and their representatives determine which master they will serve, the President or the constitution; and if the latter, impeach him for violating the constitutional rights of the citizen, and making the false return; if the former, let them wear their chains, as unworthy of liberty regulated by law, and go worship their idol, and tremble at his frowns.

Let me read you another practical consequence from your own book, the long neglected report of the Senator from Missouri, [Mr. BEXFON] made 4th May, 1826, (when Mr. Adams was President,) upon the propriety of curtailing Executive patronage. Listen, and admire the fulfillment of the prophecy.

In page 3, " \* \* \* And in this aspect of the reality we behold the working of patronage, and discover the reason why so many stand ready, in any country, and in all ages, to fluck to the standard of power, wheresoever, and by whomsoever, it may be raised."

In pages 10 and 11. "We must then look forward to the time \* \* \* when the nomination by the President can carry any man through the Senate, and his recommendation can carry any measure through the two Houses of Congress; when the principles of public action will be open and avowed, the President wants my vote, and I want his patronage; I will vote as he wishes, and he will give me the office I wish for. What will this be but the government of one man? And what is the government of one

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man but a monarchy? Names are nothing. The nature of a thing is in its substance, and the name soon accommodates itself to the substance."

"Those who make the President must support him. Their political fate becomes identified, and they must stand or fall together. Right or wrong, they must support him."

"A precious confession! So thought Washington when warning us of the danger of combinations, for Washington called things by their right names. With him, in that instance, the name was quite significant of the thing so much to be dreaded by posterity. Behold in this administration, and in this majority of the Senate, the realization of the fears of Washington, and the fulfillment of the predictions of the prophet of evil!

You have only to add, as your speeches indicate that you will, your sanction to the practice of removing men without a shadow of lawful cause, or any other that you dare avow, to make room for corrupting the very sources of mental light, by rewarding the corps of mercenary editors; or to reward even the very electors of President and Vice President—who, above all others, should stand aloof in the high and honourary duty they perform, like Cæsar's wife, not only free from reproach, but above suspicion; and then add a dark, *ex parte*, worse than Spanish inquisition of condemnation and removal, and refuse all inquiry and public knowledge of the causes—and your four years' despotism will be complete! "The President must be supported, right or wrong. He wants my vote, and I want his patronage!" Hang over the palace door, as you please, the label of "law and liberty," inside stalk the demons of dark, inquisitorial, proscriptive despotism, amidst the clanking apparatus for forging chains and manacles for slaves!

But there is a redeeming spirit in the American character. The sons of Revolutionary sires will never submit to this. I do not speak of commotion and revolt, the last resort of wretched slaves, but of the calm majesty of freemen, (cajoled, deceived, and infatuated by an interested office hunting combination, using the common artifice, the martial fame of their leader, and the cry of coalition and reform,) rising, and, in the forms of their violated elective franchise, redressing their wrongs, and reclaiming their rights and liberties, as inherited from their fathers. For, in leaving the graves of their forefathers, and migrating beyond the grand range of the Alleghanies, to find free space and easy sustenance for themselves and their families, they carried with them, even to the remote wilds of the Osage and Desmoines, the St. Francois, and the Merri-mack, those principles of union and civil liberty which they inherited from their fathers, and there cherish them in their hearts, and impress them upon the minds of their children.

Turning with disgust and abhorrence from this picture of despotism and midnight inquisition, with the determination of freemen not to submit to it, let us look upon that fair portrait of law and liberty with which the gentlemen from Delaware cheered us, and fix our hopes upon its future restoration.

Beverly Allen, District Attorney of Missouri, to whose case I will advert, for the sake of illustration, as to holy ground, where the flag of opposition to this despotic inquisitorial abuse of power was first unfurled, in his memorial, concluded in common charity, when his removal, pending his term, was announced to him, that some causes had been represented to the administration for such a summary condemnation without notice, and he asked for the cause. He asked the Secretary of State, and he declined to answer him! He inquired then of the President, and he stood mute! He besought the Senate of the United States to tell him, and the majority refused to print his respectful and laconic memorial, and now declare that they will not even inquire into the cause of his condemnation!

The culprit, arraigned at the bar, and the military, subject to the personal orders of the President, and liable to be stricken from the roll by his fiat, are entitled to more courtesy and fairness than this.

And, on behalf of the outraged rights of the country, I now appeal to Mr. Madison, who is still living, and to the just spirits of the illustrious dead, whose voice is to be heard in the constitution of the United States, in the contemporaneous expositions of that instrument, and in the early legislation of the country, and to the laws of the land, to learn the true extent of this power of removal from office, the causes for which it may be exerted, and the concurrent and restraining powers of the Senate of the United States, in such cases, to secure the citizen from the arbitrary will of a single man. The opinion of Mr. Madison we have in the case where, by law, the President has the absolute power of removing his creature at will, that no wanton use can be made even of that absolute power—an opinion in consonance with the genius of our republic, which views all powers as public trusts, and none as mere prerogatives. The constitution, article 2, section 2, gives the appointment of the whole class of officers of the public now before you, with terms, tenures, and duties prescribed by law, and not by Executive will, to the President and Senate of the United States. Congress has not thought it proper, if they possess the power, to bestow the appointment elsewhere; but has left this whole class upon the provisions of the constitution.

I have attempted to demonstrate, and the Senator from Louisiana [Mr. L.] admits, that the doctrine now contended for by the majority annihilates the appointing power of the Senate, and renders the President absolute, and at liberty to keep in or turn out men in defiance of the Senate. The restraining power belongs to the organization of the Senate, for the public security; is a high constitutional trust, without which the appointing power of the Senate is annihilated; and we cannot renounce it, nor desert our constitutional post, as guardians of the public liberty. To abandon it changes the nature of our Government, and, as you yourselves declared in Mr. Adams's time, makes the President a monarch! Under this dereliction of duty, the United States are no longer a republic! Tell us no more of the tyranny of kings, and of the servility of parasites and courtiers, bowing and acknowledging "the King can do no wrong." It is a striking circumstance that they who have pretended most regard for popular rights and democracy, are the advocates of the alarming power now conceded to the President.

Let us now hear the contemporaneous expositors of the constitution, to learn if such arbitrary and unexamined discretion was contemplated. Mr. Hamilton, one of the framers of the constitution, in the seventy-seventh number of the Federalist, says, when he, and Madison, and Jay, were expounding the nature of our Government to induce the people to adopt it:

"It has been mentioned as one of the advantages to be expected from the co-operation of the Senate in the business of appointments, that it would contribute to the stability of the administration. The consent of that body would be necessary to displace as well as appoint. A change of the Chief Magistrate, therefore, would not occasion so violent or so general a revolution in the officers of the Government, as might be expected if he were the sole dispenser of offices. Where a man, in any station, had given satisfactory evidence of his fitness for it, a new President would be restrained from attempting a change in favor of a person more agreeable to him, by the apprehension that the discontinue of the Senate might frustrate the attempt, and bring some degree of discredit upon himself. Those who can best estimate the value of a steady administration, will be most disposed to prize a provision which connects the official existence of public men with the approbation or disapprobation of that body, which,

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from the greater permanency of its own composition, will, in all probability, be less subject to incompetency than any other member of the Government."

After refuting some objections of that day, that the Senate would influence the President, and assume the control of the Government, Mr. H. says, "if, by influencing the President, be meant restraining him, this is precisely what must have been intended. And it has been shown that the restraint would be salutary, at the same time that it would not be such as to destroy a single advantage to be looked for from the uncontrolled agency of that magistrate. The right of nomination would produce all the good without the ill."

Some annotator to this number of the *Federalist* has appended a note, saying, "this construction has since been rejected by the Legislature; and it is now settled in practice that the power of displacing belongs exclusively to the President."

This note ought to be expunged, as calculated to mislead students and weak cabinets. It is not true, in point of fact, that the Legislature has rejected this construction; nor true, in point of law, that the Senate can renounce an iota of their restraining power that belongs to their organization, and chiefly distinguishes our checked and restrained Executive from one of arbitrary will. The whole idea of the annotator was taken from the laws respecting the assistants of the President, to perform duties prescribed by him as under the act of 1789, and not applicable to the officers of the public, or of the law, to perform duties prescribed by the laws of the land. The correctness of Hamilton, and the error of the annotator and his disciples, of the majority, can be demonstrated if there be truth in logic and common sense. The argument stands thus: without the concurrent power of the Senate in matters of appointing, (as you admit in your report of 1826, before quoted,) the President becomes a monarch. The appointing power of the Senate is annihilated by taking away their restraining power, as the column or edifice is prostrated by removing the pedestal or foundation that sustains it. Therefore, you have proclaimed your President a monarch, according to your own premises and arguments, by refusing the light necessary to the use of the restraining power. Hamilton has been accused of too strong a bias towards arbitrary power. But Hamilton was a tame republican, in favor of a checked and restrained Executive; and if a bias to arbitrary power be a proof of true greatness, much greater, if not more disinterested, statesmen than Hamilton are here.

The Senator from Virginia [MR. TAZEWELL] has read us the form of a commission, stating that the office, in such cases as we have before us, is held at the pleasure of the President! A full proof of the constant encroachment of Executive will, and of the necessity for an equally constant restraining power of the Senate, as taught by the fathers! but no proof whatever that the clerk or attorney who made the form of the commission did thereby repeal the constitution and laws, and the checked and restrained organization of our federal Executive, which distinguishes it from a despotism for a term of years.

I will now approach the stronghold of modern democracy, claiming unrestrainable Executive power in removals from office, supposed by the Senator from New Hampshire [MR. WOODBURY] to confer the power now claimed upon the President: the act of 15th May, 1820, "to limit the term of office of certain officers therein named, and for other purposes." The act, then, names the very class of money-gathering public officers now before us, and leaves the appointment to the President and Senate. There is nothing in the title of the act that warns us of change in the relative powers of the President and Senate, or premonishes us of the approach of dark inquisition, despotic power, or the downfall of constitutional

liberty. The political aspect of the act forebodes no revulsion of power. All seems to be a mere affair of money, to secure our revenues from the infidelity of defaulting officers of the Treasury Department! It establishes the tenure of office in these words: "shall be appointed for the term of four years, but shall be removable at pleasure." At whose pleasure, pray? At the pleasure of the prime minister, or the premier's sweetheart? or is it at the pleasure of the President's arbitrary will? I answer, no; for that would annihilate the appointing power of the Senate, and make the act unconstitutional, as the Senate cannot renounce, even by law, the restraining power that belongs to its constitutional organization; not for its own honor, but for the safety of the public; but at the pleasure of the appointing power, in the ordinary and hitherto harmonious mode of originating by the President, and sanctioning or restraining by the Senate. The construction must be in favor of the liberty of the citizen, and not in favor of arbitrary power, if the law were doubtful. Even in the monarchy of England, that is the rule. Let us take the good old common law and common sense rule of construction laid down by Justice Blackstone, and consider the old law, the mischief of the old law, and the remedy proposed by the new law; and so construe it as to suppress the mischief, and promote the remedy.

By the old law there was no summary power, except the disputed one of taking care that the laws be faithfully executed, to arrest the career of official delinquency; and the process was doubtful and dilatory, by which the cause of removal was to be established, whether by impeachment, indictment, information, or civil suit. The evil of the old law was, that, while the Government was plodding through some tedious process of law, amidst its delays and proverbial uncertainties, the defaulter could embezzle our funds, and ruin our affairs, so far as they lay within his control, and escape to Texas, the West Indies, Mexico, South America, or Europe, before the process had ascertained whether there were lawful causes for removal or not. And the remedy here proposed is the summary suspension of the functions of the officer, for cause, subject to the constitutional restraining powers of the Senate, as in all other like originating acts.

Thus, we see, it was far indeed from the design of that law, even were it practicable, to change the relative powers of the Government, or to make the offices of the country the private property of the President, to buy votes, or punish opponents, or to render the cause of removal less, the very gist of the whole proceeding, than it was before that law. If the proceeding were by impeachment, indictment, or information, or civil action, the cause would be the gist of the whole. On that the issue would be joined. That would be tried; and, on that, judgment of condemnation would be rendered before the removing power could be exerted. And when, with the sole view of saving the public moneys, a summary proceeding is given, does the cause of removal become the less essential? Does the necessity of assigning it, or the right of the Senate and public to know it, become less absolute? The necessity and propriety of knowing the cause become more imperious as the proceeding is rendered more summary; because there is more dang of the arbitrary will of a single man in the latter than in the former mode of proceeding. The cause gives life and action to the power of removal. Until the cause be given, the power remains a dead letter, a mere power in abeyance. The law of treason confers a salutary power on the Judiciary Department of the Government, to condemn the traitor; but, until the overt act, or the cause of applying the law, exists, the judiciary has no right to issue a mandate to hang a man. The Executive Department has no more right to exert the provisional right of removal, until the cause occurs, than the judiciary has in the other case. The power, in both cases, is a public trust; and we protest, with the constitution of

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our country in our hands, against keeping the cause a State secret, and thus establishing a secret, dark, and unrestrainable inquisition.

The legislator, in 1820, naturally asked himself what term and tenure of office would attain the desired public security? To hold for life would be too irresponsible. To fix his tenure during good behavior would not remedy the evils of the old law; then there must be a process at law to convict him of the cause, before the removing power could be exerted. To make him removable at the will of the President alone, as in the case of 1789, would make the President too absolute. And hence the provision for a term of years, provided he so long behaved faithfully, removable at the pleasure of the appointing power, during his term, if he gave cause; and the cause is just as material and examinable here, as under the old law. Under both, it is the very essence of the matter. The summary proceeding was to stop the career of delinquency, and not to confer arbitrary power.

And where is the provision in the law of 1820, presuming to confer upon a President the anti-republican power of holding a dark inquisition, striking officers from the roll, and then refusing to tell the cause? Or making the cause a secret of State, or the removing power an Executive prerogative, absolute as that of an Autocrat of Russia over his serf, or a King of Prussia over his slave? No, sir, this class of the officers of the public do not hold their stations at the capricious will of any man; but by a legal tenure for four years, provided they so long perform their duties, and retain their fitness for the station.

Mr. Monroe removed a surveyor general of Illinois, Missouri, and Arkansas, under a similar law, for causes sustained by judicial proof, taken in a suit to which the officer was a party. The accused was notified and present, and gave all exculpations and explanations in his power. Mr. Monroe referred the matter to his attorney general, Mr. Wirt. He reported the causes, sustained by proof. That report was then submitted by Mr. Monroe to his cabinet, for their advice. They did more than they were bound to have done; but they erred, if at all, on the side of constitutional light and liberty. There was no suppression of the causes of removal, or dark inquisition there. There was no skulking from the light of day, like guilty Adam, among the thick shrubbery of Eden, in that, as there is in the present administration!

Let us now assume a new point of view, and look at this matter in another aspect; for its acknowledged importance demands all our attention.

To create a lawful vacancy, by removal or resignation, there must be a lawful removal or resignation. Every ouster by physical force is not a lawful removal; nor is every forged paper a valid resignation; nor every feigned death a vacation of office. Nominations to fill vacancies must and do state how the vacancy occurred; and to what end, if the Senate had nothing to do, as now pretended, with the question whether there was a lawful vacancy or not. A is nominated in place of B, resigned. B comes and shows the paper to be a forgery, and no resignation. Or, C, in place of D, deceased, exhibits himself in full life. Or, E, to be Chief Justice of the United States, in place of John Marshall, removed. Every body knows the Senate could and would inquire into the legality of the pretended vacancies, and correct the procedure in the two first cases as errors in fact; and, in the last case, as error in law. They would look behind the nomination, and take notice that the President has no power, by law, to remove the Chief Justice; but we would reject E, and leave the Chief Justice to the hand of time, and his legal tenure.

So, in these cases, the President has no more power to remove the officers of the public for their opinion or vote in an election, nor to make room for favorites, in the absence of any lawful objection, than he has to remove the Chief Justice, or to deprive citizens of their constitution-

al rights, or to change our institutions into the monarchical form: and, there being no other objection to them, they are in office during their term, unless they give lawful cause, thereby giving lawful power of removing them. At the end of his lawful term, he may be delivered over to the corrupting party discipline of the times, to be buffeted; but even there it is the duty of the Senate to restrain the perversion of the public offices into means of rewards and punishments, or of bribery and tyranny combined, on discovering such a disposition in an Executive, upon the high and patriotic ground that such an abuse of power strikes at no less vital object than the root of our liberties—the elective franchise itself. Yes, in all such cases as are now before the Senate, the cause of removal generates the power of removal; and such has been the uniform and harmonious practice of this Government in all the halcyon days of the republic, (and lawyers themselves do not look for good precedents to troubled and revolutionary times,) as the commission of any other offence gives application and life to the appropriate power of prevention for the future, by punishing for the past, which, but for the commission of the offence, would have lain dormant for ever.

I now appeal to the settled practice of the Senate for half a century, and will quote the majority against themselves, in support of the republican character of our Government, in opposition to the new despotism now declared on this floor. The gentleman from Delaware has taken so ample a range over this branch of the subject, that I shall content myself with a few prominent instances.

1. In the celebrated contest between Mr. Monroe and the Senate, upon the military nominations in the year 1822, the Senate looked behind the nominations of Colonels Towson and Gadsden, without any objection to them, and there found General Bissell and Colonel Jones in a situation that, in the opinion of the Senate, gave them a right to the offices of Colonel second artillery, and Adjutant General, and practically asserted their restraining power by rejecting the nominations of the two former officers to fill those places. Mr. Monroe acquiesced in the decision of the advisory power of the Senate, and nominated Colonel Jones, who now holds the office of Adjutant General; and Mr. Adams, when President, acquiesced in the case of Bissell, and nominated him for the other office. General Bissell's friends contended he was in the army, liable to be arranged to that service by order, and needed no nomination; and rejected it on that ground, as it would cut off some years' pay to appoint him anew. On the committee that recommended this course, was the Senator from Missouri, (Mr. BENTON.)

There was a contest in the Senate concerning the true construction of the law of 1821 to reduce the army; but none upon the great duty of the restraining power of the Senate, although the President had the right by law to strike officers from the roll, as he had not proceeded under that power.

2. In the Panama discussion and report in 1826, when Mr. Adams was President, there was a dispute upon the expediency of our attending or participating in the proposed American Congress at Panama and Tacubayo; but none as to the restraining powers of the Senate. The present majority, or so many as had seats here at that time, acted upon the comprehensive principle, that it was the right and duty of the Senate to look behind the nominations, and re-explore all the ground over which the mind of the President might be supposed to have passed in arriving at his conclusion to send in the nominations.

On February 20, 1826, Mr. ROWAN submitted, among others, the following resolutions, which, on the 22d, were modified by Mr. WOODBURY, except the following, which they both voted for as it is:

*Resolved*, That it is the unquestionable right of the Senate to call, in respectful terms, upon the President of the



United States for such information as may be in his possession, and which the Senate deem necessary to the faithful discharge of the duties imposed upon it by the constitution; and more especially the duties resulting from matters which the constitution makes it the duty of the President to submit to the Senate for their advice and consent.

I deemed it unnecessary to make a question about a thing "unquestionable," and have a vote upon it; and moved its indefinite postponement, which was carried; but we called for all such information without hesitation, as an unquestionable right. The following members of the present majority voted even against postponing the resolution, affirming a power given by the constitution, and not dependant on our resolution, viz. Benton, Dickerson, Ellis, Hayne, Kane, King, Rowan, White, Woodbury, (Mr. Tazewell being absent,) and all the Senators appointed to the heads of departments, and now shrinking from a similar call!

3. The only remaining conspicuous instance which I shall deem it necessary to quote, is the report to curtail Executive patronage, already quoted, showing that the powers you now concede to the President make him a monarch!

Thus we see that portion of the present majority veering and vibrating, under different administrations, like a surveyor's needle among the mineral banks of Missouri, according to the power of the attraction; first pointing to the new diggings, then to Mine au Briton, then to Valle's mines on the Platin, and then to the great iron mountain between the waters of the St. Francois and Merrimack. They are never fixed to the pole of the constitution; but seem to govern by the law of majority—the law of force! An administration that did not wish concealment for cause, would thank the Senate for its aid, counsel, and advice upon the causes of the removals, and avow them like open men of conscious rectitude. The people are not dissatisfied with the administration for removing upon cause, as they have done in several instances in and out of this city; but this attack upon the freedom and purity of elections is striking at the root of the tree of liberty, and, if not arrested, will leave it in this republic, as in so many others, stripped of its bloom and foliage, the scathed victim of withering despotism.

There are two remaining objections of the Senator from Louisiana, [Mr L.] to be answered. He transfers himself back to the birth of the republic, and imagines all to be untried theory before him, when in fact we have been practising harmoniously upon this restraining power of the Senate for half a century, with salutary effect. He imagines the first step in removing an officer, under the system advocated by the minority, would be to convene the Senate, and submit the cause of complaint to them; and deprecates the expense and trouble, and, above all, the ease with which a delinquent, while the Senate were convening and debating, could transfer himself and his ill-gotten wealth beyond the reach of investigation, as this administration are modestly retiring from that light to hide their blushes. His premises are wholly imaginary, and his conclusions are, of course, equally visionary. The originating act of suspending the functions, and arresting the career of delinquent officers, is, and ought to be, with the President, either during the recess or the session of the Senate; and the matter is then submitted to them when they are in regular session, in the established manner we have described. The delinquency of a revenue officer is not the emergency for convening an extra session of the Senate. That power was given for great emergencies of State.

He supposes great difficulty from vexatious complaints. Safe experience answers all this against him. It is found, in practice, as easy to distinguish between querulous and vexatious allegations of removed delinquents, and the

manly, indignant sense of high-handed Presidential, or low party cabinet tyrannies, as the gentleman himself supposed it to be, some years ago, to draw the broad distinction between the summary process of Mr. Jefferson, in seizing the batture at New Orleans, and the due proceeding at law, for which the gentleman so ably contended, and ultimately obtained, in that celebrated case. No, sir, a delinquent or unfit person, removed from office for cause, will usually be the last man to court investigation, but will hide his blushes, and enjoy, if he can, his speculations, in the deep forests of the West, or in the "solitudes of great cities" in the East, or abandon the country; and in nine out of every ten thousand cases of removal for cause, the Senate will know, or easily learn, the cause, and, acting for the interests of the country, pass all, *sub silentio*, as past experience proves.

If our ancestors had left it in doubt—if the question had never been discussed or submitted to the American people—whether we should have the despotism of four years now proclaimed by the majority, or the checked and restrained Executive claimed by the minority, the construction should be in favor of popular rights and the representative principle. It would be so in England, which we are in the habit of considering a tyranny, although the rights, characters, and feelings of the subject there, in public and in private life, are better secured than they are here, at the present epoch in our history. But that question was not omitted by the wise forecast of the framers of our Government. It was directly before the people; ably discussed, and solemnly determined in favor of constitutional liberty, as claimed by the present minority. The fair mode of proceeding would be for the majority to propose an amendment to the constitution, and submit the question to the people, which of the two will you choose? And not thus, by an unexpected desertion of their post, let in the enemy of despotism, which the nation thought for ever excluded. I must leave your own minds to imagine the redeeming results that would be produced by a firm, practical re-assertion of the restraining power and duty of the Senate, and of the principles for which the minority contends.

It would arrest the downward tendency of the country to universal office-hunting, and consequent corruption and servility, and reclaim them to the high and honorable patriotism of their fathers of the Revolution. By connecting the official existence of our public officers with the approbation or disapprobation of the Senate, you will create a race of elevated and independent public officers, looking, like freemen, to the performance of their duties, and to the protection of the laws for their places; and free the country, in time, from that brood of servile sycophants, lounging around the Capitol, or eaves-dropping at the houses of their fellow-citizens, or carrying on a system of low espionage in tavern halls, or at street corners, to catch the unguarded expressions of men, to be retailed at the palace, or heads of departments, to produce vacancies for themselves to fill—a brood of beings, which, in all countries, have been the ready instruments with which unbalanced ambition has destroyed law and liberty. And you will restore the Government to what it was represented to be, when, with jealous forebodings of the encroachments of Executive will, it was adopted by the fathers of the republic and their compatriots, at the purest period of our national existence. If the Senate be faithful, all can be retrieved! And we call upon all those with whom we have acted under other administrations, upon the military nominations, and so many other occasions, not to abandon the republic; but to aid us in rending the thick veil of dark and silent mystery that hangs over these removals.

"Give me but light; I ask no more."

If your administration have not violated the essential principles of the republic, let that be made manifest by the light. We are not contending for the offices—take them

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all. But, if the administration have stricken at the root of our tree of liberty, let them bear the consequences in open day, before the American people. You tell us, the President is responsible to the people. How can the people judge without light? You are about to desert the post assigned you as the restraining power upon the President during his term, when the mischief will be done, on the ground that he is responsible to the people at the end of his term; and still you refuse to give them the means of judging whether he has used this power of removal for purposes of tyranny and corruption, or for good causes, rendering the removals proper for the public good! Look at the frequent demands of Beverly Allen for the causes of his removal, and the refusal to answer him, first of the Secretary of State, then of the President, and then of the majority here! How can the people of Missouri tell but Allen is a defaulter? How can the people of the West tell but their land officers, stricken from the roll, have failed to make their lawful returns to the Treasury Department, or embezzled their funds?—or the people of the Atlantic, but the records of the treasury show official misdeeds in the former incumbents of their custom-house officers, when you thus hide your President in inscrutable darkness and despotic silence. But, if the Senate be faithful to their high trust, there is no hope but in the redeeming virtue of the public.

All history warns us that the grand object of conquest, in the invasion of republican liberty, has been this citadel—the Senate, or restraining power upon the Executive, by whatever name it may be called. You yourselves solemnly warned us, in your report, to curtail Executive patronage, when Mr. Adams was at the head of our affairs—to beware of the spirit of servility to Executive will, and the corrupting influence of Executive patronage! That spirit, availing itself of the discords of mankind, has prowled the world, like a wolf in sheep's clothing, seeking to surprise, and destroy law and liberty; and has deprived more than half the world of them, by fraud and force combined. And we need not be surprised to see this insinuating and enterprising enemy assail this last citadel. Should it come, it will not be with sound of clarion and herald of war, openly proclaiming a permanent despotism of Executive irresponsibility. No, it is too cunning thus to give the alarm to the public, and defeat the object. It will more probably come sauntering along, like Satan going up to worship among the sons of God; and begin by scattering doubtful speeches among the Senators: as thus the emissary of Satan—

“Come, let us reason together—no premature commitments, my noble friends! It will not do to alarm the public by proclaiming Executive irresponsibility and unrestrainable will in form, although we must have it in effect; for the rash administration has, without waiting to consult us, rushed into a dilemma, from which we cannot extricate them.

“There is no alternative but to ensnare them in darkness, as Jupiter did the enemies of Ajax, so that the public cannot see to strike them, until the thing be forgotten, and the storm blown over.

“It will not do openly to deny the restraining power of the Senate—that is the very republican feature in the Executive Department. That power and duty are as clear as the sun in a cloudless atmosphere. Besides, my noble friends, you are all committed upon that subject already! yes, even recorded upon that!

“Hear my advice, then: acknowledge the restraining power, seemingly, to the public—say, in your speeches, that removals from office ought not to be made for opinion's sake, for exercising the freedom of election, to reward partisans, or punish opponents—hang this sign over your door for the public to read; but adopt this grand stratagem—vote down all inquiry into the cause of removals—cover the administration with impenetrable dark-

ness—and laugh in your noble sleeves at the minority when they, with the ancient Greek, demand but light.”

And thus, if you will listen, will this wily emissary harangue you for hours, insinuate himself into your favor, and ultimately achieve the conquest of the world.

From all the indications of the last two days, I now anticipate such a death-blow to the republican feature of our Executive Department—the restraining power and duty of the Senate! This majority will pass the Rubicon!

Time was, when the patriotic sires of degenerate sons would have moved heaven and earth at such an outrage upon their constitutional rights! But let us not despair of the Republic. There is a redeeming spirit in the American character; and to that we will appeal.

#### SPEECH OF MR. MARKS,

ON THE FOLLOWING RESOLUTION.

“Resolved, That the President of the United States be requested to lay before the Senate the cause or causes that led to the removal of William Clark from the office of Treasurer of the United States.”

Mr. MARKS said, that, in offering this resolution, he intended no disrespect to the President. He had often said, in the presence of this body, that he would not oppose the present Executive of the United States, when he believed his measures to be conducive to the interest and prosperity of the Union. Were he to act on any other principle, he would not consider himself a faithful representative of the State he had the honor in part to represent; but, knowing as he did, that the Senate possessed concurrent power with the President in making appointments to office, and when a faithful officer was dismissed, under circumstances of a nature both aggravating and cruel, he conceived it to be not only their right but their duty to inquire into the causes that led to his removal.

I am unwilling to believe [said Mr. M.] that such a high-handed measure would have been exercised during the recess of the Senate, unless representations touching the character and qualifications of Mr. Clark had been made to the President, which were both unfounded and unwarrantable. It is difficult to believe that the President, for mere party purposes, would remove from office one who so short a time had discharged the duties of the station he filled, and in opposition, too, to the unanimous opinion of the Senate, so shortly before expressed. The removal of Mr. Clark presents a case of a peculiar nature. I believe nothing like it has been before the Senate during this, or any previous session; and, to say the least of it, it shows an evident disrespect to the opinion of this body. Let us revert to the history of the case.

During the summer of 1828, Mr. Clark was appointed Treasurer by the late President, to supply a vacancy that had occurred during the recess of the Senate. He continued to fulfil the duties of his office, to the entire satisfaction of all who transacted business with him; no complaint was known to exist. At the next meeting of Congress, and after the result of the Presidential election was known throughout the United States, a majority of the Senate was favorable to, and supported, the President elect. Mr. Adams, still being in the exercise of the duties of his office, on the 11th December submitted the nomination of Mr. Clark to the consideration of the Senate. It passed through all the ordinary forms of examination; was referred to the Committee on Finance, a majority of whom were opposed to the then President. The committee, however, took a different view of the subject from that since acted on by the present Executive; they believed that an honest expression of opinion, which is guaranteed to us all by the constitution of our happy country, ought not to be a disqualification for office; and I am warranted in saying this, because it was as well known then as it is now, that Mr. Clark had expressed opinions favorable to

the re-election of Mr. Adams. Yet, with these facts before the committee, they reported the nomination for confirmation; and, with the knowledge that the Senate had of the political sentiments of the nominee, the nomination was confirmed without a dissenting voice. Then, if at all, would have been the time to have raised objections to the appointment of Mr. Clark, and to decide whether a free expression of opinion was to be considered as a disqualification for office: but not being so considered by the Senate, the President has shown a mark of disrespect to its well-known sentiment, by not allowing two months to elapse after the adjournment of the Senate, before he drove Mr. Clark from the office to which he had been appointed, without cause, and, as I contend, contrary to the principles of the constitution.

When the political standing of persons appointed to office is so frequently brought in review before this body, it may not be amiss for me to state that the person who was so unceremoniously removed from the situation of Treasurer by the President, commenced his political career in Pennsylvania, as a republican of the Jefferson school, and for a period of more than twenty years, which he spent in the service of his native State, has not been known to deviate from these principles, always giving a free, full, and honorable support to every republican administration we have had in the country. If it be necessary to show the estimation in which he was held by his fellow-citizens, a brief sketch of his official life will best illustrate that fact. When I first knew Mr. Clark, he held the office of Associate Judge, in one of the western counties of Pennsylvania. How long he performed the duties of that station, I am not informed; but I can assert, without fear of contradiction, that he filled that office with the approbation of all who knew him, or had occasion to transact business with him.

At the same time Mr. Clark held the office of Brigade Inspector; a situation which made it his duty, on any sudden emergency, to organize and march the militia to any point where danger threatened, or their services might be required; and, in this latter situation, he particularly distinguished himself in 1812, shortly after the surrender of our army on the Northwestern frontier.

We are, emphatically, a military nation. When I say this, I mean to be understood in a relative sense; and, in justification of this position, let me only recur to what so often takes place in this body. Whenever a nomination is taken up for consideration, should it so happen that the nominee has served in any military capacity in the last war, it is only necessary to hear the statement made that he was a gallant officer, and you know how swimmingly it goes through the Senate. It is in vain to disguise it; we are all more or less influenced by these considerations: and while I will not yield to any other person my respect for those who have fought and suffered in their country's cause, I mean to show that this principle has not been carried out by the appointing power, but that other considerations are necessary to ensure success—a devotion to the dominant party.

If it can be shown that no man lives at the present day, nor did any one live at that time, to whom this nation is more indebted for the preservation of that very fleet, which, under the command of the gallant and lamented Perry, first broke the power of Great Britain on the Northwestern frontiers, than to the late treasurer Clark, it will not surely be considered strange that I should offer a resolution calling on the President, in respectful terms, to submit to the Senate the reasons that induced him to make the removal. And, to show that I have not been making incorrect or unwarranted statements, I beg leave to read a few paragraphs from the Pennsylvania Reporter, a paper edited by Samuel C. Stambaugh, and published at the seat of government of Pennsylvania. I offer this article as part of my argument—first, because it enters

more minutely than I can do from recollection, into all the particulars of the service performed by Mr. Clark; and, secondly, because I believe a majority of the Senate will consider it as coming from an orthodox source. The statement which I propose to read is dated the 4th January, 1828, at the very heat of the last Presidential election. The paper in which the article is published did as much, and perhaps more, than any other in the State, to support the election of General Jackson—the editor of the paper being as warmly attached to General Jackson and his cause as man could be; yet, justice to Mr. Clark induced him to make the following statement of facts:

“During the late war, William Clark held the office of Brigade Inspector of the first brigade, sixteenth division, Pennsylvania militia, composed of the five Northwestern counties of Pennsylvania; and the following duties were performed by him: He received general orders, dated 12th May, 1812, to draft, and organize forthwith, four hundred and twenty-eight men, which was done without delay, and muster rolls were transmitted to the Adjutant General. On the 15th July, 1812, Governor Snyder ordered Major Clark to draft and march forthwith two classes of his brigade, not detached under orders of the 12th May aforesaid, to guard and protect the frontier settlements bordering on Lake Erie; also, to purchase powder, and lead for balls, together with all other necessary equipments and subsistence consequent to the service. This order was promptly executed. No money, however, having been furnished by Government to carry the order into effect, Major Clark applied his own money, borrowed large sums, and, in addition, gave his individual obligations, to the amount of many thousand dollars—thus organizing, equipping, and subsisting the troops, for several months before he received remuneration from Government.

“On the 10th of August, 1812, Major Clark received an order from General Kelso, who held authority from Governor Snyder, to call on him, Major Clark, from time to time, for such numbers of militia as circumstances might require, for the defence of the frontier; to furnish two hundred additional troops for the defence of the town of Erie. Having arrived at Erie with the detachment required, and whilst engaged in providing subsistence for it, an express arrived from the West with news of the surrender of the Northwestern army, by General Hull, to the British forces under General Brock, and that the British and Indians were pressing down upon the American settlements bordering upon Lake Erie, both by land and water. Immediately on the receipt of this disastrous intelligence, General Kelso ordered Major Clark to call out, as soon as practicable, all the military forces he could possibly raise. Speedily to execute this order, he left Erie on the morning of the alarm, and arrived at Meadville at about 11 o'clock A. M., a distance of forty miles, dispatched expresses in every direction through his brigade, put Captain Withersham's light infantry company under march by 3 o'clock P. M., which arrived at Erie the following day by 10 o'clock, A. M., made arrangements for subsistence of such troops as might pass through Meadville for Erie. Left Meadville for Erie at 6 P. M. with a number of mounted men, and arrived at Erie before sunrise next morning. Thus having rode eighty miles within twenty-four hours, besides having performed the enumerated duties; the consequence of which was, that upwards of two thousand troops arrived at Erie thirty-six hours after issuing the order. These troops were also partially subsisted by Major Clark, he having received no money from Government. After the fears of the frontier inhabitants had somewhat abated, these patriotic men returned home, leaving but a small force for the defence of the frontier.

“But a few days more had only elapsed, when the British brig Hunter came to anchor close to the bar of Erie harbor, and within cannon shot distance. Her decks appeared crowded with men, her boats were lowered, and

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every appearance of a determination to land troops was exhibited. On this occasion, Major Clark, after supplying the troops with ammunition, &c., shouldered a musket, and volunteered as a private in Captain Morris's company, to oppose the landing of the British troops. The brig, however, hauled off. In obedience to an order of the Governor, dated 25th of August, 1812, Major Clark furnished a detachment from his brigade to join the army ordered to Black Rock, under General Taneyhill. In pursuance of an order from the Governor, dated September 5th, 1812, a battalion of militia was organized under general orders of the 12th May, 1812, to form part of the army assembling under General Harrison in the State of Ohio, for the defence of the Western frontier. Early in 1813, Government commenced building vessels of war at the Erie harbor, to contend with the British for mastery on lake Erie, which work progressed with unexampled rapidity. About the middle of July the vessels were nearly completed, and Commodore Perry considered the station in imminent danger of an attack from the British with the view of destroying our vessels in their unfinished state, from the fact that the British fleet daily made its appearance off the harbor. Under this perilous circumstance, Commodore Perry made a pressing appeal to Major General Mead to furnish militia immediately for the protection of the vessels and other public property then at Erie, to a vast amount. General Mead was so well aware of the importance to the nation of having so important a station guarded against danger from the enemy, that he ordered Major Clark to march his whole brigade forthwith to the town of Erie. With such promptness was this order executed by Major Clark, that, in forty-eight hours after receiving it, one thousand militia had arrived at Erie, and, on the fifth day, twenty-eight hundred organized militia were tendered by Major Clark to the commanding General, the greater portion of them having marched from forty to ninety miles. These troops were furnished with subsistence by him on their march; and while they remained at Erie, large detachments of them were incessantly engaged in assisting to get the fleet over the bar, procuring ballast, &c. And when the fleet was ready for service, as many of these troops as could be taken on board volunteered with Commodore Perry on his first excursion on the lake in search of the enemy. Late in December, 1813, the British crossed over to the American side, and burnt the town of Buffalo. Captain Elliott, who then commanded the Erie station, where all our vessels and naval stores lay, considering the station to be altogether unprotected by land forces, and nothing to impede the march of the British from Buffalo to Erie, deemed it necessary, for the safety of the station, to call on General Mead for a military force for its defence. To constitute such defence, General Mead issued his orders to Major Clark, on the 1st of January, 1814, commanding him to march his whole brigade immediately to the Erie station, which orders, considering the inclemency of the season, were executed with extraordinary promptitude and despatch. The time spent by Major Clark in executing these numerous orders, holding courts martial for the trial of delinquents, and settling with Government, necessarily occupied nearly three years, to the total neglect of all private concerns. And while engaged in performing those services, numerous and arduous as they were, Major Clark received the pay of a major, which compensation, to say nothing of his personal services and those of a horse, was not equal to his actual expenditures.

"In Governor Snyder's order of the 5th September, 1812, to Major Clark, he expresses his high sense of the valor of these patriotic citizens, who voluntarily flocked to the standard of their country, on the Northwestern frontiers of the State, to arrest the progress of an invading foe. In a letter from the Secretary of the Commonwealth, of the 7th September, 1812, to Major Clark, on the sub-

ject of military affairs, he concludes as follows: 'I have only to add, that the Government highly applauds your patriotic exertions.'"

I ask, if examples of such sacrifices were numerous during the late war? Do they constitute no claim to public gratitude with those who rule this nation? And the only way left for the Senate to show their disapprobation of the removal, is to do what has been often done heretofore—to call on the President for his reasons of action. He may have been deceived. If so, it will be satisfactory to the Senate to know it, and but justice to himself to make it known. He will not withhold the information.

It may, however, be said, that the President was not informed of the extent of Mr. Clark's services to the country, or of his character as a citizen in his native State. I am instructed to say that he did know it; and with the information before him, it would have been creditable to the President to have suffered him to remain where he found him, at least until he could have had an opportunity of consulting his constitutional advisers.

I have now shown the way the late Treasurer served his country during the last war. I have shown you the estimation in which he was held by his fellow-citizens; the various offices he has held to their entire satisfaction. I have shown how and when he was transferred to this place, and appointed Treasurer; the unanimity in the Senate in confirming the appointment. I now inquire, was there ever a President in the United States, previous to the present, with the knowledge of all these facts before him, who would have exercised such high-handed measures? I think I am warranted in saying there was not, and I hope such examples hereafter may be rare.

The whole appointing power is conferred upon the President and Senate jointly. Whenever the Executive shows a disposition to abuse the power vested in him by the constitution, by an unlimited exercise of those constructive powers, never intended to be conferred by the instrument, the Senate of the United States, who possess co-equal and co-ordinate power, ought immediately to check such disposition, and restore the instrument to its original intention. If the President is permitted, during the recess of the Senate, to go on, and remodel the Government, by turning out and substituting whomsoever he pleases, it at once reduces the Senate of the United States into a mere registering body, divested of all Executive influence or Executive control; and this, too, not only without positive grant, but in plain contradiction to the positive expressions of the constitution.

Again, I am borne out in my opinion, when I say that the power exercised by the President to remove from office, during the recess of the Senate, without cause, is arbitrary and unjust; I am borne out in that opinion by a sentiment that dropped from one of the gentlemen from Tennessee, in the debate on another subject. The gentleman said, (I took down his words,) "that all men who exercise office for party purposes, ought to be dismissed from office; but, for the exercise of the rights of suffrage, they ought not to be dismissed." I will now appeal to my colleague; he has had the best opportunity of knowing, and I am sure he will state nothing but facts. Did Mr. Clark, previous to the last Presidential election, exercise the influence which the office he held, that of Treasurer of the State of Pennsylvania, gave him, to party or political purposes? I feel confident my colleague will say he did not. That he expressed his opinion freely in favor of Mr. Adams, I have no doubt; but at the time of the election he did not vote on either side of the question. It is well known he then resided in this District, and was not entitled to a vote.

I have been somewhat surprised at what we have witnessed in this body, when the nominations made by the President have been brought up for confirmation, (I allude particularly to those of district attorneys.) A member

has not risen upon this floor, however pleased they may have been with the nominee in other respects, but what has admitted them to be inferior in point of capacity to those they have succeeded. And is this no abuse of power in the Executive, to remove good officers, and supply their places with others less qualified? Instead of improving the system of your Government, and the moral and intellectual condition of your citizens, as the President ought to endeavor to do, we find a letting down in every department. Is there no way to put an end to these abuses? There is. Let the Senate pass the resolution now before you, and, my word for it, the President will be more careful in making his selections for the future. There is no other subject I would notice. I would not recur to it, had not so much been said, at different times, by gentlemen in the opposition, about the peace societies that existed throughout the Union during the last war. We, at that period, had a peace society in Pennsylvania; which society did as much, wrote as much, and arrayed themselves as much in opposition to the war and the measures pursued by the then administration as any other similar society. And what do we now find to be the fact? Scarcely had half a year rolled round from the time of Clark's removal, until the President bestowed an office on the

very President of that peace society, the confirmation of which took place not more than ten days since, in this body. It may be asked, why was not this information disclosed at the time? To this I answer, that neither my colleague nor myself knew it to be the same man when the nomination was before us, although I had heard of his removal to the West. Yet it never occurred to me as being the same person, nor would I yet have known it, had I not received the information, a few days since, from a member of the other House. It is, however, but candor to state, that had I known the nominee to be the same person, I should have disclosed the peace society business with reluctance. His connexions in Pennsylvania, so far as I am acquainted with them, are highly respectable, and he himself possesses many estimable and good qualities. I have mentioned this circumstance as a set off to the attempts that have been made to make the world believe that the members of these peace societies are now arrayed in opposition to the administration, when the contrary is the case. I fear men are now more regarded for their devotion to those in power, than devotion to their country. I have nothing further to say, but to express a hope that the Senate will pass the resolution now under consideration.

## DEBATES IN THE HOUSE OF REPRESENTATIVES.

MONDAY, DEC. 7, 1829.

At 12 o'clock, precisely, the House was called to order by MATTHEW ST. CLAIR CLARKE, Esq. Clerk to the last Congress.

The roll of members having been called over by States, it appeared that there were present one hundred and ninety-four Representatives, and three Delegates from Territories.

A quorum of the House being present—

The House proceeded to ballot for a Speaker. Mr. CONDUCT, of New Jersey, Mr. RIPLEY, of Maine, and Mr. POLK, of Tennessee, being appointed Tellers, announced, after counting the ballots, that ANDREW STEVENSON had received one hundred and fifty-nine votes; which, being a majority of the whole number,

ANDREW STEVENSON, of Virginia, was declared to be duly elected Speaker of the House.

### THE SPEAKER'S ADDRESS.

Being conducted to the chair, the SPEAKER elect addressed the House in the following terms:

GENTLEMEN: I receive this renewed and distinguished proof of the continued confidence and approbation of my country, with feelings of deep sensibility and unaffected gratitude; and since it is your pleasure that I should again preside over your deliberations, I accept the trust, with an earnest hope that the choice of the House may not prove injurious to its interests, or detrimental to its honor.

Of the importance and responsibility of this high office, it is unnecessary to speak. It has been justly regarded, both in relation to its elevation, and the nature and extent of its duties, as one of the most delicate and responsible trusts under the Government. Indeed, the great increase of legislative business, both of a public and private nature, (occupying, as it does, so large a portion of the year,) the number of this House, and the habit of animated, protracted, and frequent debate, have, of late, tended very much to render the duties of the Chair peculiarly arduous

to the individual who fills it, and of increased importance to the public.

How far it will be in my power to meet the expectations of the House, by an able and enlightened discharge of the duties of this high station, it is not for me to say. Distrustful of my own abilities, I can promise but little else than zeal and fidelity. I shall shrink from the performance of no duty, however painful; shun no responsibility, however severe; my time and talents shall be devoted to your service; and, in pursuing the manly and steady course which duty directs, I shall, at least, be cheered and sustained by a consciousness of the purposes, and a confidence in the principles, which I shall bring with me into this arduous service. On your part, gentlemen, I shall expect and need your kind and cordial co-operation, and that general confidence, without which all the efforts of authority would be nugatory; and I entreat you to afford me that aid and support in maintaining the established rules and orders of the House, so necessary to the character and dignity of its deliberations, and the despatch of the business of the nation.

In assembling again to consider the condition of our beloved country, I seize the occasion to offer you my cordial congratulations upon its prosperity and happiness, and the still more exalted destinies that await it. Whilst our relations with foreign Powers are distinguished by alliances and good will, which serve but to render our friendship more valuable to each, and more courted by all, our situation at home, under the influence of virtuous and patriotic councils, is peaceful, united, and happy. How long these blessings are to be enjoyed by us, and secured to our children, must depend upon the virtue and intelligence of the people; the preservation of our happy Union; and the virtuous, liberal, and enlightened administration of our free institutions.

That our confederated republic can only exist by the ties of common interest and brotherly attachment, by mutual forbearance and moderation, (collectively and indivi-

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dually,) and by cherishing a devotion to liberty and union, must be apparent to every candid mind; and, as our fathers united their counsels and their arms, poured out their blood and treasure, in support of their common rights, and by the exertions of all succeeded in defending the liberties of each, so must we, if we intend to continue a free, united, and happy people, profit by their counsels, and emulate their illustrious example.

How much will depend upon the conduct and deliberations of the national legislature, and especially of this House, it is not needful that I should admonish you. I need not, I am sure, remind you, gentlemen, that we are here the guardians and Representatives of our entire country, and not the advocates of local and partial interests: that national legislation, to be permanently useful, must be just, liberal, enlightened, and impartial: that ours is the high duty of protecting all, and not a part—of maintaining inviolably the public faith—of elevating the public credit and resources of the nation—of expending the public treasure with the same care and economy that we would our own—of limiting ourselves within the pale of our constitutional powers, and regulating our measures by the great principles contained in that sacred charter, and cherishing in our hearts the sentiment that the union of the States cannot be too highly valued, or too watchfully cherished.

These are some of the great landmarks which suggest themselves to my mind, as proper to guide us in our legislative career. By these means, gentlemen, we shall not only render ourselves worthy of the high trust confided to us, but we shall endeavor to our people the principles of their constitution and free institutions, and promote a sentiment of union and action, auspicious to the safety, glory, and happiness, of our beloved and common country.

The oath of office was then administered to the Speaker by Mr. NEWTON, of Virginia, (the father of the House,) and by the SPEAKER to the members, by States in succession.

This ceremony being ended—

Mr. RAMSAY, of Pennsylvania, submitted the following resolution:

*Resolved*, That Matthew St. Clair Clarke, Clerk to the late House of Representatives, be appointed Clerk to this House.

Mr. JOHNSON, of Kentucky, said that he was informed that there would possibly be several other individuals who would be candidates for the office of clerk. He therefore proposed to postpone the election to twelve o'clock on Thursday, to enable members to make up a judgment upon the information which they might in the mean time receive of the characters of the various candidates. This officer, he said, was the chief controlling executive officer of this body; his situation was one highly confidential and responsible. It was due to the members, and to the candidates, that a better opportunity should be afforded for selection from amongst the latter, than he at least had enjoyed. He had himself intended to move that on Thursday next, at twelve o'clock, the House would proceed to the election of a clerk; and with this view he moved to postpone until Thursday next the consideration of the resolution now under consideration.

Mr. RAMSAY asked what was the House in the mean time to do for a clerk? Could the House proceed in its business without that officer? In offering the resolution, [Mr. R. said] he had only followed the example, set by former Congresses, of electing the clerk immediately after the choice of Speaker. And he asked that the question of postponement should be taken by yeas and nays.

The yeas and nays were accordingly ordered upon the question.

In reply to a question put to the Chair, whether the late clerk would be considered in service until an election

of clerk took place, the Speaker answered that he presumed that he would.

Mr. CAMBRELENG, of New York, suggested the postponement of the election to to-morrow instead of Thursday.

Mr. JOHNSON proposed Wednesday, as the medium between to-morrow and Thursday. The object of his motion for postponement, and the only object of it, was to obtain time to make up his mind upon information which he might receive as to the relative merits of the several candidates for this office. To-morrow the message of the President might be expected to be received, and the other officers of the House also were to be elected; so that the election of clerk could not well be made until Wednesday, to which day, therefore, he now moved to postpone the consideration of Mr. RAMSAY'S motion.

Mr. BURGESS, of Rhode Island, said that if the old clerk could continue to act as clerk for several days, without an election, why not for the whole session? When was his service to end?

The SPEAKER said that that was a matter for the discretion of the House.

Mr. BURGESS said that the mere necessity of the case made it proper that the clerk to the last House should act in organizing the present. But, when the House had gone so far as to choose a Speaker, it appeared to him that the necessity was over, and that the House would be without a clerk, unless one should be immediately chosen. Without a clerk thus chosen, he did not see how the House was to make any record of its transactions.

Mr. ALSTON, of North Carolina, thought that no difficulty could arise from a postponement of the consideration of the resolution. He thought the resolution improper in itself, and, when the gentleman from Kentucky rose, he was about to have risen himself, and propose that the House should proceed to an election by ballot. He preferred that the whole question should lie upon the table for the present, and that, whenever the House should proceed to the election of a clerk, it should be by ballot. As to the old clerk continuing to act, [Mr. A. said] it had been the universal practice that the old clerk should continue to act until another should be appointed.

Mr. RAMSAY expressed his willingness, if it would meet the views of his friend, so to modify his resolution, as to propose that the House should now go into an election of a clerk.

Mr. BUCHANAN, of Pennsylvania, said he trusted that such a course would be pursued as that the House should at once go into an election by ballot. And perhaps his colleague was wrong in now proposing a different course. It had been the practice, Mr. B. knew, where no opposition to the old clerk was intended, to re-appoint him by resolution. The gentleman from Kentucky, however, had stated that he believed that there were other candidates for the office. Mr. B. said he did not know the fact; but, if there were, the proper course was, as usual in such case, to proceed to ballot for a clerk. He should, himself, vote to-day the resolution on the table, and then to proceed to an election by ballot.

Mr. RAMSAY then withdrew his resolution in favor of Mr. Clarke, and moved, in lieu thereof, that the House do now proceed to the election of a clerk.

Mr. JOHNSON, of Kentucky, moved to amend this last motion, so as to go into an election on Wednesday next at twelve o'clock, instead of this day.

On this question the House divided—ayes 54, the yeas being a large majority.

The motion to proceed directly to a balloting was then agreed to. Mr. RAMSAY then nominated Mr. Clarke, and Mr. JOHNSON nominated Virgil Maxcy, of Maryland.

The votes having been collected and counted by Mr. RAMSAY, Mr. JOHNSON, and Mr. BUCHANAN, it appeared that the number of votes given in for Mr. Clarke

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President's Message.

[Dec. 8, 9, 10, 1829.]

was one hundred and thirty-five; which, being a majority of the whole number, **MATTHEW ST. CLAIR CLARKE** was elected Clerk of the House of Representatives, and was forthwith sworn into office.

On motion of Mr. **MILLER**, of Pennsylvania, it was resolved, *nem. con.* that **JOHN OSWALD DUNN** be appointed Sergeant-at-Arms to the House.

On motion of Mr. **MILLER**, the House then proceeded to the election of a doorkeeper. The late venerable (though now infirm) doorkeeper, **Capt. BENJAMIN BURCH**, was nominated, in a very appropriate manner, by Mr. **TUCKER**, of South Carolina. Several other persons were nominated by different members. The ballots having been counted by tellers named by the Speaker, Mr. **TUCKER** reported that Mr. Burch had received one hundred and thirty-six votes, (a large majority of the whole number,) and was consequently chosen.

On motion, it was then resolved, *nem. con.* that **OVERTON CARR** be appointed Assistant Doorkeeper to this House.

The usual message having been interchanged with the Senate, it was resolved that a committee be appointed on the part of this House, to join such committee as have been, or may be, appointed on the part of the Senate, to wait upon the President of the United States, and inform him that quorums of the two Houses have assembled, and that Congress are ready to receive any communications he may be pleased to make.

A motion having been made for the usual order for furnishing members with newspapers--

Mr. **WICKLIFFE**, of Kentucky, objected to it. He said, that the subject of furnishing, at the public expense, papers for the private convenience of the members of this House, was referred to a committee last session, and that that committee had, in its report, recommended a discontinuance of the practice. His mind, he said, had undergone no change on this subject. He was of opinion that the application of the public means to this object was not justifiable. But, in order to test the question, he moved to lay the resolution on the table.

This motion was negative; and the resolution for continuing the usage was agreed to without a division.

TUESDAY, DEC. 8, 1829.

Mr. **DRAYTON**, of the committee appointed on the part of this House, to join the committee appointed on the part of the Senate, to wait on the President of the United States, &c. reported that the committee had waited on the President accordingly, and that the President answered that he would make a communication to Congress this day.

The message of the President of the United States was soon after received, by the hands of **A. J. DONELSON**, Esq. his Private Secretary, and read. [See Appendix.]

Whereupon, ten thousand copies thereof were ordered to be printed for the use of this House.

WEDNESDAY, DEC. 9, 1829.

Mr. **CONDICT**, of New Jersey, observing that it seemed proper, before proceeding to distribute among committees the several subjects of the President's message, that the standing committees of the House should be appointed, therefore moved the following order:

"Ordered, That the standing committees be now appointed, pursuant to the rules and orders of the House."

Mr. **BUCHANAN** said that there was, he believed, an unusual number of new members in the present House of Representatives; and it was desirable, certainly, that the Speaker, who was to appoint these committees, should have time and opportunity for inquiry before he appointed them. It was not probable, he said, that any legislative business would be done in the course of the present week, and for that reason he moved that the motion lie upon the

table, to give the Speaker a better opportunity of becoming acquainted with the new members, &c.

Mr. **CAMBRELENG** suggested to Mr. **CONDICT** the expediency of withdrawing his motion for the present, and renewing it to-morrow or another day.

Mr. **CONDICT** said, the practice heretofore had been to adopt a similar order before the message was considered; and, as the committees were not announced until the reading of the Journal on the day following the adoption of the order, a whole day was thus given to the Speaker for the selection of the committees.

The **SPEAKER** said, that it had been the practice, at the opening of a new Congress, to allow the Speaker three or four days for the selection of the committees.

Mr. **BUCHANAN** said, he should not have moved to postpone the motion for now appointing them, if he had not known that to be the fact.

Mr. **MALLARY** said, that, should the order be now made, it would, he presumed, not necessarily follow that the committees should be announced to-morrow.

The **SPEAKER** said, that, if the order was now made, the committees must be announced to-morrow.

Mr. **BUCHANAN** said, if the pending motion was laid upon the table until to-morrow, and should then be adopted, the House might then, following precedent, adjourn over to Monday, and thus afford the Speaker the requisite time of three or four days for a selection of the committees.

Mr. **CONDICT** said he had no objection to this course.

The motion of Mr. **CONDICT** was then ordered to lie upon the table.

THURSDAY, DEC. 10, 1829.

Mr. **CONDICT** called up his motion, made yesterday, for the appointment of the standing committees; which was agreed to by the House.

#### PRESIDENT'S MESSAGE.

The House then went into Committee of the Whole on the state of the Union; when the several branches of the President's message were referred to the different standing and select committees.

The several resolutions for the reference of the message were offered by Mr. **POLK**. On one of them, the fourth, which was in the following words:

"Resolved, That so much of the said message as relates to the modification of the existing tariff of duties on goods imported into the United States, be referred to the Committee on Manufactures."

A debate occurred.

Mr. **J. W. TAYLOR** said, he considered the general arrangement of the business as judicious; and the gentleman from Tennessee had so prepared his resolutions, as to present the various points in the most clear and perspicuous manner. He wished to have, however, some limitations in this resolution which refers to the modification of the tariff. If the gentleman from Tennessee would refer to the President's message, he would find that it contains suggestions looking to proposed modifications of the tariff. One modification is to be found in the ninth page, and begins thus: "The general rule to be applied in graduating the duties upon articles of foreign growth or manufacture, is that which will place our own on a fair competition with those of other countries," &c. presenting the great principle in regard to the protection of American manufactures. The other class, referred to in the 10th page, commences thus: "Looking forward to the period, not far distant, when a sinking fund will no longer be required," and going on to state, that, in reference to tea and coffee, a reduction of the existing duties "will be felt as a common benefit."

His object was to move an amendment to this resolution, which would have the effect of referring that part

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President's Message.

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which relates to such modification as looks to the protection of our own manufactures, to the Committee on Manufactures, while it refers so much as pertains to the modification contemplated by the reduction of the duties on tea and coffee, which is exclusively a revenue arrangement, to the Committee of Ways and Means. Only so far as the duties are regulated with a view to the protection of our manufactures is it properly an object of reference to the Committee on Manufactures. He would therefore move to amend the resolution by inserting, after the words "United States," the words "with a view to the protection of manufactures."

The question being on the amendment,

Mr. POLK said, that, as the resolution had been adopted in committee, it was no longer under his control. It was suggested, however, by a gentleman near him, that the amendment, with a modification, might be proper. The modification which he suggested was, to add the words "except that part which refers to the reduction of the duties on tea and coffee, which is referred to the Committee of Ways and Means."

Mr. TAYLOR reminded the gentleman from Tennessee that he had already referred every thing relating to the revenue to the Committee of Ways and Means, and that reference embraced the object of his present motion. This is a subject of revenue, and it is by no means necessary to go into the particular specifications as to the duties on tea, coffee, &c. That matter is of necessity before the committee, unless it shall be particularly excluded.

Mr. POLK stated that his only object was to render the language of the resolution more specific than it was before he offered this amendment. His object was to give to the Committee of Ways and Means all the duties which legitimately belong to it, and to refer to it all those topics in the message which are within its sphere. It was suggested to him that there might arise a conflict between the Committee of Ways and Means and the Committee on Manufactures, as to which was in possession of the specific recommendation contained in the message; and, in consequence of that suggestion, he had proposed his modification. It could do no harm; if it were productive of no other good, it would indicate the will of the House as to the committee to which the subject should be referred. The Committee of Ways and Means has all the subjects relating to the revenue before it; and the modification he had suggested would have the effect of making this reference more clear.

Mr. EVERETT suggested that either the original resolution of the gentleman from Tennessee, or the amendment of the gentleman from New York, might produce the effect; but the amendment now suggested by the gentleman from Tennessee, following the amendment of the gentleman from New York, would lead to the inference that the duties on tea and coffee were laid "with a view to the protection of manufactures."

Mr. POLK then withdrew his proposition to amend.

Mr. McDUFFIE then stated that he disliked the phraseology of the amendment. It seemed to be framed under the impression that the modifications recommended by the message looked exclusively to the benefit of the manufacturers. He hoped that this impression was not the correct one.

Mr. MARTIN, of South Carolina, suggested to the gentleman from New York the propriety of withdrawing his proposition, and accepting an amendment to the following effect: "And that so much as relates to a reduction of duties on those articles of import which cannot come in competition with our manufactures, be referred to the Committee of Ways and Means."

Mr. TAYLOR said he should be happy to give this gratification to the gentleman if he could. But it must be evident to all that the message does recommend the protection of manufactures. Whether the recommendation is judicious or not, is not now the question to be dis-

cussed. What he proposed was, to give a respectful reference to the appropriate committees of all the matters which the Chief Magistrate had submitted to the consideration of the House. It was not now for him to oppose, to vindicate, or approve of those matters. That was a subject for discussion hereafter, and "sufficient for the day is the evil thereof." Let that matter, therefore, rest. He wished the subject to go to that committee, where it would receive the fullest consideration. When he was up before, he read a paragraph from the message, which, after stating that the general rule was to "place our own [manufactures] in fair competition with those of other countries," went on to state that "the inducements to advance even a step beyond this point are controlling in regard to those articles which are of primary necessity in time of war." The President had thus expressed his opinion on this point in explicit terms. If there be a single article manufactured in the United States, which is of primary importance in time of war, the President, in regard to that article, recommends a protecting duty. Here, then, appears the propriety of considering what class of articles is here alluded to, and what are embraced in the principle, and these are fit subjects of consideration for the Committee on Manufactures. But, in regard to the whole subject, it appears that if we take what is said in the last paragraph in the ninth page, we shall find there is a distinct recommendation to carry the principle further. That paragraph reads thus: "The agricultural interest of our country is so essentially connected with every other, and so superior in importance to them all, that it is scarcely necessary to invite to it your particular attention. It is principally as manufactures and commerce tend to increase the value of agricultural productions, and to extend their application to the wants and comforts of society, that they deserve the fostering care of the Government."

How are these to receive the fostering care of the Government, unless by the protecting duties referred to in the amendment he had offered, with a view to the consideration of the committee? It was far from his intention at this time to invite discussion. He had supposed that, as there were two classes of modifications, the one relating to manufactures, and the other to revenue, it was proper, as the resolution of the gentleman from Tennessee would carry the whole subject to the Committee on Manufactures, to limit the reference to those points which the gentleman, doubtless, intended to refer to that committee. To carry that into execution, and to divide the matter according to the arrangement in the message, he had made his present motion.

Mr. DAVIS, of South Carolina, suggested an alteration in the phraseology, so as to make it read, that so much as relates to manufactures be referred to the Committee on Manufactures; and that so much as relates to revenue be referred to the Committee of Ways and Means.

Mr. MARTIN said, that his object was not to provoke, but to allay discussion, when he offered his amendment. It appeared, however, that the only difference between the gentleman from New York and the gentleman from Tennessee, and himself, was about words. The question was simply, how much should be referred to these distinct committees? The only fear of the gentleman from New York seemed to be, that the Committee on Manufactures might decide on matters which did not come properly within its sphere. He thought the committee might be fairly left to determine its own sphere of duties. It appeared to him to be plain and intelligible. The idea is that the tariff, so far as it concerns our manufactures, is a subject appropriate for the action of the Committee on Manufactures; and that the subject, as it relates to revenue, is for the action of another committee. To meet this view, he had submitted his proposition to the House; and he would take occasion to move it, should the amendment of the gentleman from New York be rejected; so that not



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Refuse Lands in Tennessee.—Western Armory.

Dec. 14, 15, 1829.

only tea and coffee, concerning which the gentleman from New York seemed to feel the deepest anxiety, but all articles on which high duties are laid for the purpose of revenue, should be referred to the Committee of Ways and Means. That was his object.

Mr. POLK agreed that this discussion, which had so unexpectedly arisen, was merely a discussion about words. He could assure the House that his only object was to refer that part of the message which relates to manufactures to the appropriate committee. It was now the time to determine what the duties of the Committee of Ways and Means are. Whatever concerns the revenue of the Union belongs appropriately to that committee. He had thought, when he made his proposition, that tea and coffee required a separate specification. In this he had been corrected by the Chair, who regarded these as subjects to be considered within the cognizance of that committee as a matter of course. If so, the amendment offered by the gentleman from South Carolina would be as unnecessary as that which he himself had withdrawn, which was similar in its import. He had supposed that the resolution embraced all which the gentleman from New York should require. He thought it premature to raise discussions merely as to forms of words, the effect of which might be to give an interpretation to the message which might not be warranted, on partial views, and without that deliberate examination which ought to be taken.

Mr. II. R. STORRS asked if it would be in order to move to strike out the words "modification of the tariff," and substitute "domestic manufactures."

The SPEAKER decided that the motion would not be in order, until the question should be determined on the amendment of the gentleman from New York.

Mr. STORRS said, that, on reading the message, it did not occur to him that that part which relates to tea and coffee had any reference to the question of manufactures. The question intended to be submitted in the message is, whether the duties on tea and coffee may not be reduced when the state of the revenue will no longer require these duties. He thought this had no reference whatever to the subject of manufactures. His object was to strike out the words "the modification of the tariff," and to insert, in lieu thereof, the words "domestic manufactures." This would be plain language, not to be misunderstood.

The motion of Mr. TAYLOR to amend the resolution was then decided in the negative.

Mr. STORRS then made his motion to strike out the words "the modification of the tariff," and to insert the words "domestic manufactures."

Mr. McDUFFIE said it was originally his object to avoid the inference that the President intended either to recommend any increase, or only a diminution of duties. He thought the amendment seemed to imply that there was nothing in the message on the subject of the modification of the tariff, which did not look to the increase of duties. He thought it might as reasonably be presumed to look to the reduction of the duties. The language of the message is equally applicable to reduction as to increase of duties. He preferred the amendment of the gentleman from New York, which had been just negatived. His object was to convey the idea that the modification of all duties, whether to increase or diminish them, should be referred to the Committee on Manufactures.

The question was then taken on the amendment of Mr. STORRS, and decided in the affirmative.

The resolution, as thus amended, was then agreed to; and The House adjourned to Monday.

MONDAY, DECEMBER 14, 1829.

The different Standing and Select Committees, which had been appointed by the SPEAKER during the recess, were this day announced. No other business was transacted.

TUESDAY, DECEMBER 15, 1829.

# REFUSE LANDS IN TENNESSEE.

Mr. CROCKETT moved the following resolution, viz. *Resolved*, That a select committee be appointed, with instructions to inquire as to the most equitable and advantageous mode of disposing of the refuse lands lying south and west of the Congressional reservation line in the State of Tennessee.

This resolution being read,

Mr. POLK, of Tennessee, moved to amend the resolution, by striking out so much as proposes a select committee, and moving to refer the subject of the resolution to the Committee on the Public Lands.

Mr. CROCKETT said, that he wished this subject to take the same course now as it had done heretofore. The resolution referred [he said] to a few scraps of land lying along in his district, which it was high time should be disposed of. The subject had been already several times before Congress, and had always heretofore been referred to a select committee; and all that he asked was, that it should take the same course now as it had done heretofore.

Mr. POLK said, that a part of this subject was always before the Committee on the Public Lands in the shape of a memorial from the Legislature of Tennessee. He thought, therefore, that a reference of this resolution to that committee was expedient, that all parts of the subject should be placed before the same committee.

Mr. STERIGERE, of Pennsylvania, said, that, at the late session of Congress, a proposition had been made for distributing the vacant public lands, or the proceeds of them, among the several States. This proposition was so connected with the subject of this resolution, that, as he expected it would be renewed at this session, he moved that the pending resolution lie upon the table for the present.

The motion to lay the resolution on the table was negatived.

Mr. CROCKETT made some further remarks, in which he was understood to say that the Legislature of Tennessee was disposed to withdraw its former memorial. But, however that might be, he said his colleague [Mr. POLK] had heretofore had this matter in his charge as head of a select committee; and, [said Mr. C.] as I live among the people who are interested in these lands, I want now to have something to do myself with the disposition of the subject.

The motion of Mr. POLK to amend Mr. CROCKETT's resolve was then negatived, 92 to 65; and Mr. C.'s resolution was agreed to.

# WESTERN ARMORY.

Mr. DESHA moved the following resolution, viz.

*Resolved*, That the Committee on Military Affairs be instructed to inquire into the expediency of establishing an armory at some suitable point upon the Western waters.

Mr. CHILTON, of Kentucky, proposed to amend the resolution, by adding to it "or at the falls of ———, in the State of Kentucky," and added some observations to show the strong claims of this location for the proposed armory.

Mr. VANCE, of Ohio, thought that, considering the variety of conflicting claims for this object, the resolution had better be general in its terms, and refer the whole subject of the establishment of an armory on the Western waters to the same committee; that all the sites in the Western country might be considered together.

The resolution was then modified, with the consent of the mover, so as to propose a general inquiry into the expediency of establishing an armory on the waters of the Western States.

Mr. CARSON, of North Carolina, remarking that no part of the country possessed more valuable water power than the western part of the State of North Carolina, proposed

Dec. 16, 1829.]

Annual Treasury Report.—Committee on Education.

[H. of R.]

to amend the resolution by adding "or on the Western waters of the State of North Carolina."

Mr. JOHNSON, of Kentucky, said, he regretted this motion on the part of his friend from North Carolina, as calculated to produce a collision between the West and the South as to the location of an armory. He was perfectly willing to vote for an independent proposition to inquire into the expediency of the erection of an armory in the South, but he was unwilling to connect it with a proposition for an armory in the West. For the last fifteen years it had been in vain attempted to procure the establishment of a National Armory on the Western waters, notwithstanding the unanimous opinion of the West, concurred in by the executive officers of the Government, that a Western armory was necessary, not to gratify individuals interested in its location, but for the defence of the country, and to prevent prodigal expenditure of the public moneys in transportation of arms, &c. We have now National Armories at Springfield, in Massachusetts, and at Harper's ferry, in Virginia; and a report had been made to Congress, at his own instance, pointing out the various sites which the United States' engineers had thought would be advantageous for an armory in the Western country. But, although his immediate constituents were deeply interested in the establishment of an armory at the Horse Shoe bend, and others equally interested in other sites, he despaired ever seeing in his day an armory established in the West at all, unless upon the broad principle of giving the Executive of the United States the power of selecting a site, as had been done heretofore in the case of the armory at Springfield, and that at Harper's ferry. Having no objection to inquiring into the expediency of establishing an armory in the West, as well as in the South, but being opposed to confounding the two propositions, Mr. J. moved to strike out of Mr. CARSON's amendment the conjunction *or*, and insert *and*, which would have the effect to separate the two propositions, instead of connecting them.

Mr. CARSON said, he was entirely disposed to gratify his friend from Kentucky; but, as his motion had been made on the impulse of the moment, and could be readily modified to meet his friend's views, he moved, to give opportunity for that purpose, that the resolution should be ordered to lie upon the table for the present.

The motion was agreed to.

#### ANNUAL TREASURY REPORT.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, transmitting his annual report upon the state of the finances.

The report having been announced from the Chair,

Mr. BUCHANAN moved that ten thousand copies of the report, and the documents accompanying it, be printed.

Mr. WHITTLESEY proposed six thousand copies, being the largest number ever printed of a public document before this session.

Mr. BUCHANAN said that the Annual Report from the Treasury Department was always looked to with great interest by the people; that it was too voluminous to find admission at large into the newspapers; that its general circulation was very desirable, &c. Ten thousand copies had been ordered to be printed of the documents accompanying the message of the President; and this document, he presumed, would be considered of at least equal importance.

Mr. WHITTLESEY said, he admitted that this document was one of importance, and sought for with avidity. He thought, however, that the largest number of copies ever before printed, was sufficiently large now; especially as the material and substantial part of the report would find its way into every newspaper in the country. He was disposed, he said, to observe, as far as was consistent with a prudent regard to the public interest, the system of eco-

nomy recommended in the report of the Committee of Retrenchment at the session before the last; and he could not conceal his surprise that gentlemen who were, at the last session, so anxious to reduce the amount of expenditure, especially on objects of this nature, to which they seemed to have directed much of their attention, should now show such a disposition to swell it instead of reducing it.

Mr. BUCHANAN said, he was happy to find that the gentleman from Ohio was now so decided an advocate for retrenchment; not knowing, however, that he had ever found him otherwise. He did not know but, in pursuit of this object, he and the gentleman from Ohio would be found going hand in hand. But this [Mr. B. said] was not the point at which they ought to begin to retrench. Retrenchment ought not to begin with communication of information of this sort to the people, who are more interested in knowing exactly what has been the management of their financial concerns, than, perhaps, in any other subject. If we are to begin the work, [said Mr. B.] let it be with something else, more in accordance with the proper principles of retrenchment than this.

The question was then taken on printing the largest number proposed, ten thousand copies, and decided in the affirmative.

WEDNESDAY, DECEMBER 16, 1829.

The resolution came up which was yesterday moved by Mr. RICHARDSON, of Massachusetts, for the addition to the standing committees of a

#### COMMITTEE ON EDUCATION.

The resolution having been read,

Mr. RICHARDSON said that his proposition was a simple one, proposing only that a standing Committee on Education should be provided, by the rules and orders of the House. Unless it was made necessary, by objections to the resolution, he should not occupy any portion of the time of the House upon it, but submit it for decision without remark.

Mr. HALL said, in due deference to the gentleman who presented this resolution, the subject was one which he conceived did not properly come within the control of Congress. I shall, [said he,] therefore, feel myself bound to object to the resolution. The subject of education, evidently, so far as legislation can be carried to it, properly belongs to the State authorities. If we go on assuming authority over subjects entirely foreign to our sphere of authority, where are we to end? We already have much extrinsic matter. As an instance, I will mention the subject of agriculture; over which we have, I believe, a standing committee. This, I have always been at a loss to reconcile to my idea of the just power of Congress. If we go on engulfing every subject to which legislation can be carried, to what result must we come? Shall we not effectually assume all the power of the State authorities? This must necessarily be the result. Sir, there is a doctrine advanced, and properly advanced, and sustained by the Supreme Court of the United States, a doctrine properly deduced from one of the plainest provisions of the constitution—it is, that all the powers of this Government, though limited, are plenary, within their proper sphere. I admit the soundness of this doctrine; but if so, it at once puts this subject to rest. I presume neither the gentleman himself, nor any other, will pretend that the States have not the right to legislate upon this subject. If this be so, it is decisive that this Government cannot, because its power over the subject, being plenary, is necessarily exclusive, and therefore not to be participated. It is not my object to detain the House; but for the reasons given, I object to the resolution.

Mr. DAVIS, of South Carolina, expressed a desire to know what were the particular views which had induced

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Committee on Education.

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the gentleman from Massachusetts to bring forward this proposition.

Mr. STORRS, of New York, made a few observations, the import of which was, that he was perfectly willing, when any subject requiring it should be before the House, to give it direction to a proper committee. He was not aware, however, of any necessity for a standing committee on the subject. The only way in which it had heretofore been directly presented to the consideration of the House, was in the shape of propositions connected with grants of public lands, which had been, as matter of course, referred to the Committee on the Public Lands. Believing the consideration of such propositions to be safely lodged in the hands of that committee, he had no disposition to transfer it to another select committee. As at present advised, therefore, he should vote against the resolution.

Mr. RICHARDSON said, that the importance of education to the people of the United States, induced him to advocate the adoption of the resolution now before the House.

The gentleman from New York [Mr. H. R. STORRS] has said that he knows not what a standing Committee on Education can have to act upon. Mr. R. said, he would reply to the gentleman, that such a committee would have the whole subject to act upon—a long neglected subject, and of the highest importance to the welfare of this Union.

This subject had been most earnestly and repeatedly recommended by the great patrons of liberty—the fathers of American independence—the founders of this republic. Permit me [said Mr. R.] to call the attention of the House to the opinion contained in the message of the first President of the United States to Congress, in 1790:

"Nor am I less persuaded that you will agree with me in opinion that there is nothing which can better deserve your patronage than the promotion of science and literature. Knowledge is, in every country, the surest basis of public happiness. In one, in which the measures of Government receive their impressions so immediately from the sense of the community as in ours, it is proportionably essential. To the security of a free constitution it contributes in various ways. By convincing those who are entrusted with the public administration, that every valuable end of government is best answered by the enlightened confidence of the people, and by teaching the people themselves to know and to value their own rights; to discern and provide against invasions of them; to distinguish between oppression and the necessary exercise of lawful authority—between burdens proceeding from a disregard to their convenience, and those resulting from the inevitable exigencies of society; to discriminate the spirit of liberty from that of licentiousness—cherishing the first—avoiding the last—and uniting a speedy, but temperate vigilance against encroachments, with an inviolable respect to the laws. Whether this desirable object will be best promoted by affording aids to seminaries of learning already established, by the institution of a National University, or by any other expedients, will be well worthy of a place in the deliberations of the Legislature."

—Washington's Message to Congress.

Mr. Speaker, this is not a solitary recommendation of this subject to the attention of Congress. In similar language, it has been repeatedly urged upon Congress by Washington, Jefferson, Madison, and others.

If it be true, as the gentleman from New York says, that a committee on education would have nothing to act upon, the fact is enough to en crimson the cheek of every friend to his country with the blush of deep mortification. It is high time that there were a committee to make this a subject of attention—to devise and mature measures to promote an object of vital importance to this republic.

The gentleman from North Carolina [Mr. HALL] has stated that he has constitutional objections to the proposed measure. Is it possible that the constitution prohibits the power to raise a committee on education, whilst there are

committees on agriculture, manufactures, Indian affairs and various interests, never named in the constitution? What is the language of the constitution? "We, the people of the United States, in order [among other things] to promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America." The eighth section, which enumerates the powers of Congress, declares expressly that "the Congress shall have power to provide for the general welfare of the United States;" and "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution." Is it possible to doubt that Congress is vested by the constitution with power to pass any laws, or adopt any measures, not prohibited by it, which are essential "to promote the general welfare?" All unite in bearing testimony that the general diffusion of knowledge in the United States is essential "to the general welfare, and to secure the blessings of liberty." Singular, indeed, would it be, if the framers of the constitution had bound their own hands, and the hands of their posterity, under articles and sections to exclude the great law of self-preservation from the system. I cannot impute to them, nor to the system, a folly so stupendous.

It is demanded, if measures for the promotion of education were deemed so important, why have they not been adopted? My answer is, that a favorable moment for the purpose has not before occurred. Soon after the immortal Washington recommended this subject to the attention of Congress, the civilized world was wrapt in a flame of war and revolution. Our revenue was reduced or exhausted in measures for self-defence. This country suffered from many causes of embarrassment.

When prosperity began again to dawn upon the republic, the illustrious Jefferson recommended to Congress the same subject. But soon again embarrassments and war dried up and exhausted the resources of the country. To the discharge of the public debt the revenue has been applied, until the moment has nearly arrived when it will have been wholly cancelled. At the same time the revenue is gradually increasing, so that a large surplus will remain in the national treasury. To what purpose more valuable to the United States, or more honorable to this Government, can that surplus be applied, than to the purpose of education? It may well become the guardians of the public welfare to consider, that if this surplus of revenue should not be applied in a manner to satisfy the people that it is beneficial to the general welfare, they may indignantly send up a power here that shall cause the revenue to be abolished; an event which all would have cause to deplore. Let the revenue be abolished, and the Union would be prostrate at the feet of her enemies. No, sir, rather let measures be adopted to apply the surplus of revenue to the promotion of education. The present is a most favorable moment to devise a plan for this purpose. It is virtually recommended by the President, in his message just communicated, where we are informed that the amount required for the discharge of the public debt will be at the disposal of the Government for other important objects. For these general reasons, I am in favor of the resolution. Regretting to occupy the time of the House, I submit the question without further remarks.

Mr. ARCHER, of Virginia, said, that, in common, he had no doubt, with many members of the House, he should have a good deal to say on the subject of this resolution, if he could conceive (which he did not) that there were any danger of its adoption. He was persuaded that the honorable mover had not meditated fully the extent of the question which the resolution went to raise. It was one of the largest, and, in the most favorable aspect, contestable questions of power which had been ever presented in the operation of the Government. It was true, as the

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Honor to a deceased Member.—Distribution of Public Lands.

[H. of R.]

gentleman had suggested, that the subject had been brought to the attention of Congress heretofore, on more than one occasion, but in modes very different from that now proposed. It had been suggested in the messages of Chief Magistrates as a topic of the gravest deliberation, or there had been a formal assertion by resolution that the power resided in the Government, accompanied by propositions for a practical application of it. Mr. A. had supposed that these were times in which republican principles had attained ascendancy, and the revival of this doctrine would not be thought of in this House. If the gentleman did desire the revival, however, and thought he could find any considerable number to think with him, the mode of proceeding should be that to which he [Mr. A.] had just referred; by resolution affirming the power, to which the present resolution might be a sequel. It could not be expected that, by indirection on a mere proposition to raise a committee, a decision was to be had, to let in not only this jurisdiction, but the mass of connected constructions which were equally involved. Mr. A. professed himself entirely prepared now to enter into the discussion and disprove the power. He could not conceive that it could be necessary to do so, however; and in that view, he should content himself with moving that the resolution be laid on the table, with the purpose that it should not be taken up again.

The question on laying the resolution on the table was then taken by yeas and nays, and decided as follows: yeas, 156—nays, 52.

#### HONOR TO A DECEASED MEMBER.

Mr. BARRINGER, of North Carolina, rose for the purpose of performing the last and office due to friendship, in announcing to the House the death of his late esteemed colleague, the honorable GABRIEL HOLMES. He said he would have performed this duty at an earlier day, but for his own impaired health. Before tendering to the House a resolution which he had prepared in relation to the melancholy event which he had just announced, he might, he hoped, be excused for saying, that those to whom the late Governor Holmes was known, eulogy would be unnecessary, and to those to whom his deceased friend and colleague was unknown, he felt, in his present state of impaired health, an utter inability to do justice to the eminent virtues of the deceased. He should not, therefore, make the attempt. He had the pleasure of knowing him in all the relations of life; in the endearing domestic relations, in which he was unsurpassed for the gentler virtues of conjugal tenderness and affection, for parental kindness and indulgence; as the chief magistrate of his native State, in which he discharged the duties devolved upon him with a dignity becoming his own elevated character; and the confidence reposed in him by his own constituents; as a representative of the people in this House. How appropriately he performed his duties here, was too well known to require a recital from him.

Mr. B. said, his deceased friend and colleague had been an honored member of the nineteenth and twentieth Congresses, and member elect of the twenty-first Congress of this House. It had pleased Heaven to remove him, and it was due to him to say that his loss was most regretted by those who knew him best; and, as a testimonial of respect for the memory of the deceased, he asked of the kindness of the House the adoption of the resolution which he now offered.

Mr. B. then presented the following:

*Resolved*, That the members of the House of Representatives, from a sincere desire of showing every mark of respect due to the memory of the honorable GABRIEL HOLMES, late a member thereof, from the State of North Carolina, will go into mourning for one month, by the usual mode of wearing crape around the left arm.

The resolution was unanimously agreed to.

As a further mark of respect to the memory of the deceased, Mr. BARRINGER then moved that the House do now adjourn.

THURSDAY, DECEMBER 17, 1829.

#### DISTRIBUTION OF PUBLIC LANDS.

Mr. HUNT, of Vermont, submitted for consideration the following resolution:

*Resolved*, That the Committee on the Public Lands be instructed to inquire into the expediency of appropriating the nett annual proceeds of the sales of the public lands among the several States, for the purposes of education and internal improvement, in proportion to the representation of each in the House of Representatives.

The question of consideration of this resolve was demanded by Mr. STANBERRY, of Ohio, and decided in the affirmative.

Mr. STERIGERE, of Pennsylvania, then moved to amend the resolution by striking out, after the word "States," the words "for the purposes of education and internal improvement." He had no objection whatever to the principle of distributing the nett proceeds of the sales of public lands among the States, but he was opposed to the restriction upon the application of them proposed by the resolution.

Mr. HUNT said, that, by repeated special grants, donations of the public lands had been made to some of the States, and to particular institutions in others of the States, but in all cases for the purposes of education and internal improvement, and for none other. He wished, in the distribution of the avails of the residue of the public lands, to adhere to the same principle.

Mr. TEST, of Indiana, said, that he considered the principle involved in the resolution to be one of great importance, and one which this House ought not to be called to act upon without due consideration. He objected to the resolution, as well in its details as in its principle. It seemed to him to embrace, in effect, the proposition that the public lands should be divided among the States generally; to which he could never consent. He thought that time should be given to reflect upon the subject before it was further acted upon. With that view he moved to lay the resolution upon the table.

The motion to lay the resolution on the table was negatived, 108 votes to 71.

The question on Mr. STERIGERE'S motion to amend the resolve was then also decided in the negative, 102 votes to 72.

Mr. SEVIER, Delegate from Arkansas, moved to amend the resolve, by inserting, after the word "States," the words "and Territories;" and

This motion to amend was agreed to.

Mr. VANCE, of Ohio, asked how the resolve would read thus amended? How could the Territories become entitled to land, &c. "in proportion to the representation of each," &c.? The Territories [he said] have no representation on this floor. They would have no claim to land under this resolve, unless the House should further resolve that delegates are representatives.

Mr. MARTIN, of South Carolina, entered his protest against the number and variety of propositions brought before the House concerning the public lands, and proposing to dispose of them in various ways. It seemed as if the four quarters of the Union were striving with one another which should get the most out of these lands. The appetite for them appeared to be insatiable and uncontrollable. He was opposed to the whole of these propositions. This was not the time to express at large his views on this subject; but if there was any justice, truth, or reason, in the proposition now submitted to the House, the amendment which he was about to propose ought to have its weight with the House. Mr. M. said, he did not

conceal from the House that he meant to vote against the resolution in any shape; but if the resolution is entitled to pass at all, it should be with the amendment. The principle of the resolution is, that a distribution of the proceeds of sales of the public lands shall be made among the several States for certain purposes. If this be a right disposition of them, [said Mr. M.] it then follows that those who have had land heretofore should render an account of what they have already had. Let us see how the balance sheet stands. Let us see what proportion of the public lands has been given to the Atlantic States, from Maine to Georgia. Let us compare that proposition with what has been given to the States west of the Alleghany. If there be any propriety in the mode of disposing of the public lands at all, let us bring this question to the test; what proportion has been heretofore given to the States respectively, or to institutions within those States? He would not now pursue the inquiry in detail, but he said the amount which had been given to the States west of the Alleghany was incalculable; he should hardly be credited were he to attempt to state it. He concluded by moving to insert after the word "inquire," in the resolution, the words "into the amount and value of the public lands which have been given by Congress to any State, or to any public institution in said State."

Mr. VANCE, of Ohio, said, that he was very much of opinion that, in the views which he had taken of it, the gentleman from South Carolina had looked to but one side of this question. The people of the Western States had certainly received from the United States grants of land for the purpose of promoting education; or, rather, the Government had said to them, if you will buy thirty-five sections of the public land, we will give you one section for the purpose of promoting education. And the gentleman from South Carolina, if he had gone to the Western country, as the settlers of that country did, and waded through fevers and fogs to clear it, and paid as much money as they did for their lands, would have been entitled to the same benefit as they from this sort of donation. Sir, [said Mr. V.] I am as willing to meet this question at one time as another: I say, that we of the West have had no donations of public land. Every body that got lands in that country paid for them; and the people of that country know how they have been fleeced of their last dollar for that purpose. It was well known [he said] to the people of that country how they had earned their school lands. They had paid for them a sufficiently valuable consideration. He was not prepared, [he said,] any more than the gentleman from South Carolina, to go into this discussion; but at the threshold he was willing to meet the doctrine of the gentleman concerning these lands. Any one who had been raised in the West, or had purchased lands there, had their feelings on this subject; and he, for one, knew how to sympathize with them from his own experience.

Mr. MALLARY, of Vermont, said, that it was true that the subject of inquiry proposed by this resolution was of great importance; but the resolution proposed only to invite to the attention of a committee of the House, and not to settle any principle. The subject of a disposition of the public lands, it is well known, is agitated in every part of the Union. Various views are entertained of it. We know that, in many parts of the country, the people believe that the avails of the public lands, after the national debt is paid, ought to be divided among the several States. Whether this course should be pursued, or not, was not the question before the House, but whether the subject itself was of sufficient importance to invite an investigation here. In relation to the amendment which had been proposed [Mr. M. said] he did not see any thing injurious in its character, or adverse to the object of the mover of the original resolution. He did not see any thing insulting in this proposed amendment: he was perfectly willing that

the committee should turn their attention to it, and he hoped that the result of their inquiries would be to present an interesting document, going to show how much land has been appropriated by Congress for public purposes in the several States. When the facts were ascertained, it would be seen whether, in a general apportionment, there ought to be a reduction from the quotas of these States or not. Mr. M. did not conceive it at all important whether the amendment should be rejected or not; but, of the two, he should prefer its being carried. For himself, he supposed that these donations of land have been beneficially bestowed. He felt, therefore, no alarm at the idea of ascertaining the amount of them; nor would the insertion of such an amendment deter him from pursuing the main object of the resolution.

Mr. JOHNSON, of Kentucky, said, that the subject of this resolution was one very deeply interesting to the State which he partly represented, and that he should much prefer that it should be made to contain no proposition or sentiment that in the commencement of the inquiry should promise a quarrel between the different members of the Union. He should prefer that the resolution should stand upon the liberal basis of looking to the future rather than to the time past, though he believed that the State of Kentucky, in regard to donations from the General Government, whether in money or in land, would not lose by the general settlement of the question which the gentleman from South Carolina had spoken of. At its last session, the Legislature of the State of Kentucky had had this subject under its consideration, and had requested its Representatives to present a claim to Congress for a part of the public domain, which [Mr. J. said] was rendered more interesting to the district which he represented, from the fact of its bordering on the Ohio river, by which it was separated from two or three of those States which are alleged to have received an undue proportion of the donations of public land. He thought, however, that the general discussion of this subject had better be postponed. He should vote for the proposition for inquiry on the most liberal principle: but, in doing so, he did by no means admit that the State of Kentucky had received from the United States an undue proportion of aid, either in land or in money.

Mr. REED, of Massachusetts, rose, not [he said] to engage in debate on this subject, but to show that the information sought for by the amendment under consideration was furnished to Congress at the last session, as would be found by a document on the files of the House, to which he called the attention of gentlemen.

Mr. TAYLOR, of New York, said, he had risen at the same moment as the gentleman from Massachusetts, for the purpose of stating the same thing as that gentleman had already done. The report of the committee raised at the last session on this subject did not give the value of the lands granted to the several States, but he thought that it was sufficiently minute for all practical purposes. The amendment now proposed was, he thought, calculated to embarrass the main question. He invited the attention of gentlemen to the report of the committee of the last session on this subject, which he thought contained a good deal of useful information, and which was deemed so interesting that six thousand copies of it had been ordered to be printed.

Mr. WILDE, of Georgia, avowed himself in favor of the amendment of his friend from South Carolina, and did not consider it a sufficient reason for rejecting it, that an inquiry had been made into similar topics at the last session of Congress, and that the result of it is now to be found on the files of the House. He was opposed to the original proposition. He understood that the whole subject of the disposition of the surplus revenue of the United States, over and above the payment of the public debt, constituting, as it did, one of the topics of the President's message, had been already referred to a committee of the

Dec. 21, 1829.]

Postage on Periodicals.—Western Armory.

[H. of R.]

House. It was now for the House to determine, whether, having referred the general subject, in all its extent, to one committee, it would place a particular portion of the question under consideration of another and distinct committee. He was opposed to this separation of its parts.

Mr. HAYNES, of Georgia, moved that the resolution and amendment do lie upon the table; and the motion was agreed to by a majority of about twenty votes.

#### POSTAGE ON PERIODICALS.

Mr. VERPLANCK, of New York, submitted for consideration the following:

*Resolved*, That the Committee on the Post Office and Post Roads be instructed to inquire and report on the expediency of reducing the rate of postage on periodical publications, and placing them at the same rate and under the same regulation with newspapers.

In offering this resolution, Mr. VERPLANCK said, that it was necessary to observe that the present rate of postage on periodical publications was about three times that upon newspapers. It was properly so graduated when that species of publication had been confined to the higher objects of criticism and polite literature. But it could not have escaped the attention of any one, that it had gradually acquired another character, having become extensively subservient to objects of a religious and moral character—to the diffusion of a knowledge of the popular sciences, and to the purposes of general education. The high postage on these publications (Mr. V. said) was an obstacle in the way of the prosecution of many benevolent plans of this sort. After the great plans for the promotion of education which had been suggested to the House, Mr. V. said his motion might have been considered comparatively unimportant; but it had the merit of being free from constitutional objections, and of being very practical; and, if he succeeded in his object, he trusted that it would turn out to be very useful.

The resolution was then agreed to.

#### WESTERN ARMORY.

On motion of Mr. CARSON, the House proceeded again to consider the resolution moved on Tuesday by Mr. DESHA, proposing to refer to a committee the expediency of locating an armory on the Western waters.

A good deal of debate took place on this motion, and on proposed amendments to it; in which debate Mr. CARSON, Mr. WILDE, Mr. WICKLIFFE, Mr. POLK, Mr. WHITTLESEY, Mr. BELL, Mr. CHILTON, and Mr. BLAIR, of Tennessee, took part. The same feeling was displayed by several of the gentlemen, as has often been shown in the discussion of this question in Congress, by those who considered the interests of their districts to be affected in one way or other by it. But, before any question was taken upon it, the consideration of it was terminated by a motion for adjournment; and

The House adjourned to Monday.

MONDAY, DECEMBER 21, 1829.

The House resumed the consideration of the resolution originally offered by Mr. DESHA, instructing the Committee on Military Affairs to inquire into the expediency of establishing an armory at a suitable site on the Western waters.

Mr. BLAIR, of Tennessee, moved that the resolution, with the amendment proposed to it when last under consideration, be laid on the table; but withdrew the motion at the request of Mr. WICKLIFFE, who, believing that it was not practicable for this House ever to decide on a site for the armory, wished to move an amendment proposing to inquire into the expediency of giving to the Executive the power to designate the site.

As there was a previous question pending, however, this proposed amendment could not be received.

The actual question being on an amendment moved by Mr. GILMORE, of Pennsylvania, restricting the inquiry of the committee to the expediency of establishing an armory pursuant to the report of certain commissioners under the act of Congress of 1828—

Mr. JOHNSON, of Kentucky, opposed this amendment with great earnestness. He dwelt upon the impropriety of imposing this restriction, when it was known that other surveys had been since made, in consequence of a resolution of the Senate, which were entitled to as much respect as those which had been made under the act referred to in the amendment. He denied that the last mentioned surveys were exclusively entitled to respect. He expressed his hope that this amendment would be withdrawn by the honorable mover, when he considered that, without it, the committee would be left perfectly at liberty to act upon whatever evidence might be placed before them, &c. He concluded his series of observations, by expressing his regret at being obliged thus early to enter into debate in the House, after having been ten years out of it, a member of another body: but the subject was one of such peculiar interest to the part of the country which he represented, that he could not refrain from expressing his views of it.

Mr. GILMORE expressed his regret that he could not, consistently with his duty to his constituents, comply with the request of the gentleman from Kentucky, to withdraw his proposition. This was a subject [he said] in which the district which he represented felt a great deal of interest. After a full and fair examination, the commissioners under the act of 1823 had given a preference to three sites, two of which were in the district which he represented, viz. if steam power were used, Pittsburg—if water power, Beaver: the further examination and re-examination of sites [he said] could only tend further to procrastinate the establishment of this armory, the expediency of which was admitted by all. The best proposition that he had seen was contained in the bill reported at the two last sessions, which proposed, in substance, that the three gentlemen who had made the former report, (gentlemen of high reputation for both talents and integrity,) should be authorized to determine the location of the armory. He could not consistently withdraw his motion for amendment, though he believed that, if the subject was thrown wide open, as proposed, we should be farther from the establishment of an armory on the Western waters than we now are.

Mr. MALLARY, of Vermont, took a review of the history of this proposition for the establishment of a Western armory. He was opposed to the amendment; and for reasons, which he gave at large, he was opposed to any attempt to settle the question of location in this House. He showed the difficulties which would attend its settlement here. He was for leaving it open, so as to let the place be designated by the Executive.

Mr. JENNINGS, of Indiana, after a few explanatory remarks, moved an amendment to the amendment of Mr. GILMORE, in the shape of a proviso, that the site of the armory should be fixed "as far west as the longitude of Zanesville, in the State of Ohio."

The question was taken on this last amendment, and decided in the negative.

Mr. SEVIER, Delegate from Arkansas, said, that, as it seemed to be agreed that an armory ought to be established on the Western waters, he could not but urge the claims of the country west of the Mississippi to its location. What was the object of this armory, he asked? It was to manufacture arms, for the purpose of defending the nation against its enemies. The next question was, where was the Western country to be invaded by an enemy? Either by the Indians on the frontier, or at New Orleans. If this armory should be located on the Ohio, what would be the consequence? The Government will

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Refuse Lands in Tennessee.

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have to buy a site, to buy fuel, &c. to manufacture the arms; and, when manufactured, it was well known that for nearly half the year the Ohio was dried up, and for a great part of the other was frozen over, so as to place great difficulty and uncertainty in the way of prompt transportation of these arms wherever they might be wanted. West of the Mississippi were to be found inexhaustible mines of iron ore; the Government owns the sites; the Government owns the fuel; the Government owns the mines, &c. &c. and all the expense of purchasing these would be saved. With these facts before the House, it appeared to him that it would be proper to locate the armory west of the Mississippi, where it could promptly and effectually furnish arms to defend the frontier, and to defend New Orleans, &c. For these reasons, he hoped that the amendment would be rejected, and the resolution left as open as possible, so as to allow of free selection.

Mr. VANCE, of Ohio, stated, as a reason for leaving this inquiry open and free from restriction, that, when the surveys under the act of 1823 were made, the improvement of the Western country, by means of canals, had not begun; whereas, if there had been a canal then, as now, extending within a few miles of Zanesville, that report would probably have been in favor of the location at Zanesville. At Cincinnati, also, [he said,] an important point was made by means of the canal. The effect of this work of internal improvement at other points was such as to warrant the whole subject being thrown open for further examination. If the gentleman from Pennsylvania would not withdraw his amendment, therefore, Mr. V. hoped that it would not be agreed to.

Mr. DANIEL, of Kentucky, trusted that the amendment would not be agreed to, for, so far as Pennsylvania was concerned, it was perfectly the game of open and shut. It was true that under the act of 1823 the commissioners had examined and recommended the sites at Beaver and Pittsburgh; but they had never examined a great variety of sites in the State of Kentucky, far superior to any others that had been examined in any part of the country. The falls of Little Sandy (as the reporter understood the gentleman) afforded far superior advantages to the Horse Shoe bend, or any other site that had been examined; and if commissioners were sent there, he ventured to predict that they would fix on that very spot, to which their attention had never been attracted, as the site for the armory. Mr. D. detailed the advantages of this position, and enumerated the furnaces, forges, forests, and inexhaustible iron ores of the vicinity; as proofs of the excellence of which location, he said that the best iron was manufactured there that was made in this Union, and cheaper too than in any other portion of the Western country. For this reason he was opposed to the amendment of the gentleman from Pennsylvania, preferring that the whole subject should be left open.

The motion of Mr. GILMORES to amend the resolution was then decided in the negative.

Mr. MALLARY then moved to amend the resolution so as to direct the committee to inquire into the expediency of authorizing the United States to establish an armory at some suitable point on the Western waters.

Mr. VANCE said a few words against the amendment, and expressive of a wish that the whole subject should be left open to the investigation of the committee.

The question was then taken on Mr. MALLARY'S motion, and decided in the negative.

Mr. HAYNES, of Georgia, moved an amendment, the object of which was to direct an inquiry into the expediency of a further examination and subsequent location of a site, &c.

And this amendment also was lost.

The question was then taken on the original proposition to instruct the Committee on Military Affairs "to inquire into the expediency of establishing an armory at some suit-

able point on the Western waters," and decided in the affirmative, *nem. con.*

TUESDAY, DECEMBER 22, 1829.

## REFUSE LANDS IN TENNESSEE.

Mr. CROCKETT submitted for consideration the following resolution:

*Resolved*, That the memorial of the State of Tennessee on the subject of the public lands be withdrawn from the files of this House, and referred to the select committee raised on the subject of the Tennessee lands.

Mr. BLAIR, of Tennessee, observed that the subject of this resolution had been already referred to a standing committee of this House, (the Committee on the Public Lands,) and he did not see why it should now be proposed to refer it to a select committee.

Mr. CROCKETT said, that, at the last session, this subject had been referred to a select committee. He had himself now taken charge of it, and he wanted all the documents to be placed before his committee. He was not aware that it had been referred to the Committee on the Public Lands at all; but he did not see why one part of the subject should be in the hands of one committee, and one part in the hands of another. He did not know what the Committee on the Public Lands could have to do with it, since it had been specially referred to a select committee. On that committee were several gentlemen from the Eastern States, who know very little about these subjects, and he wanted them to have a fair chance. He wanted them to have an opportunity of looking into the whole subject. He wanted these Eastern gentlemen on the committee to be enabled to examine the subject, and make a fair report upon it. He wanted to act honorably himself, and do justice to the Government on this subject; and he did not see any reasonable ground for the opposition of his colleagues to his motion.

Mr. ISACKS said, that, as a member of the House, he thought he might truly say, he felt very indifferent as to what course this subject should take. But, as a member of the Committee on the Public Lands, he felt bound to state, that, by the order of the House, the memorial and documents referred to were now in the hands of that committee, and the gentleman's resolution, if agreed to, would, he presumed, be wholly ineffectual. What the sense of the Committee on the Public Lands might be on this subject, he was not authorized to say. It might be that that committee might be disposed to have itself discharged from the consideration of the subject, and have it referred to the gentleman who had taken "charge" of the subject, as if he were the only member from the State of Tennessee interested in it. For himself, [Mr. I. said,] he did not profess to have taken "charge" of it, but, in what he had said, he acted only as the organ of the committee of which he was a member.

Mr. CROCKETT modified his motion so as to propose to discharge the Committee on the Public Lands from the consideration of the memorial, &c. and refer it to the select committee appointed on the subject.

Mr. POLK said, that, at his instance, this subject had been referred to the Committee on the Public Lands, believing that no other direction could properly be given to it. It was presumed that some of the difficulties attending it had been elucidated by the debates of the last Congress, at least to the members of that Congress. He had heard this morning the remark, which he had often heard before, that the report of a select committee had not the weight with this House of the report of a standing committee, and that was the only reason why, the other day, he had opposed the reference of this subject to a select committee. He apprehended that the House had not then understood the objection, or they would not have referred the subject, as they did, to a select committee.

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He would only add, that, after the subject had been debated here at the last session, he had submitted a resolution calling upon the General Land Office, through the Treasury Department, for all the information which it could present on the subject. That information, he understood, had been obtained, and in a short time would be transmitted to the House. Mr. P. added that he trusted that his colleague would not consider that those of his own State, who expressed any views upon this subject, were at all disposed to interfere with his rights and his privileges here. All that they wished was, that the subject should undergo that consideration which it ought, believing, as they did, that a report from a standing committee would carry more weight than a report from any select committee.

Mr. CROCKETT said, it was certainly an awkward situation for these papers to be placed in, for one committee to have one part of them in possession, and another committee another part. These lands belonged to the United States, to be sure; but he did not know what the committee on the subject of the public lands generally had to do with them. These stood on a different footing from other public lands. There never had been a survey of the United States in the State of Tennessee; and these scraps and remnants, left after the location of the North Carolina grants, stood upon a different footing from the general system of the public lands. His object was, that the select committee should propose the most equitable way of disposing of them for the benefit of his constituents and of the State of Tennessee, which, he believed, would be to give these scraps of land to the poor people living on and among them.

The question was then taken on Mr. CROCKETT'S motion, as modified, and decided in the affirmative—90 votes to 67.

WEDNESDAY, DECEMBER 23, 1829.

## FITTING OUT OF THE BRANDYWINE.

On motion of Mr. McDUFFIE, the House resolved itself into a Committee of the Whole on the state of the Union, Mr. MARTIN, of South Carolina, being called to the chair, and took up the bill reported by the Committee of Ways and Means, for making an appropriation for fitting out for sea the frigate Brandywine. No objection being made to the bill, the committee rose, and reported to the House without amendment.

On the question of ordering the bill to be engrossed for a third reading,

Mr. McDUFFIE, Chairman of the Committee of Ways and Means, briefly stated the necessity for this appropriation. The fact was known to every member of the House, that the commerce of the United States in the Gulf of Mexico and with South America was subject to piratical depredations; and, also, that the political relations of the Governments of the South were in such a state as required that the United States should maintain a considerable naval force in that sea. The recent loss of the Hornet made it almost indispensable that another vessel should be immediately despatched to supply her place. For this purpose, this appropriation was necessary.

The bill was then ordered, *nem. con.* to be engrossed, and read a third time to-morrow.

THURSDAY, DECEMBER 24, 1829.

This day was wholly occupied in disposing of motions for inquiry and the consideration of bills of a private nature. The House adjourned to Monday.

MONDAY, DECEMBER 28, 1829.

## COMPENSATION OF MEMBERS OF CONGRESS.

The House then resolved itself into a Committee of the Whole, Mr. BUCHANAN in the chair, on the following bill:

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"*Be it enacted, &c.* That the Secretary of the Senate and the Sergeant-at-Arms of the House of Representatives shall, at the commencement of each session of Congress, obtain from each member the name of the post office nearest his residence, and shall then procure from the Postmaster General an exact statement of the distance to said post office from the seat of Government, computed according to the post road to said post office; after which, he shall add to, or subtract from, the said statement, as the case may be, the distance from the said post office to the residence of said member; upon which statement the mileage of each member is to be computed.

"*Sec. 2. And be it further enacted,* That, on the final settlement of the account of each member, he shall subjoin, at the foot of his account, a certificate that he has deducted from his account all and each of the days on which he may have been absent from the seat of Government during those days on which the House to which he belongs may have been in session."

Mr. WICKLIFFE, Chairman of the Committee of Retrenchment, by whom this bill was reported, briefly explained its objects, which are, as appears from the face of it, generally, to establish a uniform rule for computing the allowance for travelling expenses of members, and to limit their per diem allowance to such days as they shall actually be in attendance on Congress.

Mr. HAYNES asked how the gentleman from Kentucky proposed, where there was more than one post road by which a member's mileage might be computed, (as was the case with many members,) to determine by which of those roads the computation of distance should be made. There ought, [he said] if the bill passed, to be such precision in its terms, as to leave no doubt as to the manner in which it should be construed.

Mr. WICKLIFFE said that the difficulty suggested by the gentleman from Georgia showed still more the necessity of some legal provision on this subject. If there was a difficulty in determining between post roads as the measure of computation, there was still a greater difficulty where there were river routes, as well as roads, to compute by. In cases where there were various post roads leading to and from the same point, the gentleman from Georgia might attain his object by amending the bill so as that the nearest road should be taken as the criterion. Mr. W. had no objection himself to such a provision, though he would not move it, because [he said] there were some post routes on which there was no convenient travelling, or accommodation for travellers, even on horseback. He did not see, however, why this objection of detail should be an objection to the principle of the bill.

Mr. HAYNES expressed his regret that the gentleman from Kentucky should have misconceived the motive of the very few remarks which he had made. It was no part of his purpose to interpose any obstacle in the way of the bill. He only suggested a difficulty in its detail, which he wished to see obviated.

Mr. DAVIS, of South Carolina, moved to amend the bill, by inserting the word "shortest," so that the distance should be computed according to the shortest post road.

This amendment was agreed to.

Mr. STERIGERE moved to amend the bill, by striking out, where they occur, the words "and shall then procure from the Postmaster General." In support of this amendment, Mr. S. said, that, when we reflect upon the manner in which the distances on post roads are ascertained at the General Post Office, it was probable that the Postmaster General would know as little accurately about them as the members of this House, and perhaps less. The distances upon these roads were more or less uncertain, even where best known; and he believed that the information could be got from the members of the House better than elsewhere, and he thought that credit ought to be given to their statements on the subject. It was a fact beyond dispute, that



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no certain reliance can be placed on the distances between different post offices, as stated on the Post Office books; and he thought, therefore, that the statements of members ought to be relied upon in preference.

Mr. WICKLIFFE observed, that one main object of this bill was to throw from the members here the responsibility of fixing the amount of their own mileage. That, if they were allowed to fix that, it would involve the exercise of as much discretion as if they were to be allowed for the amount of their own per diem allowance. He knew no better standard [he said] by which the distance of the residence of the members could be ascertained, than the books of the Post Office Department. More universal certainty, he thought, would be attained by fixing the distances in this way, than by leaving the matter to the discretion of the members of the House.

Mr. STERIGERE said, that his amendment did not propose to leave this matter wholly to the discretion of each member in each case, for it confined him to stating the distance of the nearest post road to his residence—a responsibility which, Mr. S. thought, ought to be thrown upon him, and him alone.

Mr. BURGESS said, he would not permit himself to doubt that any gentleman, making a statement to this House, would make it truly; and if any misstatement of distances had been made, he felt bound to presume that it had been made accidentally, and would be corrected as soon as discovered. He could not see the utility of this bill at all, [he said] unless it was intended to say, by a solemn enactment of this House, that the members of Congress are not to be trusted in questions in which their interest may come in conflict with their veracity. If, however, facts warranted such an assumption, there might be sufficient reason to justify the passage of that bill. Until some statement of facts, showing grounds for this assumption, should be made on the authority of the committee which reported the bill, he could not be warranted in voting for a bill authorizing such a reflection on the House. He had never heard that any such report had been made by the committee. He had never heard authentically that any gentleman of this House, or of the Senate, had ever taken any more money for mileage than, on a fair calculation, he was entitled to receive. He could not vote for this amendment, therefore, or for the bill, but should be disposed, when the bill came before the House, to move its re-commitment, with a view to obtain from the committee a report of such facts as should show that the bill was not merely justified, but called for, by a due regard to the public interest.

Mr. STRONG, of New York, hoped that the amendment would prevail. It was proposed by the text of the bill to impose on the Postmaster General the responsibility of determining the distances which members travel from their residences to this House. This [said Mr. S.] was distrusting the veracity of the members of this House. It was, besides, turning over the Sergeant-at-Arms of the House to the direction of the Postmaster General, who is not an officer of this House, and ought to be allowed no control over its officers or its action. The Sergeant-at-Arms was responsible to the presiding officer of this House; and why was he to be turned over to an officer not responsible in any manner to this House? Why rely upon him, and take away the supervising power of the Speaker of this House? Mr. S. hoped that the amendment would prevail, and that the subject would be left in charge of the officers of this House, as it now is, and to whom it properly belonged.

Mr. WICKLIFFE, in reply to the gentleman from Rhode Island, who said that he could not vote for the bill, because the committee which reported it had not reported a statement of facts, stated, as a member of the committee, that the facts of overcharge of mileage by members was within the knowledge of that committee.

He felt no disposition, as a member of the House, to present, in a specific report, the names of individual members, who, under the law of 1818, had drawn an undue amount of mileage, but he now stated the fact generally, that a practice had obtained in this House, as its records would prove, by which members from the same State, and the same neighborhood, have been in the habit of computing their mileage differently, some by water and some by land. It was believed by the committee that there should be some uniform standard by which this mileage should be computed. He alluded to the fact, within the recollection of gentlemen near him, that, in the year 1823, the practice first began in this House of charging mileage by the river route; since when, the practice had been gradually extending itself. At that time, a gentleman, not now a member, claimed the privilege of charging for the distance of descending the Mississippi, ascending the Ohio, and thence by land. Nor was it for that session only that the charge was made; for he went back six preceding sessions, and claimed and received the same rate of allowance. This fact would be shown by the accounts now on file in the Treasury Department. Nor was this [said Mr. W.] the only instance of such changes. We (the committee) then conceived, that, whilst we were complaining of constructive journeys, and charges for journeys never made, &c. on the part of other public agents, it was proper, from a regard to consistency, that we should at least put a stop to this business of constructive journeys among ourselves. The act of 1818, declaring that the computation of the distance of travel of members of Congress should be made by the most usual route, the computation of the circuitous river route was a plain perversion and abuse of the law. To remedy this evil, the committee thought it best to give to the Postmaster General the power to determine the distances. If the amendment now under consideration should prevail, by what criterion will the officers of the House be governed in ascertaining the nearest post road? It will not do [said he] to tell us, with the facts before our eyes, that the decision of each member, in his own case, will be an infallible test. For the same reason, we might leave the whole subject of compensation open. But, [said Mr. W.] we propose to take from the member the privilege of fixing, at his own will and pleasure, the extent of his compensation. If the House should require from the committee a statement of facts, they would discharge that duty rigorously, as far as they could. They would ascertain what were the actual distances of the post offices near which members reside, and report the sums which each had received for mileage. But they had not conceived this necessary. They wished to make no implication of individuals, but simply to provide for carrying into effect the intention of the act of 1818.

Mr. JOHNSON, of Kentucky, doubted whether the mode of ascertaining mileage, prescribed by the bill, would be found more correct than that which has heretofore obtained. He concurred with his worthy colleague, however, in the main object of the bill. He thought there ought to be a reasonable accuracy in the mode of ascertaining the mileage of members of Congress: that there should neither be required, on the one hand, a horizontal measurement of distances, nor, on the other, should there be allowed an excursive or circuitous measurement. He had never heard that there had been any complaint as to reasonable accuracy in computing mileage, except in cases where the meanderings of rivers had been made the basis of computation of mileage, instead of the common and usual route of travelling on horseback and in carriages. There is [said he] an intrinsic difficulty in bringing this matter of computing distances to a mathematical precision. Nor did he think such a precision necessary: reasonable accuracy was all that ought to be expected in it. He agreed with his colleague, that the practice of following the courses of streams, so as to double the computation,

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if admitted at all, should be extended and permitted to all, or that all ought to be confined to the computation upon *terra firma*. The same rule should be extended to the one as to the other. As the difference of practice in this case, however, was the only matter complained of, he doubted whether the respect due by him to his constituents required or allowed him to go, or to ask the officers of this House to go, to the Postmaster General, to ask of him what mileage they ought to charge. The usual course had been for members to state their own mileage, and, if doubt arose, to call upon some other source for better information. He asked his colleague, the committee, and the House, whether, although in forty years' experiment some mistakes had been committed, the House was not able to adjust this matter by its own organs, without calling on the Postmaster General to help them? And, if they did so, was there any reason to expect that, in the same period of time, equal errors might not occur under the new rule proposed? As the remedy would be complete without such resort, Mr. J. was in favor of the amendment. Mr. J. concluded by adding a few words as to the trouble and additional clerk-hire which this business, small as it appeared, would devolve on the General Post Office, as the distances of members of successive Congresses, even in the same districts, were continually changing, &c.

Mr. BURGESS said, that, in the remarks which he had made, he did not intend any reflection upon the committee which reported this bill, nor did he wish unnecessarily to increase their labors. But he did think that, on a question of this nature, it might have been well deemed expedient for the committee to lay before this House the grounds on which they had proposed this bill. But it seemed that there had been some mistakes in the charges of compensation. Now, Mr. B. supposed that no gentleman had, under his privilege, taken more compensation for his mileage than he supposed himself to be justly entitled to; and he presumed that there was no member of this House, or of the Senate, who was not willing to have the fullest inquiry made into that matter. After some observations as to the relative distances of land or water routes, Mr. B. said that this was a question which must always be left to the honor of members of the House, who had always as much knowledge on the subject as the Postmaster General possibly could have; and he thought that, without being obliged to get that officer's certificate, every member of Congress was entitled to his pay. It was sufficient, if any doubt existed on the subject, to restrict the compensation to the land route. He was willing to vote for a bill to obviate mistakes, but he could not deliberately vote for a bill implying that any member of Congress would deliberately take more pay than he was entitled to by law.

Mr. COULTER vindicated the committee from the suggestion of their having presented this bill unadvisedly to the House. All the facts on which this bill is founded [he said] were distinctly stated in the report of the Committee of Retrenchment at the session before the last, when a bill was reported to the same effect as this, but not acted on for the want of time; as, too, was the case with the same bill at the last session. If the facts stated in that report were true, (and that they were true there could be no doubt, for they had not been questioned,) it was important that some remedy should be provided: for, it appeared, either that the law was defective, or that, in the execution of it, abuse had crept into the proceedings of the House. He presumed, now that the evil was so clearly pointed out, the presiding officer and subordinate officers of the House might correct it, and the passage of the bill might therefore be said to be unnecessary. But, inasmuch as the attention of the House, and, through the report of the Committee of Retrenchment, that of the nation, had been heretofore attracted to the subject, it would be as easy

now to pass the bill, if it affords a remedy, as to reject it. That the bill does afford a remedy, [he said] could not be denied. It must be admitted, as argued, that this law, too, may, in course of time, come to be abused. What human law cannot be abused? You cannot place a barrier to human ingenuity or error. The only question is, does this bill offer a competent remedy to an admitted evil? On that subject there can be no question: for, if it passes, a computation of distance by water courses can never be substituted for a computation of distance by land. It was comparatively indifferent to him, [he said] whether the proposed amendment prevailed or not: but, if it did, the distance of travel, and, of course, the amount of compensation for it, would still be left in each member's own breast. He meant no imputation on members of Congress; but [he said] all laws go upon the presumption that man is not a competent judge or witness in his own case: and it was assuming too much for this House to ask for its members exemption from this rule of law, established and practised upon in all civilized nations. The rules of this House have already made all the imputation upon members which can be inferred from this bill, by excluding any member from voting upon any question in which he is personally interested, &c.

Mr. TAYLOR, of New York, said, that one of the present rules of the House, in stating the duties of the committee of accounts, says "it shall be the duty of the committee [among other things] to audit the accounts of the members for their travel to and from the seat of Government, and their attendance in the House." As far as he was advised, [Mr. T. said] the practice of the presiding officer always had been, when any difference arose between any member and the Sergeant-at-Arms as to compensation, &c. to refer the question for decision to the committee of accounts, and to settle with the member according to the decision of that committee. He knew that this had sometimes been the case, and, as far as he was advised, it had always been the case. The Speaker had not been at liberty to decide such questions, since they were thus, by rule, especially referred to another organ of the House. My own choice would be, [said Mr. T.] thinking, from the statements which have been made, that a remedy is required, instead of imposing the duty on the Postmaster General of fixing the distances, so to amend the bill as to require the officers of the House to procure the necessary information. After requiring that the shortest post road should be the standard of computation, I would leave it to the officers of the House, under the direction of the proper committee, to ascertain the distances.

The question was then taken on Mr. SEMMES's amendment, and decided in the affirmative, 60 votes to 46.

Mr. SEMMES, of Maryland, moved to strike out that part of the first section which follows the word "post office" in the ninth line, as above. He thought this was descending too much into minutiae, giving much trouble without any practical benefit.

The motion was not agreed to.

Mr. WICKLIFFE moved an amendment of a proviso to the second section, exempting members detained from the House by known sickness from the operation of this section. With these amendments, the bill was reported to the House.

A motion was made by Mr. VERPLANCK, that the House do reconsider the vote taken on Thursday last, the 24th instant, on the question to agree to the following resolution, moved by Mr. CARSON, viz.

"Resolved, That a select committee be appointed to inquire into the expediency of establishing a branch of the United States' Mint in the gold region of North Carolina."

And on the question, Will the House reconsider the said vote? It passed in the affirmative.

Mr. CARSON rose, and said that he had been induced to offer the resolution from various considerations, one of the

most important of which was, the highly interesting information he was induced to believe would be elicited by such an inquiry. That it will prove necessary to establish a mint in North Carolina, to the extent to which such an establishment now exists in Philadelphia, he was by no means prepared to say; and were he to hazard an opinion, as at present advised, he would say that it would not be necessary. A branch, however, of the Mint might be found necessary. For instance, [said he] an office, under national authority, connected with the mother institution, to assay our metals, and show us their correct value—to stamp our bars of gold, and prepare them for a circulating medium, or as an article of deposit, upon which circulating medium might issue. This would also prevent frauds from being practised: for, while it would show the owner the real value of the metal, it would also secure the purchaser from frauds, such as mixing alloy with the gold, which otherwise would be difficult to detect. In a word, [Mr. C. said] the inquiry would do no injury, while there was a probability of its doing good, for any report made by the committee will be subject to the future action and control of the House.

When I introduced the resolution on Thursday last, [said Mr. C.] I will not disguise the fact that I felt considerable solicitude for its passage. But, sir, my anxiety has in a degree been diminished, not that I deem the inquiry less important, but because I observed an honorable colleague, [Mr. COMBS] voting in opposition to the resolution. For that gentleman, sir, I have always, since our first acquaintance, entertained the highest personal respect, and so also have I for his opinions: and, sir, from a knowledge of the fact that no part of the State is more deeply interested in all subjects connected with the precious metals than the district represented by my colleague, (for, sir, the greatest proportions, as yet, have been found within his district and by his constituents,) I am constrained to believe that important considerations have induced his opposition. What those considerations may have been, I have not been able to learn, and it may be that his withholding them from the House has resulted from his kind feelings towards me, wishing rather to cover than expose the defects of my proposition. Should this be the case, sir, I certainly thank him. Mr. CARSON concluded his remarks, by tendering his thanks to the House for agreeing to the motion for reconsideration, and, as no injury could result from a mere inquiry, hoped the House would adopt the resolution.

Mr. A. H. SHEPPERD rose, and remarked, that, as his colleague had made an individual allusion to a member from North Carolina coming from the gold region, and being himself from that desirable country, he wished to know whether the remarks of his colleague were intended for him. [Mr. CARSON explained, and said his allusion was to his colleague representing Mecklenburg—that he did not know how his colleague now making the inquiry voted on the question.] Mr. SHEPPERD continued by saying, that, owing to his bad health he was necessarily absent at the time the resolution was offered and rejected; had he been present, he should have voted for its adoption, not merely because it happened to come from a colleague, and to embrace a subject interesting also to his own constituents, but from a belief that, upon a mere question of inquiry, it was the more courteous, if not indeed the more prudent course to accede to the proposition, unless it be absurd in itself, or clearly adverse to some established rule of legislation. Should the resolution be adopted, the committee raised upon it would doubtless elicit much information, interesting not merely to the country in which the precious metal is or may be found, but to the nation at large; and even if the inquiry proposed should not at this time result in a transfer of a branch of the Mint (that powerful attribute of Government) to the region proposed, yet it cannot but be important, in a national point of view,

to have authentic information as to the probable capacity of any portion of our country to produce this important basis of the circulating medium. I repeat, sir, that, was there not (as indeed I think there is) a manifest importance in the proposition, courtesy to the mover would, in my humble opinion, be a sufficient reason to lead to its adoption. I would, Mr. Speaker, have preferred that the terms of the inquiry had been more liberal in their character, by embracing also the States of Virginia, Georgia, and South Carolina; in all of which gold also is found, though by no means so extensively as in the State from which I come; for, whenever, sir, any inquiry is proposed here, relating to any particular interest in our country, I am not for confining it to my own State or immediate district, but would embrace also any other portion of this Union where the same interest is known to exist. But without waiting to cavil about the terms of the resolution, permit me to hope that it may be adopted in its present form.

The question was then taken on the resolution moved by Mr. CARSON, and decided in the affirmative.

TUESDAY, DECEMBER 29, 1829.

#### DISTRIBUTION OF THE PUBLIC LANDS.

The House resumed the consideration of the resolution moved by Mr. HUNT, of Vermont, on the 17th instant, proposing an inquiry into the expediency of appropriating the nett annual proceeds of the sales of the public lands among the several States and Territories, for the purposes of education and internal improvement, in proportion to the representation of each in the House of Representatives.

The question being upon agreeing to the motion of Mr. MARTIN, of South Carolina, so to amend the resolution as to direct an inquiry also “into the amount and value of the public lands which have been given by Congress to any State, or to any public institution in said State,”

Mr. MARTIN said, he was indebted to the kindness of the gentleman from North Carolina, [Mr. SPRAGUE] who yesterday moved the postponement of this resolution, and to that of the House, which agreed to it, because of his casual absence when it was called up. The subject of the resolution (he said) was one of great delicacy, and respecting which he felt much difficulty: it was one of great public importance, also, and in which the people take great interest. He knew of no subject on which, at this moment, public opinion was more divided, or on which public inquiry was more excited. It seemed to him, therefore, before deciding any thing in reference to this question, it ought to be examined with much deliberation and with great caution, that nothing might be done in regard to it which should produce confusion or difficulty hereafter. He had so fully believed that the subject was laid upon the table for the remainder of the session, that he had not prepared himself, as he otherwise should have done, for entering freely into the discussion of it. He had intended to prepare a statement showing the amount of the public debt, for the payment of which the public lands were pledged: for, though he entertained no doubt that the public debt might be paid from other sources, there was still an delicacy in touching upon the security which had been given for the payment of that debt until it should be redeemed. Whatever may be our ability to discharge the public debt according to our obligations, [he said] the proposition to alter the security for its payment certainly ought to come from any other quarter than that by which such security had been given. The precise amount of debt for which the public lands stand pledged, he was not, for the reason already given, prepared to show; but that it does stand pledged in this manner, no one would question. Mr. M. went on to say that he was opposed to the whole object of the resolution; he should be so if the amendment which he had proposed should be

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adopted: but, if the mover and supporters of it were serious in their proposition for the distribution of the proceeds of sales of public lands according to representation in this House, or according to any other ratio, they ought to recognise the principle to its full extent; which would require that those States which have already received a large portion of the public lands should receive of the residue only in their due proportion.

In the few remarks which he made the other day, [Mr. M. said] he had not intended to draw out the gentleman from Ohio, [Mr. VANEK] as he had done. He had not meant to rouse his feelings: for, though the gentleman had not said a great deal on the occasion, he seemed to suppose that some unkind allusion had been meant to that State. In alluding to the extent of the grants of land to the Western States, [Mr. M. said] he did not do so for the purpose of complaining of them, or with reference to any particular State, but only to state the fact. The gentleman from Ohio, upon this allusion, had spoken of the thirty-sixth sections, and, from the manner in which he spoke of them, seemed to imply that these sections were all the donations of lands which the States had received from the General Government. Now, [Mr. M. said] he had meant no allusion to those reserved sections, but had intended to allude to the very large grants of land which had been made by Congress to the different States of the West for the purpose of canals, of asylums, and various other public undertakings. Indeed, so common had these grants been of late, that when any important public undertaking was meditated in those States, they seemed to look almost of course for an appropriation, and a large appropriation, too, of public lands towards it. He would now [he said] turn to document No. 95 of this House at the last session, to show the quantity of land which had been thus appropriated, but he did not wish to consume the time of the House, especially as each member could turn to that document for himself, and ascertain the facts.

But he might be told again, as he had repeatedly heard it said on this floor, that these grants of land to particular States, &c. were beneficial to the Government and to the people at large, because they increased the value of the remaining lands belonging to the United States. Of all the arguments which sophistry every invented, this [Mr. M. said] was one of the most convenient. It might be resorted to with equal facility in every question of public policy. In matters of internal improvement, it was easy to say that whatever benefited a particular town, or village, or neighborhood, was a measure promotive of the general welfare. And [said he] by the same process of reasoning, if, for the benefit of a particular branch of industry, or class of people, their pursuits are protected, properly or improperly, at our expense, we are told that, ultimately, we shall be benefited, inasmuch as the establishment and encouragement of manufactures, like internal improvement, must, in the end, benefit the whole country, &c. On every question of grants of privileges, &c. this argument was resorted to. Admit all the force that was asked for it, yet it must be allowed that it was only true in part, because those to whom a grant is made have the immediate benefit of it, whilst others have only a remote one. Then, if the public lands are to be distributed among the several States, (which would look very much, he thought, like the case of a man dying, and his children dividing his estate among them before paying his debts,) let us have the good common sense rule of each bringing back to the general stock what each has taken from it. This was the proper footing on which to place it; that those States which have hitherto received no lands shall have their allotment of lands or money, in the same proportion as those that have hitherto received them.

Mr. M. then answered some of the objections which had been made to his amendment. The existence of the information which he asked for on the files of the House,

was, as had been said the other day, no argument against his amendment, because the committee would have the less difficulty in coming at it, and presenting it in a condensed form. A difficulty had been suggested in arriving at the amount of land granted to each State, but he did not perceive the force of it: the States, which had received lands, either had them or had sold them, and it could readily be ascertained what lands they now hold, and what quantity they have sold, &c. Upon the whole, Mr. M. concluded by saying he was opposed to the principle of the resolution; but, if it was to pass, he wished it to be put in the best possible shape, which he thought would be assisted by the adoption of his amendment.

Mr. HAYNES, of Georgia, said, that he, too, with the gentleman from South Carolina, had supposed that this resolution had been laid upon the table for the remainder of the session. Without going into the subject at all, he rose to suggest that this subject had been already referred to one of the select committees appointed upon the President's message. [At his request, the resolution was read referring so much of the message as relates to internal improvements, and the distribution of the surplus revenue, after payment of the public debt, among the several States.]

Mr. PETTIS, of Missouri, regretted that the resolution now under consideration had been offered, and he regretted, also, that the gentleman from South Carolina [Mr. MARTIN] had thought fit to offer this amendment. Whatever his opinions might be in relation to the proposition for making a distribution of the net proceeds of the public lands among the several States according to their representation in this House, he thought the present an improper time to make the inquiry proposed. The resolution seemed to contemplate an immediate distribution. The public lands were pledged to aid in the liquidation of the public debt; and he asked gentlemen, if this plan were immediately carried into effect, whether it would not embarrass the Government in its views in paying off this debt. The offering of this resolution was to be regretted on another account. It was expected that some improvement in regard to the mode of disposing of the public lands would be attempted, and he feared that the plan proposed by this resolution would throw difficulties in the way of that measure. Sir, the people of the new States desire to see some reasonable prospect for the arrival of the period when the title of the United States to lands within their several limits may be extinguished. They thought that some better mode might be provided for, which would be better for the Government as well as the new States. He said he regretted to see the excitement which prevailed in this House on this subject; and he supposed from this that the public mind was also excited. It did appear as if gentlemen considered this a mere scuffle for the public lands, who should get most. And while he thought that some improvement could be made in regard to the mode of disposing of the public lands, he could assure the House, that on this, as well as every other subject of legislation, he should, while attending to the interests of those he represented, not be unmindful of the interests of the United States.

He would say a few words on the amendment in reply to the gentleman from South Carolina, [Mr. MARTIN.] The gentleman seems to think that each State should render an account of the public lands which have been given; that there should be an account current made out, and that there is nothing in the argument, that, by the donation of these lands, and the sales and improvements of others, the remainder of the public lands are not enhanced in value. Sir, the argument is not so light as the gentleman supposes. Is there nothing due to the enterprise of the West? Is there nothing due to the exertions of those who have gone as pioneers to the improvement of the West? It is a fact too well known in the Western country now to be

doubted, that, by the sale and improvement of one tract of land, the contiguous tracts are enhanced in value; and it is equally well known that the grants of land to the new States, for various purposes, were intended to promote the improvement of the country, to induce the sale and improvement of the lands, and thereby to increase the value of the lands unsold.

But if this account is to be taken, he asked the gentleman if the same justice and equality would not require that we should extend our inquiries back, and ascertain what States had contributed most of the public lands to the common stock. This being ascertained, should not the States, according to his principles, be reimbursed in proportion to the quantity granted by each? If this were the case, the State of Virginia (and he begged pardon of her delegation for taking an interest in the welfare of the Old Dominion) would be entitled to much the greatest share. He was opposed, however, to the whole inquiry. When the public debt shall have been paid, it would be time enough to make this inquiry. When that time arrived, it might be worth the consideration of gentlemen here, holding certain opinions, whether, if we have the power, the contemplated distribution for the objects mentioned in the resolution (internal improvements) might not assist very much in freeing us from the many difficult and perplexing questions which were constantly arising on this floor.

Mr. REED, of Massachusetts, said, it had been remarked that this subject excited more of the public attention at this moment than perhaps any other. If so, did it not become the more the duty of the House to examine it? As to the proposed amendment, [Mr. R. said] he had no disposition to retrospect in this matter, considering the argument to be correct, generally speaking, that the gifts to the new States have not diminished the value of the public domain, but that they have increased the value of the remainder sufficiently to compensate for the loss of what has been given away. As coming from one of the old States of the Union, [Mr. R. said] he claimed nothing, and wanted nothing, for the past. But, as regards the future, the disposition of the proceeds of the public lands was a question which presented much difficulty, and should be met unincumbered and unembarrassed. He thought the amendment wrong, therefore, because it tended to embarrass the main subject. When a proper occasion should offer, of so much consequence did he deem the main purpose of the resolution, he should move to refer it to a select committee, rather than to the standing committee, which is already too much burdened with business to give to this question the attention which its importance demands.

Mr. MALLARY, of Vermont, was in favor of the amendment, and gave his reasons for being so. What, he asked, was the object of the resolution? To inquire into the mode of disposing, for the future, of the proceeds of the sales of public lands. We all know that Congress has, from time to time, made disposition of portions of them, sometimes in answer to the demands of justice, sometimes in liberal donations towards the accomplishment of useful public objects. The question presented by the amendment is, whether the committee shall be charged with an inquiry into the amount of donations which have been thus already made to different States. He was in favor of the amendment, because it would enlarge the scope of inquiry. He should vote for it, to disembarass, and not to embarrass, the inquiry, as some gentlemen seemed to suppose it would. If the amendment were rejected, what would be the effect? The gentleman from South Carolina would institute the inquiry in a different form, and ultimately it must and would connect itself with the main inquiry. Was it not more important that the House should have this information in the outset, than have it called for in a later stage of the proceedings? Whether these grants

of land heretofore ought to be taken into account or not, in any arrangement for the future, was a different question. He was for having all the information, which was or would be asked for, at once; for [said he] meet this question, we must. We have got to hear it; and the more we can anticipate the difficulties which are likely to embarrass it, the better.

Gentlemen had urged that this was an inauspicious time for considering this question; that the lands are pledged for the payment of the public debt. Mr. M. said he did not suppose that any committee, which should consider the subject, would ever think of violating that pledge. The object was to provide, beforehand, for the distribution of the proceeds of the public lands whenever the national debt shall have been paid. When that payment shall have been accomplished, what shall then be done with the public lands? That is the question. Some intimation had been thrown out that some motive of interest was at the bottom of this proposition. It is a motive of interest, [said Mr. M.] I freely avow it a motive of interest in behalf of the rights of the people whom I represent, which influences me in favor of it. I think that the gentleman from Missouri intimated that, when we come to the question of the actual disposition of the public lands, some intricate questions will arise. I know not, sir, exactly, to what the gentleman refers. I will refer, however, to one—to a principle which has been very commonly spoken of in some portion of the Western country, viz. that the United States do not, in fact, own a foot of land in the Western States. When sentiments of this kind were publicly stated, and found strenuous if not numerous advocates, [Mr. M. said] he was willing and anxious that the question should be met as early as possible. I am one [said he] who believes that the United States have land there; and when their right to them is endangered by false pretensions, I am ready to defend it. We cannot, at too early a day, look to the security of our own interests in that particular. These [he said] were his reasons, frankly expressed, for desiring this inquiry, and he had no objection to the amendment which would go to make it broader and more liberal. He would endeavor to procure a fair, and liberal, and equitable distribution of the public lands, such as was due to the people of his State and to the people of the United States in common. He was in favor of at once ascertaining the rights of the several States in that great interest.

Mr. DUNCAN, of Illinois, said, he was perfectly willing to see a full investigation of every subject which relates to the public lands. He cared but little about the resolution, or the amendments offered by the gentleman from South Carolina, [Mr. MARTIN] although he was opposed to the general object. His object in rising was to notice some of the remarks of the gentleman from South Carolina, and those made by the gentleman from Vermont. He said that the gentleman from South Carolina, and other members of the House, appear to misapprehend the objects, or considerations, received by this Government for the grants of land, or donations as they are called, which have been made to the new States. He said that the largest portion of those donations, as they have been styled, was the school lands, or the sixteenth sections given to the inhabitants of each township for the use of schools to be established in said township; and as these lands have always been appropriated before the sale, they have been justly considered as a part of the consideration, and an inducement to the purchase of all the remaining lands in the township; and so far from their being a donation to the States, they have been, and are selling to the inhabitants of the townships in which they lie.

He said that some small grants of land had been made to the new States by the General Government when they received their admission into the Union; but they were made upon the express condition that those States would

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never tax the public lands within their limits, nor those sold by the General Government within five years after the sale. Surely [he said] this is no donation, it is a fair bargain, and the new States have much the worst part of it, as they have given up a right which would be worth more to them now than a hundred times the quantity of land they have received. He said that it was a fact, which could not be questioned, that the new States would now have the power to tax all the lands, public and private, within their bounds, if they had not bartered away their right to do so for a few acres of land, and some other equally unimportant considerations. He said that those lands had been purchased by the surrender of all right to levy a tax, which would have amounted every year to more than the land is worth. He said, if it should be determined now to charge these new States with this land, (and the proposition to give an equal quantity to each of the old States before the contemplated division takes place, is, in effect, to do so,) he hoped that the new States would be restored to their natural rights—the right to tax and exercise a sovereign power over their own territory, which in a single year would be worth more to the new States than all the lands in question.

Mr. D. said that the gentleman from South Carolina could not certainly be acquainted with the situation of the new States, and their peculiar relation to the General Government, or he would not have raised a claim by the old States for those lands which have been given to some of the new ones, to assist them in making internal improvements, such as roads and canals. He said that it was a fact well known to every man of common observation, that every valuable improvement in a country, such as a road or a canal, is calculated to increase the value of the lands through and near which they are constructed; and as the General Government owned much the largest part of the land in the new States, and especially where some of those improvements are to be made, he thought he should hazard nothing in saying that, in every instance where the improvement is made, the increased value of the public lands occasioned exclusively by the improvement will amount to ten times the value of the donation. He said that a policy which would be wise in an individual owning large quantities of wild land, would also be wise in a Government; and he appealed to any gentleman to say whether he would not consider a portion of this land well appropriated in this way, when there was a certainty of its hastening the sale, and increasing the value of the residue.

Mr. D. further said that the United States were bound by every principle of common justice to contribute something to the improvements which were making, and contemplated to be made, in the new States, as every canal, road, or bridge, made in those States, had a direct tendency to increase the value of the public lands. He said that about eighteen-twentieths of all the lands in the State he represented belonged to the General Government, and that his constituents were burdened with a heavy tax to construct roads and bridges, which, though necessary to their own convenience, had a direct and certain tendency to raise the value of all the lands over which they are made. He said he knew the States had no power to compel the General Government to contribute its part to these improvements; but he hoped that a sense of justice would prevent its receiving such advantage without contributing its full portion towards it. He said that all the old States had the power of taxing the lands over which they made roads or other improvements, and that the holders of land rarely complained of a tax of this kind, as it generally gives a great increase to the value of their estates. He said that there was a county in a remote part of the State of Illinois, containing about ten thousand inhabitants, all of whom are tenants of the United States, and pay near fifty thousand dollars per annum tax on rent to the Govern-

ment; and he supposed no one could think it reasonable or just that those people should be burdened with an additional tax to make roads in a country where every foot of land is owned by this Government. Mr. D. regretted to hear the reasons given by the gentleman from Vermont in favor of this proposition. It was true [he said] that some individuals, and one State, had asserted a claim to all the public lands, but he did not believe that any large portion of the people would sustain any pretension of that kind. He said he believed his constituents would be satisfied with having their just and reasonable claims satisfied, which were, that the price should be reduced, and the sales so regulated as to enable all the settlers to obtain their homes on reasonable terms.

When Mr. DUNCAN concluded, the SPEAKER arrested the discussion for the day, the hour allotted for the discussion of resolutions having elapsed. It will come up again to-morrow.

#### PAY AND MILEAGE OF MEMBERS.

The bill to regulate the mileage and pay of members of Congress coming up for consideration, and especially the amendment proposing to strike out the clause referring the computation of mileage to the Postmaster General,

Mr. WICKLIFFE said, that, as a member of the select committee which had been raised during the last session, and re-appointed at the present session, on these subjects, he felt it a duty to himself and to the committee to explain why he thought the amendment ought not to be adopted. He felt satisfied that, if the amendment passed, they might lay the bill at once upon the table, and say no more about it; for its chief object would, in a great measure, be defeated. The House had heard a great deal of the necessity of reforming abuses and retrenching expenses. He was one of those who was willing to give evidence of his sincerity, by carrying the principle into effect in every department of the Government. As a member of that committee, he had brought this subject up as a matter fit for legislative action—as a matter imperatively requiring the interposition of Congress. Yesterday he had offered his explanation of the object and effect of the bill. The objection to that part of the bill proposed to be stricken out by the amendment was, that it implied a want of confidence in members of Congress, and cast, by implication, a suspicion upon their integrity. He thought that that matter had been well answered by his colleague of the committee yesterday, who argued that all legislation was based upon an admission of human fallibility—upon a presupposed liability of the human mind to be influenced by interested motives. The object of that bill was to take from members the possibility of being thus biased in a calculation where they were personally interested; and in which the estimates were not limited except by their own discretion. In reply to the objection that the calculation would much encumber the business of the Post Office Department, he would state simply that this morning a clerk in the department had furnished him with statements of the post offices, and distance of every member of Congress (two hundred and sixty-one in number) from the seat of Government, in less than an hour. This was for the members of the last Congress. And this calculation would be necessary only once in two years. By the amendment, it was proposed to leave the decision to the Clerk of the House. He had as much confidence in the present Clerk as any man, but this regulation was for the future—for future Clerks and future Houses. It was not proposed, as had been said, that every member should call upon the Postmaster General for a certificate of the distance for which he was entitled to charge mileage. It was to be the business of the Clerk of the House to make a general application.

It had been said, both in the House and out of it, that this was a small matter, not worthy the attention of the

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House. Were gentlemen aware of the amount of mileage annually overcharged for the last ten or fifteen years? He had calculated upon the table of distances furnished that morning by the Clerk of the Post Office Department, that the number of miles charged, under the act of 1818, for mileage, should have been one hundred and six thousand nine hundred and sixty-one; the amount actually charged was one hundred and forty-two thousand seven hundred and two, being an annual charge for more than than thirty-five thousand miles above the strict construction of the law, and a sum exceeding the proper amount of money payable for that object by twenty-eight thousand dollars. Was that a trifle? It was [he said] not so small a business, and very well worthy of gentlemen who were very clamorous, abroad and at home, for reform and retrenchment.

He believed this charge to have been made under an erroneous construction of the law. He could not say that any member had wilfully overcharged. But here were gross mistakes, which the bill of the committee was intended to prevent for the future. We have been calling upon the departments to account for these expenditures. Was it not time to work at home, and correct the loose practices and mistakes which had occurred in this House?

These facts he had mentioned for the satisfaction of those gentlemen who had called yesterday for the reasons on which the committee had framed this bill. He would not unnecessarily impeach or impugn the motives of any member now here, or who had been here. But, being called upon yesterday, he had stated the facts. He now had in his hands the record of the facts. In parliamentary language, he had the documentary evidence. Believing that the abuse was the result of accident, of miscalculation, of changed roads, shortened distances by improved roads, &c. yet, when the abuse was ascertained, it was the duty of the committee to correct it. He concluded by saying that he was opposed to the amendment, because it would still leave the calculation of mileage at the discretion of each member.

Mr. PETTIS said, from his distant residence, and from the intimations which had fallen in debate, he was constrained to ask the indulgence of the House, while he expressed his opinion of what he considered the true construction of the existing law on this subject, and while he gave his views in relation to the bill now under consideration.

Coming, as he did, from the most western State, he might not be considered sufficiently disinterested to take any part in this debate, but he could assure gentlemen that he was quite disinterested; he did not expect to gain or lose by the passage of this bill. He said, without imputing improper motives to any gentleman who had given a different construction to the law, he had never had but one opinion as to the true construction. He had come hither by what was called the water route, because it suited his convenience to do so, but he expected to charge according to the most usual post route—the most usual stage road. Whenever there was room for a misconstruction of any law—whenever an improper construction had been applied, he was in favor of taking away the ground for such a misconstruction, but he thought that we should take care that we cast no unworthy imputation upon ourselves. For these reasons, he was in favor of the main principle of the bill—that which fixes the true rule of computing the mileage—but he was opposed to referring the question to the Postmaster General. He was in favor of uniformity in the charges, but was opposed to placing members of Congress under the control of any officer of the Executive. When the rule provided for in the bill shall have been established, he did not expect that any gentleman would make a false statement in regard to the distance he had to travel. He therefore hoped that the amendment of the committee would be agreed to by the

House. The rule being fixed, he was not afraid to trust this subject to each House, to the officers of the House, or to the members themselves. He preferred, however, that, instead of the provision now in the bill, the computation should be made according to the nearest post road—that it should be according to the most usual stage road. Under the apparent excitement which this subject had given rise to, he considered it due to himself to make this explanation of his views to the House.

[At this stage of the business, Mr. CHILTON made a motion to recommit the bill for the purpose of reducing the specific allowance for pay and mileage of members; which was opposed by Mr. WICKLIFFE, on the ground that its effect would be to defeat the practical and attainable object of this bill, and defended by Mr. CHILTON, on the merits of the retrenchment itself, and on the ground of a pledge given to his constituents to move it. Mr. BURGESS made a few humorous and rather sarcastic remarks upon the last motion, and Mr. BUCHANAN made some observations deprecating a debate out of place, as this was. When Mr. CHILTON withdrew his proposition, with a view to offer it at a future stage of the bill.] When, the question on the amendment recurring,

Mr. CARSON, of N. C. said, as to the amendment now under consideration, he felt perfectly indifferent. Yet, if the estimate made out at the Post Office Department, and presented to the Chairman of the Retrenchment Committee this morning, as he states, is to be made the standard, sir, the amendment ought to prevail. The palpable errors in that estimate ought not, nor cannot be received. I will state one, sir. This estimate gives my colleague, [Mr. CONNELL] by whose post office I travel, (and I am compelled to do so if I travel by stage,) a distance of thirteen miles less than the distance they have given me. Now, sir, the fact is, I live near eighty miles further than my colleague. The same book, sir, places Lincolnton, North Carolina, three miles distant from my residence, when, in fact, it is sixty short of the distance.

With regard to the distance for which I have received pay, I believe I can safely say that I never knew it till this day. When I first took my seat upon this floor, Mr. O. Carr, our cashier, came to me, and asked my distance or mileage. I told him I did not know, that I had not travelled directly to this place, but had passed by the Sweet Springs in Virginia, on account of my health. He then asked me how my residence was to that of my predecessor. I answered thirty-three or five miles nearer. He then said he could arrive at the distance. I told him if he took the mileage of my predecessor, "to deduct forty miles," and I presume he did so. If so, it will be found that the distance given in by my predecessor was six hundred miles—for it appears that the distance allowed me was five hundred and sixty miles—should it appear otherwise, the responsibility must rest on Mr. Carr, our clerk, who settles our accounts; for, sir, I never did know the distance for which he paid me, nor did I ever scrutinize his accounts, for my confidence in his honesty and correctness left me without a doubt as to the accuracy of his settlements. I therefore placed my signature to his receipts whenever he presented them, without inquiry. Nor have I any thing to reproach myself with, except for negligence in not calculating the distance myself, and placing it beyond the power of any man to impute to me the slightest disposition to obtain more than was due to me. But, sir, there is a remedy left, and I shall avail myself of it. It is this: I have already directed the clerk to get an estimate of the distance of the most direct mail route from this to my residence, and to calculate my mileage from that; and, if it should be found that I had received an excess heretofore, to deduct it from my wages of the present session. I will not have a dollar that is not due me; but what is right I want. This explanation [Mr. C. said] he considered due to himself to make.

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Distribution of Public Lands.

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Mr. C. made some other remarks upon the merits of the bill, and took his seat.

Mr. STORRS, of New York, made some remarks, which we are accidentally prevented from reporting at large, but the general object of which was to show how inapplicable and incorrect a test the post office account of distances would be.

After a few observations from Mr. STERIGERE, vindicating his amendment from Mr. WICKLIFFE'S objections to it,

The House adjourned.

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#### DISTRIBUTION OF PUBLIC LANDS.

The House resumed the consideration of the resolution moved by Mr. HUNT, of Vermont, proposing to direct an inquiry by the Committee on the Public Lands into the expediency of distributing the nett proceeds of the sales of public lands among the several States for the purposes of education and internal improvement.

The question being stated on agreeing to Mr. MARTIN'S proposed amendment, for directing the committee to report the quantity of lands already granted to each State by the General Government,

Mr. POLK, of Tennessee, said, that, from the time which had been already occupied in the discussion of this resolution, proposing an inquiry merely, it must be evident not only that this discussion is premature, but that it is not likely to arrive at any profitable end. It was admitted by those who supported the resolution, that it is not expedient to make this distribution, at all events until the public debt shall have been paid. That the public debt will not be paid for several years to come, was known to every one, and therefore this discussion was premature. Another reason against entertaining the resolution at present, was, that the whole subject of the distribution of the surplus revenue, after the payment of the public debt, had been brought to the notice of Congress by the President of the United States, and was now under consideration before a committee of the House. When this whole subject was thus before one committee, why should this part of it be referred to another committee? Another reason against the present discussion was that, that if it should be the policy of the country, after the public debt was paid off, to levy more taxes than the Government should require for the ordinary administration of public affairs, and the question should be between the present plan of internal improvement and the proposed plan for the distribution of the public revenue, he was free to say that, between the two modes, he should prefer the latter. But this was a question which it will be time enough to argue when it shall actually have arisen. It might be, possibly, that, when the public debt should have been paid off, there would be no surplus revenue, and no occasion for this abortive process.

There was still another reason why he thought that no good would result from prolonging this discussion, and that was, the course that this debate had taken. The amendment now under consideration involved a proposition to raise an account current between the States, and the discussion of it could have no other effect than to produce an unnecessary excitement between members of the same family. With as much propriety might an account be raised of the money expenditure of the General Government among the several States. Suppose it were proposed to instruct a committee to inquire into the amount of debts of the several States assumed by the General Government at the date of the funding system, and strike a balance of account between them; what an excitement would it not produce! Gentlemen must see [Mr. P. said] the labyrinth of difficulties into which this sort of discussion would lead them, and that its pro-

longation could do no possible good. Mr. P. said he purposely abstained from entering himself into the discussion of the merits of the proposition before the House, having risen principally for the purpose of moving to lay this resolution on the table, with the understanding that it should not be called up again at the present session.

Mr. BUCHANAN, of Pennsylvania, asked the gentleman from Tennessee to withdraw this motion, (which by rule admits of no debate,) to allow him to make a few observations.

Mr. POLK said he would accommodate the gentleman with a great deal of pleasure, but the very object of his motion was to stop the debate.

The question on the motion of Mr. POLK to lay the resolution on the table, was then taken by yeas and nays, and was decided as follows—yeas 72, nays 95.

So the House refused to lay the resolution on the table. Mr. BUCHANAN then rose, and said, he felt himself indebted to the vote of the House, and not to the courtesy of the gentleman from Tennessee, [Mr. POLK] for the privilege of making a few observations on this subject. He ought not perhaps to complain of that gentleman's course, because it was sanctioned by the rules of the House; yet he would say, it was not very liberal, after a member had himself addressed the House upon a question, to conclude his remarks by making a motion, which, if successful, would prevent all others from making any reply to his argument.

The House [said Mr. B.] is placed in a singular position in regard to this resolution. The course pursued by its friends has been unfortunate. Upon this resolution, which merely proposes to institute an inquiry before a committee of the House, the skilful tactics of the gentleman from South Carolina [Mr. MARTIN] have involved us in such a debate, as can only become proper in case the committee should report a bill for the division of the nett proceeds of the public lands among the States in proportion to their population, and that bill should be before the House for discussion. Yet, in this preliminary stage of the business, we have been drawn off from the main subject of inquiry, and have been seriously engaged in discussing the question, whether the new States, who have hitherto received donations of public land from this Government, shall account for them in the general distribution. The gentleman from South Carolina, who proposed this amendment, has frankly avowed, that, whether it prevailed or not, he would vote against the resolution. Such is my regard for that gentleman, and of such value do I estimate his support, that I might be willing to sacrifice something of my own opinion to secure it; but when he proposes to amend our resolution, and informs us, at the same time, he will oppose it in every shape, we ought to view his amendment with jealousy and distrust.

"Times Dances, et dona ferentes."

Without being drawn into an argument upon the subject, it is my decided opinion that it would be both unjust and ungenerous to charge the new States with donations of land which they have already received, and that an inquiry into the expediency of such a measure could only tend to distract and divide the friends of the resolution.

What [said Mr. B.] is the true and the only proper question for discussion at this time? It is, whether the subject of the resolution is of sufficient importance to demand inquiry. Upon this question can a doubt be entertained? The vast importance of the measure proposed must be impressed upon every mind, whether we regard its consequences to the people of the old or of the new States of this Union. The public feeling of the country is alive to the subject. And shall such of us as are friendly to its thorough investigation suffer inquiry to be stifled? I trust not.

The report of the select committee of the House, at the last session of Congress, has furnished us all the statis-



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tial information upon the subject which can be desired. There are two important questions which that report does not embrace, and which ought to be carefully investigated by a committee of this House. I desire to have a report from such a committee, upon the question whether the proceeds of the public lands are pledged in such a manner to the public creditors, that, without violating our faith, we cannot distribute them among the States until after the total extinguishment of the national debt. In the course of the debate, the affirmative of this proposition has been stated with a degree of confidence which would almost seem to preclude doubt; and yet there are probably strong reasons to sustain a contrary opinion.

It is very true, that, when the funding system was first established in 1790, the proceeds of the sales of the public lands were directed to be applied solely to the extinguishment of the debt of the Revolution; but it is equally certain that this pledge was often disregarded. In the year 1817, when the present sinking fund was established, all previous laws which had made appropriations for the purchase or payment of the funded debt were repealed. That fund of ten millions of dollars annually, for the discharge of the public debt, was to be raised from the import and tonnage duties, from the internal duties, and from the sales of Western lands. It may be [said Mr. B.] that the obligation imposed by this act will be equally satisfied, whether the annual sinking fund shall be provided from one or from all these sources. Such was probably the opinion of Congress, when, in less than one year after they had created this fund, they abolished all the internal duties, and thus cut off one of the sources from which it was to be supplied. I wish to express no decided opinion upon this question; but it is certainly well worthy of investigation by a committee. Its proper understanding and correct decision may aid us much in arriving at a just conclusion in regard to the main question.

Mr. B. wished to be distinctly understood, that even if we could, consistently with the public faith, at once distribute the annual proceeds of the public lands among the States, he had not for himself determined whether it would be expedient to do so until after the national debt should be discharged.

There is [said Mr. B.] another important question involved in this inquiry, on which I desire to have the report of a committee; and that is in regard to the constitutional power of Congress to make the proposed distribution among the States. The power to distribute the proceeds of the public lands among the States to which they now belong, is, in my opinion, very different from that of distributing among them the surplus revenue arising from taxation. I purposely refrain from entering upon the discussion of this question at present; but I think I might appeal with confidence to the gentleman from South Carolina, [Mr. MARTIN] whether there is not an obvious distinction between the two cases. A gentleman might, with perfect consistency, admit the power of Congress in the one case, and deny it in the other.

Mr. B. said he thought this resolution ought not to be referred to the Committee on the Public Lands, as the mover of it [Mr. HUNTER] had proposed. Highly as he respected that committee, it was well known they were chiefly selected from the members representing that portion of the Union within which the public lands were situated, and who were therefore best acquainted with the laws which related to them. The subject proposed to be referred was one of deep and general interest to every State. In his opinion, a select committee, composed of members from different portions of the Union, should be raised for the purpose of investigating it. The subject involved important questions in regard to the construction of the constitution and of the laws of the country, which did not appropriately refer themselves to the Committee on the Public Lands; and the information peculiarly within the province

of that committee, we have already received from the report of the select committee raised at the last session.

Mr. B. said he thought the present the peculiar and the appropriate time for inquiry. The country were expecting, nay, they were demanding it. Are we prepared to stifle this inquiry? Are we prepared to declare that we do not think this important subject even worthy of a reference? Such, he trusted, would never be the determination of the House; and he was convinced the friends of inquiry would never be diverted from their purpose, until they had obtained all the information necessary to enable them to act with wisdom.

Mr. B. said he would read a substitute for the resolution proposed by the gentleman from Vermont, [Mr. HUNTER] which was in accordance with the remarks he had just made. He trusted it would be acceptable to that gentleman. He knew that, under the rules of the House, he could not at present offer it as an amendment; and if he could, he would not, because his time was already too much occupied on the committee of which he was already a member, to make him desire to be placed on the select committee to which this subject ought in his opinion to be referred.

Here Mr. B. concluded by reading the following:

*Resolved*, That a select committee be appointed, to which shall be referred the report of a select committee made to the House of Representatives the 25th February last, relating to the distribution of the net proceeds of the sale of public lands among the several States, in proportion to the population of each; and that the said committee be instructed to inquire, and report to this House, whether there be any provision of the constitution, or of any act or acts of Congress, in relation to the discharge of the public debt, which ought to prevent Congress from making such distribution, and that the said committee have leave to report by bill or otherwise.

Mr. TEST, of Indiana, then rose to address the Chair. Before he began, he was warned by the Speaker that it was the question on the amendment which was before the House, and he must confine his remarks to the question.

Mr. TEST remarked that he thought he understood the question, and should endeavor to confine himself to it as nearly as he could, but he considered the original proposition and amendment so connected together, that he could not do justice to the subject without a partial notice of both. Coming from the part of the country where I do, [said Mr. T.] and where a question of this kind so vitally affects the interests of my constituents, it will be expected that I should say something upon the subject. Indeed, I should think myself derelict from my duty if I were to remain silent. The amendment, sir, looks forward to the general operation of the original resolution. I shall, therefore, be necessarily led into the examination of the principles of the latter, to come fairly at the effects of the former. What, sir, is the question before the House? The first or original proposition is to appropriate the net proceeds of the public lands towards internal improvements and the promotion of learning, to be divided among the States according to their representation in Congress. The amendment offered by the gentleman from South Carolina proposes an inquiry into the quantity and value of those lands, in order, as I understand it, to a division among the States, with a view to come at a fair settlement as he calls it; and that those States, who have received a portion of those lands, may be charged in the account current with what they have received. It is necessary to look into the motive or consideration which induced the State of Virginia, and others, to cede their wild lands to the United States; and then to see if the proposition now before the House is calculated to promote the grand object which those States had in view when they made these cessions; and the determination of this point will test the utility of the measure. It

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is considered, on all hands, that one of the motives was to enhance the resources of the Federal Government, which were at that time very limited indeed, and to enable them to discharge their obligations to their creditors; but, sir, I am very far from believing this was the most prominent or urgent motive. There were higher and more important considerations. The prime object of all was, to maintain and secure a continuation of the confederation. Virginia possessed almost as much territory as any two or three of the other States, and it was readily seen that, in a course of time, an increase of population must give her a vast ascendancy over the balance of them. Looking with a philosophic eye through the course of events, it was not difficult to discern that the growing greatness of an individual State, already the most powerful in the confederation, would be calculated, in the very nature of things, to create fears and jealousies in the smaller States, which might, in time, grow into discontents and bickerings, which, being fostered by those fears and jealousies, would lead directly to a dissolution of the Union or confederation. The prime motive, then, must have been to provide against that event, by reducing the amount of territory in the larger States, and limiting their size as near to an equality as possible, thereby to produce a balance of power in some measure like that of Europe. Passing, for the sake of brevity, over all the intermediate steps, and without adverting to further evidence, it must appear clear to any gentleman in the House, that that must have been the most powerful inducement or motive (and truly patriotic it was) in the larger States to make this great sacrifice of their power and resources; which, coupled with the idea of doing justice to their creditors, and relieving the confederation from its distressing embarrassments, form the consideration upon which these lands were ceded to the General Government; and I hold it to be the duty of Congress to sacredly regard this consideration in all its legislative acts, and to promote the generous and benevolent views of the States in making those enormous though necessary sacrifices. Let us see then whether the amendment to the resolution which forms the proposition before the House is calculated in its consequences to promote that great and magnanimous object. So far from doing so, I view it as the most dangerous proposition that ever was agitated in this House, or brought before this nation. What is it, sir? It is to divide the public lands among the different States, and to require the new States to answer, and pay for all the appropriations made by the Government toward their improvement, while you have reaped the benefits of those improvements to a much greater degree than they. You have furnished the capital, we have done the labor, and we are now to be called upon to pay back all that we have received, after doing the labor for you. How are you going to make this calculation of value? what is to be the standard? where are you to begin? at what point of time? shall it be calculated for the future? will you make it as of now, or shall it be *nunc pro tunc*? We are very gravely told by the gentleman from South Carolina, that to talk about the benefits the United States receive from these appropriations for improvements, is the most fallacious and preposterous idea he ever heard suggested. Let us see if it be so silly and fallacious as that gentleman supposes. What is the effect of those appropriations and improvement of the country? Do they enhance the value of your lands, or do they not? Do they not induce population to flow in by hundreds of thousands? Are they not the means of selling thousands and millions of acres of your land, which would otherwise lay waste and wild? Does not this add to the resources of our country, besides augmenting the value of the lands? To reduce to practical results the argument of the gentleman, I will make such a calculation as I suppose he would ask the committee to make, and see whether he be right or wrong.

Shall we make it at the minimum or maximum price? Sir, I presume the gentleman would calculate them at the price which they sold for. I will gratify him in making it so: then, suppose, by your appropriations and our labor, the lands shall bring ten dollars per acre, do you gain nothing? And the more labor we add to the appropriation, the more it enhances the price, and we are to be charged at that price. Sir, it amounts to this, the more labor we do, the more we have to pay; the more money you receive in consequence of our improvements, the more we have to pay you—we could have purchased the land of you at the minimum price, but in consequence of receiving it as a donation (as the gentleman would call it) we have to pay three prices. It is a valuable gift to you, but it beggars us—and I should say, take back your "Deganire," take back your fatal gift, it is poisoned. Sir, it is like a man laying out a town, and selling his lots for a high price, and afterwards calling upon the purchasers to pay him for the streets and alleys which he had laid out. You have been cunning enough to give, and we silly enough to receive. Sir, it is reversing the whole order of things; upon this calculation the less we have of your gifts the better. Poor Indiana, there is a terrible day of reckoning coming; she has been silly enough to receive some of your gifts; and on the great day of reckoning, if it shall be found that she has received more than her share of the lands, she must pay up the balance; and how is she to do it? Sir, she never will do it, no new State will do it; and to enforce such a proposition would be to strike them from the confederation and dissolve the Union.

Do you believe, sir, that the new States would stand and look on, and see you carrying away the fruits of their hard labor, without a struggle to prevent it. It would take away every motive in them to remain a part in the confederacy, every ground of attachment to the Union, and cause them to look to their own resources for protection. I have said that your appropriations had been the inducements to thousands to emigrate to those new States. They have broken up, and left their homes, to seek a home in the wilderness, allured by your deceitful gifts, and, after arriving there, they find themselves called upon to pay back the pretended boon. What will they say to you? Would they admire your justice, or would they despise your avarice and fraud? Sir, I have inquired at what point of time will you refer this calculation of value and division of the spoil. Will you commence at the present period? Will you go back to the time when those lands were ceded to the States? or will you refer it to some point of time in advance? If you refer it to the time when the cessations were made, little Delaware would receive as much as any of you in the general distribution, for she had as many representatives in Congress then as New York; and would she not contend with you that that was the correct principle? She had then, and has yet, all the burdens of sovereignty to support, without the means of the other States; and the lands being a gift to you at a time when she had as much right in the confederation as any of you, it would seem an argument in her favor to fix the division, or allotment, at that point of time. The object of the trust having now expired, and the trustees about to take the estate into their own hands, and appropriate it to their own use, it seems to me it would be equally if not more just to distribute it according to the situation and relation in which the parties stood at the time of its creation. I say, by this sort of distribution, Delaware would get a share. Suppose you refer the calculation and distribution to the present time, how would it stand? What would Delaware get? However, sir, I will pass by this part of the subject for the present, and take another view of it. Sir, I shall never consent, nor will my State, or the new States generally, consent to stop here with the division, calculation, or distribution. We must go the whole, or perchance we shall not be able to

pay you for the liberal donations you have made us; and where will be the justice of distributing a part of the public domain without the whole?

Here Mr. TEST was reminded by the SPEAKER that the hour for the discussion of resolutions had passed by, and that he must desist.

### CONGRESS MILEAGE AND COMPENSATION.

The House then resumed the consideration of the bill for regulating the compensation for mileage and attendance of members; and

The question being upon concurrence in the amendment reported by the Committee of the Whole, the object of which is to strike out that part of the bill which places the calculation of distances travelled under the direction of the Postmaster General,

It was taken, and decided in the affirmative without a division.

On motion of Mr. WICKLIFFE, the bill was further amended, so as to require the proper officer of the House to obtain from each member the place of his residence, and then, with the aid of the presiding officer of each House, to ascertain and fix the distance, &c.

Mr. TAYLOR, of New York, advertising to the second section of the bill, (requiring from each member, at the close of each session, a certificate of the number of days he may have been absent from the seat of Government,) expressed the opinion that (this principle being introduced into the bill) it ought to be still further amended, so as to make it effective to secure the attendance of members at the sittings of the House. This would not be accomplished by requiring an account of days of absence from the seat of Government, because, in legal phraseology, the seat of Government includes the whole ten miles square of the District of Columbia. To make the provision of the bill more definite, therefore, Mr. T. moved to amend the bill so as to require from each member a statement of the number of days that he should have been absent from the sittings of the House.

After some observations between Mr. WICKLIFFE and Mr. TAYLOR, this amendment was agreed to.

Mr. TAYLOR then moved further to amend the bill, so as that the computation of distance of the residence of members should be by the shortest road, instead of the shortest post road—on the ground that the post road was frequently not the nearest or most convenient road for travelling to a given point.

After some observations between Mr. WICKLIFFE and Mr. TAYLOR, this motion was negatived, 100 votes to 50.

Some further verbal amendments were made to the bill, on the motion of Mr. STORRS, of New York, Mr. TAYLOR, and Mr. HAYNES.

Mr. CARSON moved to strike out the second section of the bill; upon which motion the mover, and Mr. WILDE and Mr. WICKLIFFE, made some remarks, the first and last of these gentlemen at considerable length. When

Mr. SPEIGHT, of North Carolina, moved an adjournment. This motion was negatived.

Mr. LETCHER, of Kentucky, said, that with the greatest pleasure he would have acceded with the request of the gentleman from North Carolina for an adjournment, were it not for what he believed an unnecessary consumption of time which it would have occasioned. This House [said Mr. L.] has been already four days engaged in vain debate on a plain and simple proposition. An evil is admitted by all to exist in the variant computation of the mileage of members, and a bill is before us to make the construction of the legal provision on this subject uniform; and, somehow or other, great difficulties seem to stand in the way of the passage of this bill. But, when we take into consideration the word "retrenchment," that powerful and magical word, so much the favorite of my colleague, and his idea of its beginning "at home" by the passage of

this bill, with a view to that object I would earnestly recommend to him the saving of time. Time, sir, itself is money, and we ought to economize it. And, although it may be due to that gentleman that he should be allowed to advocate this darling of his bosom with zeal, I might yet acknowledge, without intending any personal disrespect, that he has occupied an undue proportion of the time of the House in doing so. If he had allowed the bill to pass without so much debate, after going through the Committee of the Whole, there would have been no difficulty in it. I invite the attention of that honorable gentleman, when he next looks into the subject of retrenchment, to the devising of ways and means by which we can get along with business in this House a little better: that we may not be obliged to hear any gentleman, on a subject of this sort, more than one hour at a time, nor have him repeat the same speech more than three times within that hour: nor to hear him take a wide range concerning himself and the difficulties he has encountered in getting here. I speak of this in general terms, as an evil that needs the correcting hand of the retrenching committee, or some other committee. Upon principles of justice and equality [Mr. L. said] he thought that this bill ought to pass in some shape or other, and he could not but regret its delay, and the obstacles which its friends had, no doubt unintentionally, thrown in the way of its progress. He admonished his colleague not to be too particular as to terms, and, if he obtained a bill sufficient for a correction of the evil, to be satisfied. This might have been done [he said] without any great parade, by the introduction of a resolution declaratory of the opinion of this House as to the intention and construction of the law of 1818. The committee, however, having preferred a different mode of accomplishing the same object, he was disposed to acquiesce in it.

This child of the bosom of his colleague had been long in coming into the world. The nation has looked for it with intense anxiety. It had been slow in its conception, and tardy in its delivery. It was old; though it had been said to be small, yet it was comely. It was a production which [Mr. L. said] he himself admired very much, since it had seen the light; although, from the great difficulty in bringing it to life, some had apprehended that the Cæsarian operation would have become necessary before it saw the day. It has come, however, [said Mr. L.] and I rejoice to see it. I rejoice the more, because it has a striking resemblance to its father—not to the colleague of mine who laid claim to it yesterday, but to him who has the charge of it; though, really, from the affectionate struggle between my two colleagues as to its paternity, I did not know but we should have to resort to the plan of Solomon of old, and settle the question by dividing the offspring between them. But, to speak seriously, he believed that his honorable colleague who reported the bill was the real father of it, and should have all the credit of so hopeful an heir. He hoped to see it carefully nursed, but not too closely, lest perchance it might be smothered by too much kindness. He also desired that it might inherit all the good properties of its father—all his industry, ability, and usefulness; and, in saying this, he was not speaking ironically, but he hoped that it would not at the same time inherit an unconquerable desire to talk. Mr. L. hoped [he said] that we should have its twin brother, and a good many of the same progeny. He liked the breed. He wished to see "reform" here in expenditures, as well as elsewhere throughout the country. Though it might be thought small game by some, he would be glad if his colleague would go on and pursue it. So much saved is so much gained.

As every body seemed willing that this bill should pass, [Mr. L. said] he had got the floor to ask why the House should hesitate longer about it. Why not pass it to-day? He never had himself a doubt as to the intention of the law of 1818; for he never had the acuteness himself to be

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able to find out that "the usually travelled road" was the bed of a river, and, therefore, never thought of making such a charge; but, at the same time, he did not condemn the gentlemen who had calculated their travel in that way, if they thought it just and according to law.

Those parts of the bill which had been stricken out, [Mr. L. said] he did consider as conveying an imputation on this House, by referring the computation of the mileage of members to the Postmaster General. For himself, [he said] he wanted no overseer or supervisor of this House, or what might be called a Congress-Master General. He could never agree to let any officer out of this House regulate its peculiar and exclusive concerns. Gentlemen might, on the stump, or elsewhere, harangue about the want of integrity in this House. Mr. L. said, he considered its integrity the last stay of the nation; and when that reliance was gone, he should think the Government was gone. Such things may be talked of as electioneering topics, and to be witty upon. But, when we come to be serious, the truth is known and acknowledged, this House has integrity. Having no doubt on that subject, ought we ever so far to bring ourselves into disrepute by our own vote, as to intimate that any individual at the head of a department is likely to have more honesty than we have? I do not acknowledge that any one man, the Postmaster General, or any other executive officer, up to the highest, deserves such preference over ourselves: for I believe that there is as much honesty and patriotism in this House as in any equal number of people upon earth. I look to them with hope and confidence for safety in the worst of times. Let the times be as bad as they may hereafter—I do not now speak of the present time—I look to this House to protect the public interest. I never will consent to say, either directly or indirectly, that there is any head of a department that can and will do more justice to this nation than the nation may rightfully expect from the House itself. The Post Office Department has already heavy duties to perform, with fewer responsibilities, with more power and patronage, than any other department of the Government; and all the ability and all the honesty of its head is required for its own faithful management. He would not therefore agree to place this House under the control of him, or any other officer whom it might be proposed to make its comptroller general. Mr. L. concluded by saying he did not wish to consume time unnecessarily, and expressed a hope that the House would pass the bill before its adjournment.

Mr. SPEIGHT said, he had not submitted the motion for adjournment with a view of making a set speech on the subject of retrenchment and reform. He was fearful that the patience of the House was already exhausted; he had not originally intended to take any part in the discussion; but the innumerable amendments which had been made to the bill had induced him to make a brief statement explanatory of the vote he should give. He could scarcely expect that the House would attend to him with the same good humor with which they had listened to the gentleman from Kentucky, [Mr. LITCHER.] That gentleman had been pleased to call this bill a child, which needed nursing and attention to rear to maturity, and professed himself willing to aid in rearing and educating it to useful purposes. Mr. S. thought that the chairman of that committee might say, in reference to the friendship manifested by his colleague, in the words of the Spanish proverb: "Save me from my friends; from my enemies I can protect myself." When the bill was first introduced into the House, he was opposed to it, and had so stated unreservedly, mainly on account of that clause in the first section, about which so much debate had been had, directing a reference to the Postmaster General. When this part was stricken out by an amendment, he was disposed to vote for the bill. His objections to that clause were the very incorrect estimate which the post office books give of the

distances on some of the post routes. Their distances were no doubt generally obtained from deputy postmasters and mail carriers, who evidently knew very little of the matter. In his district, he had heard no complaints about the per diem allowance on the mileage of members. The committee had, however, reported an abuse or an error, and had demonstrated how it had originated, and had proposed a remedy. The fact that this matter, thus disclosed, had not been spoken of at such a distance, shows that this error has been gradual in its growth, and that the people have never been fully apprised of its extent. It ought, therefore, to be corrected, and the amended bill afforded a proper remedy. Mr. S. could not agree in opinion with his friend and colleague, [Mr. CASSON] his bosom friend, he might say, that in this matter corruption or dishonorable motives were to be imputed to members, and that they should resent such attempts.

He saw nothing in the bill to awaken such feelings. It was based upon the admitted fact that something had been done which ought not to have been done; and that the present law was so defective that such errors might occur even with good intentions. The enactment of this law would prevent a recurrence of these things, by establishing a uniform rule. He saw in this nothing to impeach the character or ruffle the complacency of members. He reprobated the doctrine that members of Congress were too honorable to need accountability, and that they should be exempted from responsibility. Members of Congress were, he doubted not, equally fallible with other men; and, in this matter, the question is about that in which men are most fallible, their self-interest. He was for discarding such pretensions, and for putting a stop decisively to these malpractices. Mr. SPEIGHT said, that two years ago, when these matters were first broached, this Hall, and every Hall in the country, rung with the accounts of the waste of public money, constructive journeys, double outfits, &c. He was then, as now, of opinion that the question of retrenchment should be fully met, and a thorough investigation ordered into all the departments of the Government. But his opinion was, unequivocally, that this reform and investigation should commence, like charity, at home, and here in this Hall. This bill, in part, met his view; and when this should be settled, he hoped the committee would prosecute the inquiry into certain other matters about the House, the use of stationery, &c. And when the affairs of that House were retrenched and reformed, he hoped they would proceed through all the departments, from the Executive down through every office, and examine and reform all the abuse which may exist. He had heard, during the last nine months, a great deal of the removal of faithful public officers, men who, for many years, had served the public well, and the appointment of others. If these things have been done without cause, it is proper that such an abuse of power should be detected, and its authors punished by public opinion. In these remarks he had no intention of alluding to individuals; the question simply was, the abuse being admitted, should not the remedy be applied? He thought it should, and therefore supported the bill as amended.

The question was then taken, by yeas and nays, on striking out the second section of the bill, and decided in the negative by a large majority, [153 to 15.]

Mr. CHILTON, of Kentucky, then moved further to amend the bill, by adding the following as a new section:

Sec. 3. *And be it further enacted*, That the sum of six dollars per day, and six dollars for each twenty miles travel, and computed according to foregoing provisions, be allowed to each member of Congress, in lieu of the present allowance; and that all laws making a greater or different allowance be, and the same is hereby, repealed.

This motion Mr. CHILTON supported by a speech of some length, and concluded by asking for the yeas and nays upon it.

The House refused to order the yeas and nays to be taken, by a vote of 162 to 19.

A motion was then made to adjourn, and decided in the negative.

The question was then taken on agreeing to the motion of Mr. CHILTON, and decided in the negative, yeas 26.

And then the bill was ordered to be engrossed for a third reading, in the following form, viz.

"Be it enacted, &c. That the Secretary of the Senate and the Sergeant-at-Arms of the House of Representatives shall, at the present and at the commencement of each subsequent session of Congress, obtain from each member and delegate the name of the post office nearest his residence, and shall then, with the aid of the presiding officers, ascertain and fix the distance to said post office from the seat of Government, computed according to the shortest post road on which letters are usually transmitted by mail from the seat of the General Government to said post office; after which, he shall add to, or subtract from, the said statement, as the case may be, the distance from said post office to the residence of said member; upon which statement, the mileage of each member is to be computed.

"Sec. 2. And be it further enacted, That, on the final settlement of the account of each member or delegate, he shall subjoin, at the foot of his account, a certificate that he has deducted from his account all and each of the entire days on which he may have been absent from his seat in the House of which he is a member, during those days on which it may have been in session: Provided that nothing in this act contained shall be so construed as to prevent a member receiving a daily compensation, if the absence of such member was occasioned by sickness after his departure from home; in which case, a member so prevented from attending the House shall annex a certificate of the fact of sickness, and its duration."

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#### DISTRIBUTION OF PUBLIC LANDS.

The House having resumed the consideration of the resolution of Mr. HUNT, proposing a distribution of the net proceeds of the sales of public lands among the several States for the purposes of education and internal improvement,

Mr. TEST rose, and said that he had but a few words more to say, and he should close. I think, sir, [said Mr. T.] I was calling the attention of the House to the *modus operandi* under the provisions of the amendment to the resolution by the gentleman from South Carolina, and particularly what was to be taken into this account current which was to be made out. I had said, we shall call upon you to go the whole; we shall not only call upon you to throw in all the lands in this district, besides the useless millions you have laid out upon this building and the President's house, but we shall call upon you to take an account of your navy also, for it will be extremely onerous to call upon us in the new States to pay for the lands you pretended to give us, without allowing us to draw out of the general stock our money portion of the funds. I shall be told that these public buildings are a part of the staple improvements of the country, which were never intended as a fund; this I admit; and so, by your pretended gift, these lands (so far as they have been applied) have become a part of the permanent improvements of the country as much as your public buildings; but we are called upon to pay for them, and we cannot do so except we be permitted to draw upon the joint stock. It will be no answer to our proposition to tell us that the cost of these buildings, &c. are money appropriations, and not land. Sir, I would inquire of the gentleman from South Carolina, what distinction he will draw between an appropriation of money and of land—except that money is preferable.

The State of Indiana would have much preferred the money, or I would for her. It would have been much easier managed. I shall be told that the navy ought not to be taken into the account, because it is for the security of the country and the protection and facility of commerce—so are the roads and canals erected, and to be erected, from the proceeds of those land appropriations; they serve as means to transport your arms and munitions of war from one point to another, and to disseminate the various objects of merchandise through the country. Yes, sir, the navy in time of peace serves only to protect the merchants in their commercial pursuits. We can, therefore, with perfect propriety, call upon them to aid us in paying back our share of these appropriations so generously made, by paying us our share of the value of the navy. We shall call you to an account for your forts, your arsenals, your armories, your light-houses, your sea-walls, and all the improvements upon the seaboard; and shall I be told they are for the general protection of the maritime frontier? Sir, our public and private improvements protect your inland frontier much more effectually than all your navies, and forts, and arsenals do your maritime. How long since this very spot was a howling wilderness, infested with the wild beast and the savage? Now, sir, the improvement and settlement of the new States form an impassable barrier between them and you; and when you have not made us appropriations towards the erection of these improvements, and we have not been able to make them ourselves, we have presented our breasts as a rampart to protect you. It is to the industry, the enterprise, the toil, and the labor of these new States, that you owe a greater share of protection than from all your navies and forts; and yet you ask us to suffer you to retain the navy, together with all your permanent improvements, while you call upon us to pay back to you a miserable appropriation of land in the midst of the wilderness. Could the gentleman from South Carolina have the face to ask it? Sir, are we to be charged with all these improvements which have been called western? Shall we have to pay for the Cumberland road, and all its repairs, too? I hope not. But, according to the gentleman's amendment of the resolution, Virginia, with all her constitutional scruples about internal improvements, and Pennsylvania, with all her objections to the termination of the Cumberland road, will have to pay the expense of making and repairing it, unless it can be shown that there is some distinction between appropriations for land and money. Do you think, sir, Virginia or Pennsylvania will ever pay you back the appropriations for that road? I will answer for them, and I will answer for all the Western States—they will neither of them ever do so. I think, sir, the gentleman from South Carolina, and every gentleman in this House, cannot but see the gross injustice he would do the people of the new States by carrying into effect the principles of the amendment to this resolution. It is calculated to injure and oppress the bravest, the hardest, and most virtuous part of your community—men who have borne the burden in the heat of the day—men who, when your country was invaded by both the civilized and the savage foe, stepped forward with alacrity to defend it. No murmuring was heard. They never inquired, is my country right or wrong? The only inquiry was, where are her enemies? The story of these appropriations which you desire us now to repay, drew thousands of emigrants to these new States, upon the faith of the Government that they were real, not fictitious. They settled down in the midst of a wilderness, where, perhaps, the human foot never trod; they have honestly toiled and labored till they have made themselves a little home, perhaps near the spot where by your donations (as you were pleased to call them) you seduced us to make a road or canal. What will they say when they are told they must pay back this deceitful, this Indian gift? Sir, you would create heart-

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burnings and discontents that time will never heal. Sir, I will say something more to the gentleman from South Carolina concerning his calculations of the price of these public lands. Are his calculations of the value of these lands to have a retrospective operation or not? If so, and you go as far back as to the time of the cession of these lands, why then the small States will get a full proportion; but then great injustice must be done if you place them at the present time; the small States would get almost nothing. The State of Delaware, for example, would get the two hundred and thirtieth part, and Indiana would get three two hundred and thirtieth parts; for it is to be kept in mind that the territories as well as the States are to share in the plunder. Yes, sir, and while Delaware and Indiana receive this little miserable portion, New York will be entitled to about one-sixth of the whole of your wild lands. Fix it prospectively, still injustice must be done; so that, as an original proposition, and established on the very best footing, it is evident that the grossest injustice must fall somewhere; and to carry it through upon any principle would tend to defeat the great, indeed the prime object of the donors of the trust. So far from tranquillizing the people of this confederation, it would lead to a state of public feeling in every respect the reverse.

A few words to my friend from Vermont, and I have done. I have never been more astonished than at seeing the course which he has taken; and when I call him friend, I do so sincerely and candidly. I have always found him generous of heart, liberal in his sentiments, and the steady, untiring supporter of all the valuable institutions of the country. I found him with me in obtaining the appropriation of land for the Wabash and Erie canal, and my heart has never ceased to recollect with gratitude his kind aid on that occasion; but if he now turns about, and calls upon us to pay back the amount of that appropriation, I shall have, however reluctantly, to cease to cherish those pleasing recollections. To say there have been appropriations made without a view to the general benefit of the whole nation, is a direct imputation upon the honesty and integrity of the gentlemen who composed that Congress; and I am ready to answer for my friend from Vermont, that he never gave a vote in this House through mere whim and caprice; but when he did vote on any question, it was an honest, and, generally, a very judicious one.

[Here Mr. MALLARY rose, and begged to be heard in explanation. He said he was sorry that he should have been so misunderstood; that he had declared in the outset that he had no disposition to call upon the new States to repay the appropriations made them; that he believed them to be of national benefit, calculated rather to enhance the value of the public domain, than to diminish it.]

Mr. TEST resumed. My friend from Vermont has misunderstood me, and not I him. If he had waited a moment, I should have satisfied him and this House that I never intended to attribute to him any such intention. I had intended to say that he had in the outset disclaimed every idea of calling upon the new States to repay the value of the appropriations they had received; but, at the same time I heard him thus disclaiming every such intention, I could not help but see him advocating the passage of the resolution and amendment before the House, which led to all the evils I have deprecated. He says he is not for an immediate distribution of these lands, but he wishes this as a mere preparatory step. If nothing is to be done now, why push the measure? Why arouse the excitement, and all the angry feelings consequent upon it, if nothing is to be done? Why not let it sleep till he thinks the time arrived when it ought to be awakened? He says he hears a sentiment propagated by many, very many, which, if it shall ultimately prevail, all their prospects of obtaining a share of the public lands are at an end; that is, that the lands of right belong to the States in which they lie; wherefore, he says, he wishes to be paving the way for a

proper disposition of this part of the public domain in time.

Sir, I should think the gentleman's precipitancy a conclusive evidence that he was afraid to submit his proposition to the deliberate cogitations of the people. He is fearful that that monstrous sentiment which he has heard in whispers might assume a more audible tone—he is fearful it may gain upon public opinion. Sir, if it be true that such a sentiment or opinion be gaining ground, it is one of the strongest reasons under Heaven why the decision of the question should be postponed. Let the people deliberate upon it, and my life for it they will come to a correct conclusion concerning it. Is the gentleman afraid to postpone it till after the next census? I should think so, from his desire to push the matter now. Why, sir, drive us into a decision now? Why not let it remain till public opinion has decided upon it? The new States are but weak in numerical strength; why cram this measure down their throats before they shall have acquired the strength which the new census will give them? It shows there is something wrong about it, and that he is afraid to trust it to the searching investigations of time. If we must have a scramble for this property, give us a chance with you—do not take the advantage of our present representative weakness, when you know we have a large portion of original physical strength just ready to organize and bring into action. It would not be fair; if we must lose our lands, let us at least have the benefit of all our strength before we commence the unequal struggle. Sir, I can say to my friend from Vermont, I have never heard such principles as he mentions contended for—I have never heard any man deny but that Congress had the right to dispose of those lands according to the tenor of the compacts with the various States which have made cessions. But I will say to my friend, that whatever lands the United States may have in the new States, at least the Western ones, Vermont has no land there, nor ever will have, until the Western States consent to it, or the most solemn engagements shall be violated by the Congress of the United States. Sir, I have said this, and I will say it here, that the gentleman may be apprised of it, that when the motives or considerations for ceding these lands to the United States, by the several States, shall have been fulfilled, that, from a principle of equity, connected with the contract, they must and will fall to the States in which they lie; and, sir, I will give the gentleman the grounds of my opinion. Sir, it is evident that these lands were ceded to the United States upon two considerations, the most prominent of which was, to create a sort of political balance in the Union, as I have heretofore said; the next was, the payment of the public debt. The lands are, therefore, a trust estate in the hands of Congress or the United States, for the purpose of fulfilling the design of the States which ceded them, that is, to lay off a certain number of new States, not to exceed a certain size, so as to create the balance of power I have before stated—which States were to be free republican States, possessing all the rights of sovereignty and independence of the original States; and, at a proper time, to be admitted into the Union upon an equal footing with them. Now sir, it is not a settled principle, in the construction of all trusts from which no tribunal ever thought itself at liberty to depart, that when the whole object or consideration for which the trust was created shall have been fulfilled, that the estate reverts to the original donor, unless otherwise directed by the terms of the trust. Here, sir, it is otherwise directed; it never can revert to the donors. But, sir, when these new States shall have been laid out, and the public debt paid, these lands must go to those new States according to the provisions of the grant—having all the rights of sovereignty, freedom, and independence of the original States. Sir, I am forbidden to travel upon this ground—it belongs not to the amendment, but to the original resolution, which

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I have been warned not to discuss. When a proper occasion, however, shall offer, I may take up the subject more at large, but, for the present, I will not trouble the House longer.

Mr. WILDE, of Georgia, spoke briefly to the question, with a desire to have it modified, and placed in a more definite shape before the House.

Mr. SPENCER, of New York, said that he rose to make a very few remarks. The gentleman from Georgia [Mr. WILDE] had correctly stated that the resolution was merely for the purpose of inquiry; it was an initiatory proceeding with a view to certain results, and every thing pertinent to the inquiry should be embraced in the resolution, if nothing more. He presumed it had not been the intention of the mover of the resolution that donations in land, or otherwise, to the new States, should be taken into consideration; and the gentleman from Vermont, [Mr. MALLARY] although he had expressed an intention of voting for the amendment, had distinctly disavowed taking into the final account those donations against the new States. He was opposed to any retrospect as to grants or donations to any of the States, and he believed those who acted with him in support of the resolution were opposed to it. In the first place, they wished to avoid any excitement; and, in the second place, they considered such retrospect unjust. He fully agreed with the gentleman from Ohio, [Mr. VANX] that the donations which had been made had promoted the interests of the United States, by greatly increasing the value of the residuary lands; and he even felt that those hardy adventurers, who had entered our forests, and, amidst privations and sufferings, reduced the wilderness to pleasant abodes, were entitled to even more than they had received. He said the amendment proposed by the gentleman from South Carolina, [Mr. MARTIN] was a Pandora's box, and had produced the excitement which had been displayed; that gentleman, instead of uniting to put that down, had opposed the original proposition, as containing the unjust principle of taking the donations to the new States into account in the final distribution of the proceeds of the sales of the public domain. The gentleman from South Carolina had candidly avowed that he was hostile to the inquiry, and should vote against it if his amendment was adopted. He had never perceived the propriety of the amendment, and was satisfied that it would produce no other purpose than that of exciting, unnecessarily and improperly, the feelings of the representatives of the new States. His own opinion was, that the subject should be examined now, and that it should be settled by this Congress; and that opinion had been strengthened by what he had heard from the gentleman from Indiana. He had never before heard the reasons assigned by that gentleman for the cessions made by Virginia and North Carolina. He had never supposed that these cessions were for the purpose of making new States. It was notorious, that, by the treaty of peace terminating the war of the Revolution, the lands falling within the original boundaries of those States were wrested from the crown, and enured to the States within whose limits they were situated; in consequence of the arduous struggle for independence in which all the old States participated, and by the common blood and treasure of the then States, these lands had been acquired. Virginia, and the other States who made cessions, magnanimously surrendered a portion of the territory thus gained. This surrender was dictated by a high sense of justice, and never has been, and never ought to be, viewed as a donation. He should suppose that the ratio of representation in this House was the proper measure by which to ascertain "the proportion of charge and expenditure." Let inquiry be made, as it ought, in order that, in our future distribution, we may conform to the intention of the grantors. The gentleman from Indiana [Mr. TEST] had admitted that the legal title to these lands was in the Unit-

ed States, but he has said that eventually they ought in justice to go to the States within whose boundaries they were. Suspicions that such sentiments were entertained by the new States had probably led to the introduction of the resolution. It must also be recollected that there was a vast quantity of public lands, which had been acquired by purchase, for which the United States had paid large sums, and assumed onerous burdens. He referred to Louisiana, Florida, and the Georgia and Alabama lands. Have the United States been reimbursed for the consideration money paid out of the common treasury for these lands? He believed not. And on what plea then can the new States claim the unsold lands as theirs? It certainly was to be apprehended that at some future time the claim which had been intimated by the gentleman from Indiana would be more boldly advanced, and that the right of the old States would eventually be denied. He was glad that, in the enumeration of the States which had largely participated in the public expenditure, the gentleman from Indiana had not named New York; she had indeed had but little of the expenditures of the General Government; she had applied for its aid when about to undertake her great work, but was denied all assistance on the ground of unconstitutionality. She then went on with that great enterprise unassisted and alone, and had succeeded, and was now enjoying the rich harvest of her enterprise. He thought this the precise time to make inquiry as to the distribution of the proceeds of the public lands, and he desired to make the inquiry and measure entirely prospective. He thought the friends of the resolution should unite to disencumber it from the amendment, and that they should adopt the proposition suggested by the gentleman from Pennsylvania, [Mr. BUCHANAN] and send it to a select committee.

Mr. BLAIR, of South Carolina, remarked that he was sorry to see, in that House, such a strong and inveterate disposition to scramble for the public funds. During the short time they had been in session, frequent attempts had been made to commit that House on the subject of appropriating public lands, or setting apart the "surplus revenue" for objects of "internal improvement" or education. Some gentlemen seemed to be very much afraid we should not know what to do with our surplus revenue. This reminded him of the story about the hunter, who sold the skin before he had killed the bear. Mr. B. said, he thought common prudence and ordinary delicacy would require gentlemen to wait until the Government had paid its debts, and had really a little spare cash over and above its necessities, before they undertook to dispose of its surplus funds "in advance." Mr. B. said, although he very much wished to see this Government out of debt, yet he never expected, and he never wished, to see it possessed of surplus revenue to any considerable amount. He feared it would only serve to engender discord and corruption. The true policy of this country [he said] was to pay off the public debt as soon as possible, and lessen the duties on imports so as to meet only the real exigencies of the Government. It was a folly to say, or to imagine (as he had understood some gentlemen to intimate) that the people, after having realized the convenience and advantages resulting from low duties, would resist such an increase of them as might become necessary to meet any contingency or emergency that might arise. This [he said] would be a bad comment on their patriotism. He hoped they had not yet so far degenerated from the political virtue of their Revolutionary fathers. No, sir, [said Mr. B.] when the people see the Government disposed to ask no more from them than is really necessary to support it, they will, in cases of necessity, submit to the greatest burdens. They will not only give their last dollar to aid a Government thus mindful of their interest, but, along with their money, they will freely give their blood. Mr. B. further said, that, after the public debt is paid off

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entirely, and the public lands thereby redeemed from the pledge they are now under for the obligations of the Government, he did not know that he should have any objection to a fair and equitable distribution of that territory; and if South Carolina could only get justice—sheer justice—in all other respects, he should not be disposed to squabble about those lands. Those who seemed to have such an “itching palm” for them, might take them, rather than he would enter into a scramble with them, like school boys scuffling for chestnuts. But, until our honest debts were paid, (if he might call them honest,) at any rate until all the pecuniary obligations of the Government were discharged, he hoped the public lands would be held as sacred as is the cash in the treasury itself.

[Here Mr. BLAIR's remarks were suspended, in consequence of the hour for discussing resolutions having expired.]

Adjourned to Monday.

MONDAY, JANUARY 4, 1830.

#### DISTRIBUTION OF PUBLIC LANDS.

The House resumed the consideration of the resolution moved by Mr. HUNT on the 17th ultimo.

The question recurred on the motion made by Mr. MARTIN, on the same day, to amend the same; when

Mr. BLAIR, of South Carolina, addressing the Speaker, said, he had concluded his remarks on Thursday last, by expressing a hope that, until all the pecuniary obligations of the Government were discharged, and the public lands thereby redeemed from the pledge they are under, no distribution of that territory would be made, but that it would be held as inviolable as the cash in the treasury.

It has been said by some [continued Mr. B.] that the public lands are a very inefficient fund for national purposes. This has been owing more to bad management, than to the inadequacy of the fund itself. At any rate, [said Mr. B.] the public land has been found, on former occasions, to be quite a convenient article with which to enlist recruits for your armies; and it is not at all impossible, but he thought it altogether probable, the Government might stand in need of it again for a similar purpose. Suppose [said Mr. B.] that, during the late war, instead of a bounty of one hundred and sixty acres of this land, you had been compelled to launch out its equivalent in money to every private soldier you enlisted, and a still higher amount to each of your officers, what would have been its effect on public credit? and would it not have made a serious inroad upon your strong box? I guess it would, [said Mr. B.] He therefore thought sound policy required the public lands to be husbanded with care, at least till the public debt was paid. I am one of those [continued Mr. B.] who think the best “provision for the common defence and general welfare,” and the best preparation for war, would be the payment of the public debt in the time of peace. At the commencement of the last war, your public debt was much smaller than it is at present; the war itself was feebly conducted on the part of Great Britain, yet your credit became so low during the contest, that you could effect only limited loans—very limited loans at an enormous premium. And it ought never to be forgotten how abortive, futile, and disastrous were some of your operations for the want of means. Indeed, the Government acknowledged it had not the means wherewith to defend South Carolina against the common enemy. South Carolina, therefore, had to use her own purse. And she has not even yet been refunded or reimbursed the money she expended. Her memorial on that subject has been presented to this House this morning. The war, to be sure, was occasionally characterized by a brilliant exploit, particularly by one at the Miravien town, in which an honorable gentleman of this House took a distinguished part; and the conflict was finally terminated

with great éclat and success at New Orleans. But that is almost entirely to be attributed to the rare energy, skill, and courage of the illustrious individual who commanded in that quarter, not to the Government or its means, for these were poor indeed.

But, [said Mr. B.] notwithstanding the true policy of the country requires that we should husband with care and economy all the public treasures until the national debt is paid, I very much fear a great many gentlemen do not wish the public debt extinguished. Their greatest fear is, that, under the administration of our present worthy Chief Magistrate, the Government may happen to get out of debt.

Mr. B. said, he hoped he was not disposed to judge too uncharitably, but he inclined to think the stockholding interests did not wish the trouble, the loss, and the hazard of making new and frequent investments. They would not only lose money by it, but they would then have to contribute something to the support of the Government. The manufacturers also were desirous of a pretext for continuing a high tariff. It was not for their interest, then, that the public debt should be discharged; nor was it for their interest that the national demand should continue to be a source of revenue. He would not say that the friends of the stockholding interest combined with the advocates of high protecting duties, and the friends of internal improvement, in order to divide and to squander away the public funds for selfish sinister purposes, but he did think the circumstances to which he had alluded warranted such a conclusion. But, [said Mr. B.] it has been said by some of the senior members of this House, for whose opinions I have a high regard, that this is not a proper time to discuss this matter; and I certainly have no disposition to pursue the disagreeable subject any further. He had not been able [he said] to reply to those gentlemen on his left, who perhaps had differed from him in opinion, because he had not been able to hear them. He knew that some gentlemen had objected to the amendment proposed by his worthy colleague, [Mr. MARTIN] but those objections, so far as he had distinctly heard them, appeared not to be valid. He hoped, if the House was determined to adopt the resolution, it would be with the amendment offered by his colleague; but, whether that amendment should be adopted or not, he would finally vote against the resolution. He was at present [he said] opposed to the whole proposition in every possible shape and form. He hoped, therefore, that it would be laid aside now, and if not for ever, at least for years. He had been desirous that the motion, made some days ago by the honorable gentleman from Tennessee, [Mr. POLK] to lay the resolution on the table, would have prevailed. He was not now disposed to renew that motion, because he did not wish to seal up the lips of such gentlemen as might wish to present their views of the subject. But, when a proper time arrived, if no other gentleman renewed that motion, he would. At present, however, he made no motion.

[The debate here ended for this day.]

#### FORAGE TO OFFICERS OF THE ARMY.

The House resolved itself into a Committee of the Whole, Mr. DWIGHT in the chair, on the bill to regulate the allowance of forage to officers of the army.

The bill was in the following words:

“*Be it enacted, &c.* That, from and after the passage of this act, the officers of the army, entitled by existing laws to forage, shall be allowed, in lieu thereof, the following sums, respectively, viz. A major general, brigadier general, adjutant general, inspector general, quartermaster general, and commissary general of subsistence, each twenty dollars per month; a colonel, sixteen dollars per month; a lieutenant colonel, major, quartermaster, paymaster, and surgeon, each twelve dollars per month; and every other officer, entitled to forage, ten dollars per month.



"Provided, That the officers of the line and of the staff, when their duties require them to be mounted, shall be allowed to draw and receive, at their option, forage in kind, in lieu of the sum allowed them by this act, for as many horses as they may have in actual service, not exceeding the number allowed now by law to such officer of the line or staff."

Mr. WICKLIFFE (chairman of the committee which reported the bill) explained the scope and object of its provisions. After doing which, he remarked, that being admonished by what fell from his colleague [Mr. LETCHER] the other day, that it ought to be a part of the duties of this committee to provide for the retrenchment of debate and the economy of the time of the House, he should desist from any further unnecessary consumption of it on this occasion. Mr. W. said, he did not envy his colleague the consolation which he must have derived from the amusement which he had furnished the House, at the expense, as might be well supposed, of the feelings of one who had never harmed him, and of one who had ever treated him with the highest respect. He was not conscious of having, on the occasion referred to, consumed more of the time of the House than was proper to defend the measure for which he, as one of the committee which reported it, was responsible. He had thought that some response was due to the observations which the gentleman had made; but he forbore from it, under an impression, that, left to his own reflections, the gentleman would find the satisfaction which his course afforded him would not be as great as it seemed to be in the immediate enjoyment of it. He was deterred also by another consideration—the want of time. He well recollected, when that gentleman made his last appearance upon the boards, two years ago, he furnished the House with a somewhat similar dish of amusement; condemning and reprobating much talking—in doing which, he had spun out a speech covering about five columns of the *Intelligencer*. I do not [said Mr. W.] envy him the gratification of being considered the wit of the House. I yield to him the palm he so much desires, and only ask of him to let me enjoy the humbler consolation of endeavoring to render myself useful to those who have sent me here. I would admonish my colleague that it is not by wit and humor the business of the nation is to be advanced; and, above all, he who indulges in it should never do it at the expense of private friendship. In reference to the un conquerable desire to talk, which he imputes to me, of that let those judge who have known me the longest and best. With a view to its influence on those who know me not, this premeditated judgment on my character and motives seemed to be a little unkind. On the subject of the character of the labors of the committee, [Mr. W. said] it had been fashionable for gentlemen out of the House to attempt to turn them into ridicule and contempt. The same attempt was made when the subject was first broached in this House. Mr. W. said, he should never, in the duties assigned him as a member of the Committee of Retrenchment, be prevented from presenting subjects which he believed worthy of the attention of the House, by the opinion of individuals either in or out of the House; and, if necessarily called upon to explain them, when he found individuals professing friendship acting with the opponents to the retrenchment of unnecessary expenditure. If he successfully defended the committee against such insidious hostility, he should be content to receive the censure for a disposition to talk too much, gratuitously bestowed by his colleague. Mr. W. said thus much he added, not from a disposition to provoke a renewed attack upon him, but to vindicate his own course. He trusted, however, that the measure now before the committee would be more acceptable to his colleague, than that which had, the other day, excited his wit and provoked his irony.

Mr. LETCHER said, he regretted that his colleague had not received what fell from him the other day in the same spirit in which he had uttered it. Mr. L. said he never had, at that time or at any other, a disposition to use any severity towards his colleague; and he believed that the whole House perfectly understood that he meant no personal reflection upon him. If he had supposed that his colleague had taken unkindly what he said, he would have taken the earliest opportunity to put him right in that particular. In his colleague's remarks, the other day, Mr. L. said he thought he had gone out of his way to throw improper reflections upon the last administration, in speaking of a travelling cabinet and of constructive journeys; which language formed a part of the electioneering machinery of the late contest for the Presidency. Mr. L. had thought, after the violence of the war was over, and victory had ranged herself on the side of his colleague, that generosity, magnanimity, liberality, would have marked his course, and that, of all the members of this House, he would be the last to revive the topics of the old contest. He had thought that the nation was tired and weary of the thread-bare story; that his colleague's allusion to it was wrong; and he acknowledged, very frankly, that it had excited him a little. But he had not intended to be personal in his remarks; for, when he meant to be personal in his observations, there should be nothing equivocal about them. When he had spoken of the industry, integrity, and ability of his colleague, he had meant nothing ironical.

Mr. WICKLIFFE said that he must relieve himself from the imputation that he had the other day made some unkind attack on the late administration. He had not done so. In answer to the gentleman from North Carolina, who had criticised the bill in harsh terms, he had spoken of what had been said out of the House, of individuals receiving compensation and neglecting their duties, and had called his recollection to the great deal that had been said of a travelling cabinet, &c. Sir, I am not obnoxious to the charge imputed to me by the gentleman. I have not desired, nor do I intend to disturb the ashes of his favored and favorite dead. In peace let them sleep. I do not believe that my colleague has admitted, or is willing to concede, that the battle is over, the victory is won. Not so. Richmond is in the field again, else I am deceived by things which surround me. Mr. W. had not supposed that that remark invoked the ire of his colleague; but had rather supposed him to have been excited by the remark, that the abuse in the computation of mileage, from a misconception of the law, had originated under a former presiding officer of this House, who was a particular favorite of his colleague.

Mr. LETCHER said, he had no disposition to have any further controversy of this sort with the gentleman from Kentucky. I had a right [said Mr. L.] to explain my own motives, and he has no right to suggest for me a different one. I am no man's bull-dog: I take up no man's quarrel. I never had that sort of ambition. I act for myself, as I think for myself; and it is the height of my ambition to do my duty to the satisfaction of those who send me here. I did not know, sir, that Richmond is in the field; if he is, he is very able to conduct his own campaign. When the campaign does begin, if I have not the prudence to get upon the fence and see which way the victory is to go, I will take my part at once, and do my duty—not as a partisan officer, but as an untampered private, determined, as far as possible, to promote the interest of my country.

Mr. STORRS, of New York, then made some inquiry of the chairman of the committee which reported this bill, with a view to the more particular understanding of its object.

Mr. WICKLIFFE said that the principle of the bill was, to give to officers of the army a certain allowance in lieu of forage, whether they kept horses or not, instead of making the allowance dependant upon that contingency.

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As the law now stands, the amount of annual expenditure for the article of allowance for forage of officers was forty-four thousand six hundred and forty dollars, resulting from the fact, that, being required by law, the allowed number of horses was either really or nominally kept by officers. The bill proposed, in lieu of this arrangement, to make an allowance to officers, which would amount to the annual aggregate of twenty-three thousand nine hundred and twenty-eight dollars, thus saving annually to the Government the sum of twenty thousand seven hundred and twelve dollars. If this arrangement, besides saving this money to the Government, was also better for the officers, (as he believed would be the fact,) Mr. W. said he could see no valid objection to the bill.

Mr. STORRS objected [he said] to the principle of the bill. The existing law presumes that the officers of the army will keep each a certain number of horses, and, if they do so, allow them forage accordingly. Would not this bill introduce a new principle into our legislation? Instead of paying forty thousand dollars for certain expenses required or justified by law, this bill proposed the allowance of twenty odd thousand dollars for nothing; because the effect of it would be, undoubtedly, to exempt the officers of the army from keeping horses at all, and to allow them a monthly sum for no consideration whatever. Mr. S. said, he did not call this alteration retrenchment. He should say that, if there was no necessity for the officers keeping horses at all, they ought not to be paid for not keeping them. The bill proposed, in a word, to convert an actual compensation for services rendered into a sinecure. This [he said] was not exactly the kind of retrenchment which he desired to see put in practice. It was vicious in principle to grant the proposed perquisites by way of compensation for duties which the officers were not bound to perform. If any part of our legislation required to be particularly guarded, it was that in which money was allowed to be paid for sinecures—for constructive services—for services never performed. He concluded by saying that he was not for decreasing the compensation of officers of the army; but he had no idea of passing a bill professing a retrenchment of public expenditures, but in reality proposing to pay money for services not rendered. Mr. S. then proposed to amend the bill by adding to it the following:

"And provided further, that no allowance shall be made to any officer under this act, for forage, unless it shall appear by his certificate, or otherwise, that he has kept the number of horses for which he claims compensation."

The question was taken upon motion of Mr. STORRS, and decided in the negative—ayes 65.

Mr. DRAYTON then rose, not so much to object to the principle of the bill, as to consider some of its details. He was of opinion that the nature of the allowance for forage was not well understood by the House. Besides what is properly designated as the pay of the officers of the army, there were several allowances in addition, such as rations, forage, quarters, &c. But, however denominated, they were intended to constitute a part of the pay or salary of the officer. Thus, under the present system, the allowance of forage to an officer was, in effect, an item in his pay. Mr. D. took further views of the subject, all tending to show that these allowances to the officer do in fact stand on the same footing as his pay. The question for the decision of the House is, whether or not the officers of the army do or do not at present receive too much pay. If they do, then this bill, in its present shape, might pass. If otherwise, it should not. Mr. D. proceeded to show some defects, as he conceived them to be, in the details of this bill, if it were to pass at all: such, for example, as the reduction of the allowance to officers of different grades for forage to the same amount; the effect of which would be, to take from one class of officers a much larger proportion of their pay than from another class, as he showed by

various instances. This [he said] was neither liberal nor just, &c. &c. Mr. D. said, however, that he admitted that under the present law there was an evil requiring correction, and he was willing to exert the power of Congress to remedy it. The present law [he said] was certainly evaded. He would not be considered, by anything he should say on this floor or elsewhere, to imply any thing derogatory to the character of the officers of the army, for which he had the highest respect in general, and which, as far as he had any knowledge, was highly honorable. But [he said] an irregular practice under the laws was easily fallen into. The fact is, that, in many cases, under the present system, the officer does not actually keep the number of horses that he is entitled to keep; but he says, here are horses at a livery stable at my command: these horses I keep. There is an understanding between him and the keeper of the livery stable, and the officer certifies that he keeps so many horses, &c. Upon this composition, Mr. D. did not undertake to stand in judgment: he believed that every officer who made out his account in this way, did so under a conscientious conviction that he was doing right. But, [he said] considering it an evasion of the spirit and meaning of the law, he thought that it ought by some means or other to be rectified; and he thought that a pecuniary compensation, in lieu of an allowance for forage, was advisable, on principles of justice and of policy. When, therefore, this bill should be so amended as to allow such commutation as should be in an equitable rate to what the officers now received, he should be willing to see it pass. Until that was done, he thought the bill ought not to be acted upon. Mr. D. said, he was exceedingly averse to courting business for the committee (on Military Affairs) of which he was a member—he would rather shun it—that committee had much business before it; but he thought that this bill required so much remodelling, and the subject to which it relates was so immediately within the sphere of the duties of that committee, that he felt it to be his duty to move to recommit this bill, for revision, to the Committee on Military Affairs.

Mr. DWIGHT said, he should vote for the recommitment of the bill, under the expectation that the committee would report a specific monthly compensation, in full of all allowances, &c. for every officer of the army, that it may be as readily known what pay they receive, as what pay is received by any other officer of the Government.

Mr. WICKLIFFE said, he did not mean to throw any obstacle in the way of any direction which it might please the House to give this bill, but with a single request that the bill be not so overloaded as to be at last unable to travel from this House to the Senate. Nor did he regret that the labor of conducting it through the House was transferred from the select committee to the Committee on Military Affairs, should such be the pleasure of the House. The bill, rightly understood, however, was not subject to the criticisms which the gentleman at the head of the Committee on Military Affairs supposed, as Mr. W. made some observations to prove. Mr. W. said, he was glad to find that the principle of the bill met with the approbation of the chairman of the military committee. But, should that committee undertake to establish a monthly allowance to officers in lieu of all other compensation, Mr. W. said they would find greater difficulty in their way than the gentleman from Massachusetts seemed to suppose. He wished, sincerely, that it could be done in regard to every officer in the employ of the Government, &c.

Mr. SEMMES, of Maryland, wished to amend the motion for commitment, so as to instruct the military committee to report a provision that no allowance should be made to any officer for forage, except for horses actually kept for service. We had heard much of constructive travelling, to which he had always been opposed: he was equally opposed to constructive horses. There had been much abuse [he said] in reference to this matter. Horses

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had been kept at farm work, &c. and certified to be kept for the use of officers. In saying this, he intended no reflection on the motives of officers, for no man more respected the high character of the officers of our army than he did; but the law required to be made more clear and specific.

Mr. TAYLOR, of New York, thought it would be inexpedient, as this bill was to be referred generally to the Committee on Military Affairs, to tie up their hands. If that committee should not report a provision, such as to meet the gentleman's views, it would be competent for him, when the subject should be again before the House, to move an amendment.

Mr. DRAYTON suggested that what the gentleman from Maryland proposed to instruct the committee to report, was exactly what is now required by the law.

Mr. SEMMES, on this suggestion, withdrew his proposed amendment; and

The recommitment of the bill to the military committee was agreed to.

TUESDAY JANUARY 5, 1830.

## DISTRIBUTION OF PUBLIC LANDS.

The House resumed the consideration of the resolution moved by Mr. HUNT on the 17th ultimo, concerning a distribution of the public lands among the several States.

The question recurred on the motion made by Mr. MARTIN, on the same day, to amend the same.

Mr. CLAY, of Alabama, said, that, but for the amendment proposed by the gentleman from South Carolina, [Mr. MARTIN] he should have claimed no share of the indulgence of the House on this occasion. That amendment [he said] involved the rights and interests of the new States, one of which he had the honor to represent, in part, in no small degree—at least, according to the exposition of its friends—consequently, he felt it a duty incumbent on him to repel some of the remarks which had been made upon the subject.

Mr. C. said, he did not wish to be understood as being ready to assent to the general proposition embraced in the resolution, as originally offered by the gentleman from Vermont, [Mr. HUNT.] He would not undertake, at this time, to say what might be his vote upon that proposition when the proper time for giving it might arrive, but he certainly now considered it objectionable. It seemed to him that the measure contemplated was entirely premature. Though Congress might now deliberate and act upon the question, by passing such a law as was proposed, of what avail would it be? It was agreed on all hands that it could now have no effect, nor would it have any for several years to come. In the mean time, for several successive sessions, the measure might be discussed, and changed and modified again and again, or even repealed, before it went into operation; which, it was agreed, could not happen before the extinguishment of the public debt. Mr. C. said, he believed it was an acknowledged axiom in political economy, that too much or unnecessary legislation was always improper; that it was always a sufficient objection to any measure which might be proposed, when its utility could be demonstrated. If it be allowable to adopt the measure now proposed, we might, with equal propriety, be continually legislating in advance, and upon contingencies. Upon the same principle, we might begin to legislate upon the subject of apportionment in this House, four or five years before the proper period arrived; though any act which could be passed upon the subject would, for four or five successive sessions, be open to consideration, alteration, or repeal. He would ask whether this would not be an indiscreet consumption of the public time, and an unwarrantable expenditure of the public money. He thought it would, and, under such impres-

sions, he was not prepared to give his assent to the proposition, in any form.

But [said Mr. C.] the amendment is much more objectionable. It assumes the fact, as explained by its friends, that many and large donations have been made to the Western States, and calls on us to perform the onerous and unenviable task of now raising an account, a charge against them for their value. Sir, [said Mr. C.] I will leave to other gentlemen to determine, if the fact be as supposed, how far it is consistent with the generous spirit in which gifts are presumed to be made, to demand or claim an equivalent in this manner. But [he said] the assumption of facts on which the amendment was predicated, be by no means admitted. On the contrary, he felt authorized to controvert them. He believed that it would be found, on examination of the various grants alluded to, that every one of them had been upon some consideration, supposed to be adequate, and upon terms and conditions. As to the sixteenth sections of every township reserved for the support of schools, they were part of the original consideration of purchase offered by the Government, in "an ordinance for ascertaining the mode of disposing of lands in the Western Territory," passed as long ago as the 20th May, 1785. The like reservation, had, he believed, been made in every subsequent law which had been passed for the disposal of the public domain, from that time down to the present. It was part of the consideration and inducement held out to the adventurous pioneers, that, if they would buy thirty-five sections of a township, they should have the remaining one to assist in the education of their offspring. They cannot be said to be donations, then, but are part of the original contract between the Government and the purchasers.

Mr. C. said, there had been other grants for different purposes; some for roads, some for canals, and some for seminaries of learning. It would be found, however, that all these grants were for the advancement of some great improvement, of a character national rather than local, or for some advantage, or benefit, which amounted to an equivalent. Grants had been made to Ohio, to Indiana, to Illinois, and more recently to Alabama. In all instances, the Government still retained lands, the value of which would be greatly enhanced by the improvement; and in many, perhaps half the cases, every alternate section through which the road or canal was to run, was reserved from grant or sale, thereby increasing the value twofold. He believed in every case of a grant for a road or canal, one condition was an exemption of the property of the United States and persons in their employment from toll; and another pretty general feature in them was a rigid accountability on the part of the State receiving for the application of proceeds or funds arising to the particular object contemplated. But independent of this, every road and every canal, for which an appropriation had been made, improved facilities of commercial intercourse, as well as of defending the country in time of war. One of those grants contemplated the construction of a road from the Atlantic coast to the Ohio river; others contemplated canals, or roads establishing communications between the Northern lakes and some of the principal rivers of the Western States; and still another class were made for the removal of obstructions to the navigation of our rivers, so as to admit of uninterrupted navigation at all seasons far into the interior. Mr. C. asked, could it be pretended that any of these grants were for the exclusive benefit of Ohio, Indiana, Illinois, or Alabama? He thought it could not with propriety; but contended, on the contrary, that the State to which any of those grants were made, was constituted a sort of trustee or agent, to superintend the accomplishment of improvements, in which her sister States were often equally, and sometimes more deeply, interested than herself. The experience of the last war has shown the want and the value of such facilities of intercourse between remote parts

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of the country; and had, probably, induced the making of some of these appropriations.

Mr. C. said that the grants which had been made for seminaries of learning, so far as he had examined them, had either been made upon some one of the considerations which he had mentioned, (for example, the enhancement of the value of the remaining public lands,) or in consideration of concessions made by the States upon their admission into the Union. He spoke more particularly in reference to the grant made to Alabama for the establishment and support of a seminary of learning. But what was required of that State in turn? Nothing less than the surrender of some of the most important rights of sovereignty, common to the older States; whilst we were told, in the act passed for our admission, and in the resolution declaring it, that we were admitted, or to be admitted, "upon an equal footing with the original States in all respects whatsoever." Yes, sir, we were compelled to disclaim all right to the primary disposal of unappropriated soil within our chartered limits, and to abandon all right to tax the lands of the United States, or lands sold by the United States, till five years after such sale. He said he knew nothing pertaining to sovereignty of more importance than the power of taxation; without it, he presumed, no Government could long exist. Again, when this grant was made to Alabama, the Government of the United States still owned a large quantity of land within her limits, the value of which was augmented.

Mr. C. said that one gentleman who had addressed the House, (he did not then recollect from what State,) had urged the claim of the old States to this distribution of the public land, on the ground that they had achieved the independence of the country. The argument had struck Mr. C. with some surprise. The gentleman could not certainly mean that the independence of our country had been achieved by those who now reside in the old States and by their ancestors; and could not the people of the new States claim the same ancestry? Had not they, and indeed some of those who fought the battles of the revolution, emigrated from the old States? They had, (he said) and had shown themselves, in the late war, worthy of such ancestry; they had evinced as much courage, as much enterprise, and as much patriotism, as the people of any other section of the Union. Mr. C. said, he invited the attention of every gentleman to an examination of the terms of these grants; and repeated, that he had full confidence that each one of them would be found to be grants, upon some adequate consideration, or for the accomplishment of some national work. Under these impressions, he hoped that the amendment under consideration would be promptly rejected.

When Mr. CLAY concluded, Mr. HUNT obtained the floor, but had not proceeded far, when the hour allotted for the consideration of resolutions having elapsed, the remainder of his remarks was deferred to another day.

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The principal part of this day was spent in disposing of motions for inquiry.

THURSDAY, JANUARY 7, 1830.

## DISTRIBUTION OF THE PUBLIC LANDS.

The House resumed the consideration of the resolution, moved by Mr. HUNT on the 17th ultimo, concerning a distribution of the public lands among the several States.

The question recurred on the motion made by Mr. MARTIN, on the same day, to amend the same.

Mr. HUNT resumed the remarks which he commenced on Tuesday, when the subject was last under consideration. He said, as the original resolution contained no specific instructions, he did suppose it would pass in silence to the committee, and that when they might report a bill,

if they should think proper to do so, the merits of the whole subject would then be open to the discussion and action of this House. But it had taken a course different from what he anticipated, and become the occasion of a protracted debate, and an excitement unpleasant no doubt to many gentlemen on this floor. The honorable member from Pennsylvania, [Mr. BUCHANAN] wishing to avoid the difficulties in which the House was placed, proposed that the original resolution should be withdrawn, and a substitute offered in its place. Mr. H. said that he was willing to adopt any plan or take any course that might advance the accomplishment of the object expressed in the resolution, but to do nothing that may retard or defeat it, and that he was not disposed at present to withdraw his resolution, because the House had on two occasions expressed a wish to retain it, upon the vote of consideration being taken. If [said he] surrender the resolution now before the House for a substitute that may be offered, may not the gentleman from South Carolina, [Mr. MARSHALL] or some other member, propose again the same amendment that now embarrasses this House?

The amendment, which is now the question before the House, merely directs the committee to ascertain the value and quantity of the public land that has already been given to particular States and institutions. It is manifest, sir, that the value cannot be ascertained without much time and expense, or even an actual appraisement; but, for all the purposes of legislation, we may assume the ordinary price of the public lands to be the fair and average value. The quantity of land given to particular States and institutions has already been obtained; it is appended to a report made to the House during the last session, and is open to the inspection of every one. It would therefore seem that there was no necessity for this inquiry; neither would there appear to be any serious objection to it so far as it relates to the information sought for; but there was an objection to the object which the gentleman intended to make of that information. The honorable mover [Mr. MARTIN] avows that it is his intention to call the States to an account, which have received lands; and to make deductions from them to the extent of their donations, before they can be placed upon an equality with the other States in the contemplated distribution.

It is well known that donations of the public lands have been chiefly made to the new Southern and Western States. To these States, [said Mr. H.] I am not disposed to be rigid. I would be just, and, so far as consistent with my duty here, I would be liberal—and, sir, the numerous grants that have been made to these States afford evidence that the Union at large is disposed to be liberal.

The grants heretofore made have been for good and sufficient reasons, for State and national objects; and it is not for us to question them. They have vested rights in these States and their institutions, which we ought not, by any acts of our legislation, to take away or impair.

The plan, as proposed by the gentleman from South Carolina, [Mr. MARTIN] of making deductions from some States, and giving to others, and thus, in his own language, to strike the balance sheet, cannot be done with any degree of justice that can give satisfaction. When grants have been for the construction of roads, canals, the improvement of navigable rivers, or for the purposes of education, the benefits resulting from them are not confined exclusively to the States that have received the donations for those purposes, but are enjoyed in part by the adjoining States. It is unnecessary to enumerate particular cases for illustration. I will, however, refer to the case of the donation made by Congress, in 1828, to the State of Alabama, of four hundred thousand acres of land for improving the navigation of the Tennessee river, by the Muscle shoals, situate on the northern extremity of that State. This river takes its origin in the State of Virginia, thence it passes through the eastern and southern part of

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Tennessee, into the northern section of Alabama, where the improvement is contemplated; it then turns and runs through the whole width of Tennessee, and into the State of Kentucky, where it empties its waters into the Ohio river. It is palpably manifest that the principal advantages to result from this improvement will not be confined to the inhabitants of Alabama. And shall the value of the four hundred thousand acres be deducted from that State, when the adjoining States will derive more benefits from the improvement than the State of Alabama itself? The public domain, and the grants that have been made, are of such a nature, and embrace such a variety of interests, that justice among the States is not to be done mathematically. We cannot, sir, like clerks in a counting-house, deduct one-half of one per cent. from one partner for some little advance, and give it to another; and thus strike the balance sheet. If we undertake to do justice in this manner according to the rules of arithmetic, we shall do injustice in every other sense of the word.

Mr. H. observed that his object in offering the resolution was to prevent the further continuance of the present course of partial and unequal legislation of special grants to particular States and institutions, and to introduce a general system for the equal distribution of the avails of the public lands among all sections of the Union. The General Government has already given, by a great number of particular acts, two millions and a half of acres to particular States and institutions, in addition to the reservations in all the new States of one mile square in each township for the support of schools; and petitions are now before Congress for more than twice that amount. Some of the applications may succeed; others, constituting, no doubt, the greater part, will be rejected; and it is natural that those who are unsuccessful should feel jealous, dissatisfied and discontented, and be impressed with the belief that justice has not been done. It is difficult for Congress, and always invidious, to make selections out of the numerous applications, and must ever be impossible to make an equal distribution and give general satisfaction.

Mr. H. remarked that the gentleman who opposed the resolution deprecated the scrambling for the public lands; so did he; and wished to avoid it, and never to see this House made the arena where the battles of interested applicants for the public lands were to be fought. His object was to prevent these contests, and to substitute a general law, that by its even operation should give to every part of the country its just proportion.

The public domain he considered to be public property, in common to us all. What [said he] is the foundation of our title—whence its origin? The treaty concluded with Great Britain in 1783 acknowledged the right and sovereignty of the United States over a vast extent of territory. This was the result of the war of our independence; a war undertaken in self-defence, and carried to a successful termination by the united efforts of the whole people. The subsequent acquisitions of Louisiana, of the Floridas, the purchases from the Indian tribes, and the contract with Georgia, were all obtained by money drawn from the common treasury. As these lands have been acquired by the common expenditure of treasure and of blood, natural justice would dictate that the benefits to flow from them should be equal, and that they ought not to be appropriated to the aggrandisement of a few, while others, equally entitled, are excluded.

The gentleman from Georgia [Mr. WILKINSON] referred to the cession of the territory northwest of the Ohio, made by the State of Virginia, and advanced an opinion that the terms expressed in that grant present an obstacle to the distribution of the public lands, as indicated by the resolution. I am induced, sir, to draw a conclusion entirely the reverse, and to believe that the terms of that cession afford a direction to guide us in the distribution of these lands, and that the resolution is not only not repugnant to

the terms of the cession, but in conformity to them. It will not be proper on this occasion to enter into a history of that cession. It will however be recollected that, when we were colonies, some few of the States had claims to extensive tracts of land in the Western country. During the war of the revolution these lands, though not of great value, were susceptible of immense future enhancement; they were then but a mere wilderness, and of course could afford no aid in the prosecution of the war. They rather served as haunts and safe retreats for savages, who made war upon our border settlers. It was foreseen that if independence should be secured, the States having those claims would add immensely to their territories, while others, who had no such claims, but contributed equally to the prosecution of the war, would remain confined within their former limits. This great disparity of interests in the expected results of independence was the cause of no small jealousies among the several States. To appease these jealousies and establish harmony, the Continental Congress, at an early period, earnestly recommended to the States claiming those lands in the Western country, to be liberal in making grants of the same to the United States for the benefit of all. The States of Massachusetts and New York relinquished their title. The State of Connecticut, at a later period, did the same, retaining, however, that tract of land known as the Connecticut Reserve. In 1784 the State of Virginia having a title, as she contended, to the entire territory northwest of the Ohio, after making a reservation in favor of her troops, and some French and Canadian settlers, transferred the whole of that extensive country to the United States; and, in the terms of the cession, expressly declared that the "lands so ceded shall be considered a common fund for the use and benefit of such of the United States as have become or shall become members of the confederation, or federal alliance of the said States, Virginia inclusive, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and bona fide disposed of for that purpose, and for no other use or purpose, whatsoever." The same language is employed in all the cessions made by individual States to the United States.

The land thus ceded is, in the first place, expressly made a common fund—net for the use and benefit of any particular State or section of country, but for all. The use of this common fund is declared not only for such of the States as were then members of the confederacy, but such as might thereafter become members. It was not limited to their use jointly, in their federal character, but, in the language of the cession, it was given to them respectively, in their separate and independent communities. The rule of distribution is there declared and fixed; which is, according to the proportion of each State in the general charge and expenditure. The basis of this charge and expenditure was the population capable of rendering assistance to the country. It was a just and an equitable one—intended for use, and capable of being put into practice. The principle of distribution is as applicable at this time as when it was established; and it will apply with the same certainty hereafter, when other States may be added to the Union. It is, that each State shall receive from the common fund in proportion to its taxes, expense, and charge, in supporting the General Government. The precise and exact amount of taxation and expense, it is true, cannot be ascertained, nor is it to be expected. It is sufficient that some general rule of distribution among the several States must be adopted. And perhaps there is no better criterion to direct the adoption of a rule of apportionment, than the representation of this House, or, rather, what would be more exact, that population, the federal numbers, which is the basis of our representation. But, sir, it is not necessary at this time to determine upon any particular rule of distribution, as the subject before the House is one of mere in-

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quiry, and not of enactment. The principle of apportionment is well established in the cession made by Virginia, and it will be competent for Congress, at the proper time, to make the application.

Mr. H. concluded by observing that, when appropriations of the public lands were made to a few of the States exclusively, and equal shares were not conceded to the others, justice was not only withheld, but the express terms contained in the cessions made by Virginia, and the other States, were violated.

Mr. POTTER said, that, when he recollected the subject of the resolution before the House, that it proposed nothing definite—nothing conclusive—it appeared to him that this debate was most unnecessarily protracted. Gentlemen took for granted the matter which it is the object of the resolution to ascertain, and have founded their arguments upon what they apprehend might be the report on the resolution, if agreed to. They certainly seemed to be the impression of gentlemen who had spoken in opposition to the amendment; for those from that part of the United States where the amendment pointed, discussed it with as much zeal as if the final proposition to distribute the proceeds of the sale of the public lands amongst the several States, for the purposes contemplated, had been under consideration, and to exact a rigid account of the new States of the proportion they have received. What did the amendment propose? It simply proposes to instruct the committee to lay before the House a statement of the quantity and value of the public lands which have been given to any State, or the public or private institutions thereof. It implies [said Mr. P.] a pledge as to the use which the House will make of this information when obtained. For my own part, [said Mr. P.] I have no disposition to demand a strict reckoning on this score from the people of the new States. No one sympathizes more than I do with the difficulties they have had to encounter, or admires more the courage with which they have sustained them. But, before I proceed to act in prospect upon this subject, I wish to see what has been done with it heretofore. It is with a bad grace that gentlemen seek to suppress this information. They talk to us about the valuable public considerations for which the donations in question have been made. Be it so. It will be time enough to bring up those arguments when we have a proposition before us to demand an account of them. All that we want now is such information as will enable us to determine, correctly, whether such an account shall be demanded. Mr. P. said, I would rather have the facts than the statements of any gentleman, whatever might be my own confidence in their integrity. I will never act upon faith when facts can be produced, in relation to any matter whatever, and shall therefore vote for the amendment. There is surely a most fastidious sensibility here upon this subject. We have even heard the title of the Union to these lands drawn into controversy, and a comparison instituted between the military merits of the old and new States. This, sir, is idle. I apprehend there is no man here, who will dare to deny the right of the United States to its own property. That is a proposition I would no more consent to discuss, than the plainest axiom in Euclid. Having been alluded to, however, it was placed on the true ground by the gentleman from New York, [Mr. SPRAGUE] who favored us with his remarks on Thursday last, so much to the satisfaction of every one who heard him. We have heard something said of the share which the individual States have contributed of this common stock. The State which I have in part the honor to represent, gave up to the Union a territory, which, whether you look to the quality or the extent of it, forms one of the most valuable portions of the public domain. Yet North Carolina, one of the oldest and most liberal members of the confederacy, has received but a step-child's portion. She will not

stoop to the language of complaint, but at a proper time she will present herself to the justice of this House, and of the nation, and in mere justice will ask their co-operation in measures which may be necessary to enable her people to receive and retain in their own hands the avails and the profits of their own labor and industry—measures, in short, which will unchain her navigation, and place her in free and fair communication with the commercial world. This, however, is a consideration not to be gone into at this time. I merely mention it now as that which will govern my vote in this and all similar questions. Our situation in North Carolina requires all the resources we can command; and I feel it to be one of the most sacred duties I owe to my constituents, to take back from the federal treasury every dollar I can put my hand upon of the sum contributed by us, over and above our fair proportion in the general charge and expenditure, to be expended however, at our own option, and under our own direction. I regret to have heard the gentleman from Vermont, [Mr. HENRY] who introduced this resolution, decline yesterday receiving the proposition which had been suggested, but not actually proposed to the House, by the gentleman from Pennsylvania, [Mr. BRIDGES]. That proposition even avoids the semblance of a commitment on the part of the House, either as to the constitutionality of the power proposed to be exercised, or the time when it will be expedient to put it in operation; and when the amendment before us is disposed of, I will myself, if no one else will, present that proposition as a substitute for the present resolution. It is desirable on another account. It proposes to substitute a select committee for this reference, instead of the Committee on the Public Lands. This is obviously proper; and, from what I have seen of the mass of business before that committee, I am sure they will be obliged to be relieved from the task of this investigation. In giving the pledge to offer a substitute to the resolution before us, I have no disposition to take the management of this matter upon myself. I shall wait, therefore, when the pending amendment is disposed of, to see if some other gentleman will not introduce it.

Mr. LEWIS said, that, as a member from a new State, he felt that no apology was due in claiming for a few minutes the attention of the House. The subject was of one of great interest to the members generally—to the new States it was a matter of incalculable interest. It is no less than a proposition to distribute these lands among the different portions of the Union. In fact, [he said] the process was actually going on, and the Representatives of these States cannot be expected to sit the silent spectators of a scene in which their constituents have so great an interest.

The mover has said that this is a mere question of inquiry, and infers that it should not meet with opposition, until it is embodied in a report from the Committee of the House. Sir, it is a question of inquiry, and one of a character so decisive of the destiny of the new States, that it should be met at the threshold. He thought that it would be well to discuss most propositions on a motion of reference. The question is then fairly presented, divested of all extraneous matter, and the unbiased sense of the House is taken alone upon the merits of the inquiry.

Mr. L. said, he should vote for the amendment of the gentleman from South Carolina, but from views very different from those of the honorable mover. He thought it a requisition of sheer justice, that, before any distribution of the funds of this Government should take place, it should be known what amount the several States have previously received for purposes of education and internal improvement. It was but fair play, and should precede every other inquiry. So far from avoiding such an inquiry, he was disposed to extend it, not only to the donations of land actually received, but to donations of money for splendid roads, canals, breakwaters, &c. in different sections of the country.

Mr. L. said, he was, he believed, the only member from the new States, who had declared actually in favor of the amendment; and he did so, from a conviction that, so far as Alabama was concerned, she had nothing to fear from the investigation. Other gentlemen had asserted the same, in relation to other new States. Then why oppose the amendment? Mr. L. thought that, when the debits and credits were fairly stated between the General Government and Alabama, a considerable balance will be found in her favor. He believed he could get a verdict for that balance, before any impartial committee of this House; and hence he had every reason to invite the inquiry.

Previous to any sales of her lands, it was known that there were to be certain reservations for the purposes of education and internal improvement. These are what gentlemen call donations; but, sir, I think I can prove that she has trebled paid for them in the enhanced price of her land, and in her relinquishment of certain portions of her sovereignty. I mean the right of taxing these lands. Can any gentleman believe that these stipulations in favor of the purchasers of public lands did not enhance their price? That they did not enter into the considerations of the purchase, as much as fertility of soil, health of situation, or any other local cause? Yes, sir, these stipulations were as well known at the land sales as they are in this House. They entered into the price of every acre of land, and into the calculations of every individual purchaser, from the keen and cautious speculator to the humblest individual who sought to purchase an eighty acre tract on which to place his little family. Gentlemen who argue differently, must suppose that the people of Alabama are the most uncalculating beings on earth. They are not, perhaps, as calculating as the population of some other sections of the Union; but to impute to them a disregard of such obvious advantages in the settlement of a new country, would amount to a charge of idiocy. As well might it be urged that an acre lot of land, twenty miles from this in the country, would sell for as much as one advantageously situated on Pennsylvania avenue. The conclusion is inevitable, that, whatever advantages were offered by the Government to purchasers before the sales, were well understood at the sales, entered fully into the price of the public lands, and were fairly paid for in an enhanced price. In addition to this, an injudicious promise had been extorted from the State not to tax the public lands, nor the lands of individuals, until five years after their purchase.

Here was another of those favors to the citizens paid for at the land sales. But, [Mr. L. asked] what has been the effect of this concession on the part of Alabama? It has impoverished her finances, and created the necessity of the most oppressive taxes on other kinds of property. Mr. L. said that he was somewhat acquainted with the finances and taxes of Alabama, and he believed that if the lands within her limits had been subjected to as heavy a tax as other property, it would not have fallen as low as the annual amount of fifty thousand dollars since her admission as a State. How long this sacrifice would continue under the present slow, tedious, and objectionable mode of disposing of the public lands by auction, it was impossible for him to calculate. Perhaps at the end of fifty years all the land will not be sold. In one-third, however, of that time, the sacrifice will doubly exceed the value of the land secured to the State by compact. These [Mr. L. observed] were the advantages which Alabama had received from the General Government, and which have been alluded to in this debate. Sir, Alabama has experienced a rigid policy from the Government. At the time that this compact was formed between her and the United States, she was a territory. The General Government stood to her "in loco parentis," in the situation of a guardian to his ward. Alabama as to the exercise of her political rights, was in her minority—in her childhood; and

these sacrifices were demanded of her as conditions precedent to her admission into the Union. The compact has been discreditable to this Government, and injurious to Alabama, crippling her energies, destroying her fiscal resources, and, at the same time, operating in every respect advantageously to the United States. Sir, from the situation of the parties at the time of this contract, I am induced to believe that it would be declared a nullity before any equitable tribunal. It was a compact entered into by Alabama, not only in her minority, but under duress and fear of not being otherwise admitted into the Union.

Mr. L. said, allusions have frequently been made in this debate to the splendid donation of four hundred thousand acres of land for the improvement of the Tennessee river. That matter was much misunderstood. It was a donation nominally to Alabama, but really to another section of the country. Sir, if Alabama had pursued a mere selfish policy, she never would have accepted that donation. Mr. L. said he was a member of the Legislature which did receive the land in trust for the specified object. He doubted very much whether that Legislature (and he among the rest) had not done injustice to the State in not promptly rejecting the pretended boon. Sir, Alabama has assumed the immense expense of legislation on that subject, and the responsibility of a faithful application of the funds; and yet not more than two counties in the State are, or can be, benefited by the proposed improvement. Other portions of the country, East Tennessee, for example, will be benefited; but he was certain that no benefit would accrue to Alabama, as a State, from the completion of the canal. Sir, it opens a way to no market in that State; on the contrary, it proposes the establishment of a complete thoroughfare through her northern limits, for the produce of other States, to that great mart of western wealth, the city of Orleans.

Mr. L. said there was one way in which Alabama may receive a collateral benefit from this donation; and in that point of view the Legislature were perhaps justifiable in accepting it. He alluded to the control it would give the State over the sale of the lands upon which a respectable portion of her population resided. He believed that it would be found from that experiment, what has here been considered a paradox, that it was possible, without sacrificing the public lands, to dispose of them on liberal terms to the purchaser. He had understood that the commissioners had not pursued the directions of the law in valuing the land, but he believed that, whenever the provisions of that act were carried into effect, (though he did not believe it equal to some other plans proposed,) it will be found that the mode of entering public lands at fixed prices would be far better than the sale of them by auction. Mr. L. said he hoped at least the lesson would be of some service here. If this effect was not answered by the donation, he was certain the State could derive no benefit equal to her expense and responsibility in making an application of the grant to the specified object. And yet, sir, this is the great donation which Alabama has received from the Government, and which has been so often cast into our teeth during this discussion.

Mr. L. said, he had spoken of Alabama particularly, in the above remarks, because he was unacquainted with the legislation of Congress in relation to other new States. If they had been more successful applicants for the favors of the Government, and had received more substantial benefits, it was for other gentlemen to point them out.

Mr. L. asked what had the Government done for the new States, in the disposition of the public lands. He believed no other nation had pursued so rigid a course in the disposal of her public domain. But, sir, the evil could be better tolerated if there was a corresponding advantage resulting to the Government from this course. Sir, it is a singular fatality attending the sales by aucton, that they

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are alike injurious to the Government and the people; that while the Government scarcely ever receives more than the minimum price, the settler is universally forced to pay a price ranging from two to ten dollars an acre for his land. This, sir, is the premium which the law gives to speculation out of the hard earnings of honest industry.

Encouraged by the system, individuals come from even the adjoining States, and form combinations of capital so strong as to put down all competition. Hence they bid off the land at a dollar and a quarter, and exact from the actual settler a premium of from fifty to a thousand per cent.

Mr. L. said, he had attended the land sales, and witnessed these results. They are the inevitable consequences of the system, and it is impossible for human laws to put them down so long as the system continues. At every land sale, the whole community are placed competitors in the power of speculators, and are forced to pay them tribute for the improvements which they themselves have placed on the public lands—even for the shelters which cover their families. And still the Government receives only the minimum price. The people and the Legislature have remonstrated, year after year, against this system, and yet their prayers have not been heard. Lest the lands might not bring all that they could, under any circumstances, this policy has been continued. Nevertheless, the new States have been considered, and, I fear, have sometimes considered themselves as dependant on the Government for its favors. In fact, sir, these impressions have a tendency to reduce them to a state of vassalage to this Government. It is high time the delusion should be removed. Mr. L. said he wished to see every State independent of this Government, and to feel and recognise that independence. He was certain that Alabama was not in arrears to the Government for favors, and he desired, by a report of a committee, that others should know it, and that the public mind should be disabused on this subject. For these reasons, he had determined to vote for the amendment.

Mr. L. said, he did not wish Alabama to lie under the imputation of being indebted to the bounty of the General Government for any exclusive favors; for favors create a servile dependance. The only benefits which any State should receive are such as appertain to all, and result from a constitutional exercise of the powers entrusted to Congress.

As to the original amendment, he was opposed to it in  *toto* , even though the amendment should prevail. He was opposed to it because the public lands were pledged for the redemption of the public debt. They were now discharging that debt, and there was an impropriety and delicacy in applying them to any other object. The proceeds of those lands are now lessening the amount of the public debt; and to what object more national can they be applied? What other disposition can be made of them so just and equal? And will gentlemen divert the funds of this Government from an object so purely national to objects of a local and sectional character, unauthorized, as it is believed, by the constitution? I have yet to learn that the constitution authorizes the action of this Government in relation to either of these subjects, education or improvement.

Sir, I have been admonished that little respect is paid to any reference which may be made to the constitution in this House; but, sir, I am a junior member, and must abide by it as the rule of my conduct, until I am absolved from the obligations of the oath taken at your table.

Mr. L. observed, much was said about the extravagant recommendations in Mr. Adams's first message, of national universities, observatories, &c.; and yet he feared that gentlemen who then derided these opinions as the vagaries of a visionary statesman, are about to adopt the same principles, by voting an application of the national funds to the same objects. This House has once decided against a

Committee on Education. And why? Because such matters were not under the cognizance of the House. Gentlemen may draw the distinction that the proposition involves nothing more than a donation to the several States for the purposes of education and internal improvement. He thought it a distinction without a difference. If Congress furnishes the means for the erection of college buildings, or internal improvement, it contributes more efficiently to the ends than if each member were to take a spade or trowel in his hand, and proceed to the manual execution of the work. Besides, what difference was there between the appropriation of national lands and national money to local objects? They are one and the same thing. If we withdraw the proceeds of the public lands, the vacuum will have to be supplied by taxation. Then what is the difference between the proceeds of the public lands and other money, or between public land and hard dollars? They are means convertible to the same end. As a Southern man he felt bound to oppose any application of the national funds, by taking them from an object so national as the payment of the public debt, and appropriating them to any local or sectional purposes. This has been the ground of complaint with the South. The Southern people never murmured at any contributions which have been levied on them for the general good, but have objected to every dollar applied to less national objects.

Mr. L. said, that, as a citizen of a new State, he should oppose the proposition, as unjust and unequal to the new States. What was the value of these lands before they were reclaimed and subdued by the enterprise of the first settlers? To quote the language of the mover of these resolutions, (the honorable gentleman from Vermont,) they were "waste and uncultivated deserts." Sir, their value has been imparted to them by the industry, enterprise, and sufferings of that hardy population who precede the comforts and conveniences of a more advanced condition of every newly settling country. Who levelled the forests, who opened the roads, who established the towns, who gave, in fact, a determinate value to all the lands in the country, by converting a wilderness into a country possessing all the comforts of cultivated life? The people of Alabama. The labor and hardship was with them; and shall they be placed on no better footing than the old States? Shall they receive but three shares out of two hundred and thirteen, in all the lands within their limits? Shall their improvements and industry be sold and distributed, for the purpose of establishing roads and canals, schools and colleges, in other States, whose citizens have shared with them none of the hardships, the labor, and the sufferings, of settling the country? Sir, the proposition is unjust, and the system would render the new States tributary to the old. Besides, what would be the share of Alabama under this system? Three shares would probably be worth fifteen thousand dollars, and yet her citizens pay perhaps four or five hundred thousand dollars a year for land. A constant drain upon the resources of the State to this vast amount, a continued current of circulation setting from them in its onward course, with the paltry return of fifteen thousand dollars. This is too much the case at present; but the citizens of Alabama will not complain so long as this money goes in payment of a debt incurred in defence of national rights and honor. If applied to any local purpose, they will and ought to complain.

From whence [asked Mr. L.] does this proposition come? From Virginia, whose contributions of land to the General Government have been more than all the other States? No, sir; that great and patriotic State, whose generosity is so often complimented on this floor, and whose name is identified with every sacrifice of blood or treasure in defence of this Government—*ah*, I say, sir, does not ask, and would be the last to ask, this distribution at our hands. North Carolina has also made an important cession



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of lands to the Government. I hope a majority of that State do not demand the distribution. South Carolina and Georgia have also made large cessions of lands, and I am persuaded neither of them will favor this project. From what quarter, then, does the proposition present itself? From Vermont—a State which has made no cession whatever to the Government; and that, sir, in the absence of Virginia, whose liberality has created the largest portion of the fund which it is proposed to divide. He hoped the question would not be taken until Virginia was fully represented on this floor. He should make such a motion if no one else did.

Mr. L. said, he was opposed to the proposition for another reason. It would be a means of continuing the present oppressive rates of impost duties. The withdrawal of every dollar from the present purpose of paying the national debt, produces that result. The Southern States had hoped for some alleviations of their burdens after the payment of that debt. They had thought, that, after the necessities of the revenue had ceased, these duties would be taken off. But, sir, the race of politicians who believe that a national debt is a national blessing, is not yet extinct. They exist in full force in this House. He had but little experience in the legislation of Congress, but he thought it required very moderate foresight to perceive that the friends of the tariff would go *en masse* for this proposition. It will serve as a pretext for keeping up the high rate of duties, and of continuing their exactions on the South. How, then, can southern gentlemen who are opposed to the tariff vote for this proposition? There is, sir, a tax-paying and a tax-receiving portion in this Union. The interest of the one is to create, and of the other to avoid, a public debt. The legislation of this House proves it: the one portion voting in favor, and the other portion voting against the appropriations of public revenue for sectional and local objects. Sir, a stranger in the lobby would soon discover this fact. The able report of the Committee of Ways and Means, in 1828, establishes the proposition conclusively. The reasoning of that committee in proof of the unequal operation of our revenue system, has not, and, in my opinion, cannot be shaken. Sir, if the duties on imports were paid equally by all parts of the country, why do we see so many propositions from certain quarters to distribute the national revenue among the several States. If no State is to receive more than she has paid, why this anxiety on the subject? Why not suffer the money to remain with the people, and be drawn for these local purposes by the local Legislature? This disposition to create a common fund, and to distribute it according to numbers, proves the inequality of the contributions to the public revenue. It proves that a minority pay the money, and that the majority are determined to go into joint stock with them, and to wring from them the last possible farthing.

Mr. L. said, as a representative of a new State, he would present another reason for opposing the resolution. So soon, sir, as the new States begin to yield the old States an annual revenue for the opening of roads and canals, and the establishment of schools, they will be viewed as so many plantations, furnishing a regular income to their owners. The sympathies of the old States would be lost in the stronger feeling of cupidity; exactions upon exactions would follow in the sale and disposition of the public lands; and a system, which is now very oppressive, would be rendered more so by the combined efforts of the old States. Every demagogue would minister to the public appetite by some new scheme to draw from the new States a higher price for their lands. This condition of things, besides its absolute degradation, would check in an instant the prosperity and growth of the new States. Sir, as soon as the new States put their seal to this proposition, they add to the number of their taskmasters in the proportion of sixteen to one. Their destinies are then fixed. It is,

nothing short of a proposition to place them in the vice press, and to squeeze from them every possible drop of vitality which could minister to the prosperity of the older States.

Mr. BURGESS next rose to address the House; but the hour having elapsed, the debate was closed for this day.

FRIDAY, JANUARY 8, 1830.

The House resumed the consideration of the resolution moved by Mr. HUNT on the 17th ultimo, concerning a distribution of the public lands among the several States. The question being on the motion made by Mr. MARTIN to amend the same.

Mr. BURGESS rose, and addressed the House at considerable length in support of the original resolution, and in opposition to the amendment. The hour allotted for the discussion of resolutions elapsed before Mr. B. had concluded his remarks.

The House adjourned to Monday.

MONDAY, JANUARY 11, 1830.

SOUTHERN INDIANS.

Mr. CAMBRELENG moved that the memorial heretofore presented by him, and then laid on the table, from a meeting of citizens of New York, praying the interposition of the General Government to protect the Southern Indians from injustice and oppression, be now referred to the Committee on Indian Affairs.

Mr. THOMPSON, of Georgia, rose, and said, that, disclaiming all intention of opposing the reference proposed, he would, however, question the propriety of entertaining every petition or memorial which may be addressed to Congress, whether it be the result of an accidental meeting at a grog shop or not. It appeared to him to be a perfectly useless waste of the time of the House, to order a reference of the memorial in question to the Committee on Indian Affairs, in as much as the subject matter of the memorial was generally and fully presented to Congress by the President's message, and was by an order of this House referred to the Committee on Indian Affairs. Mr. T. said, he did not wish to provoke discussion upon the subject alluded to, because that was not the proper stage for its discussion. He was, however, prepared to meet the question then and at all times.

Mr. SPENCER, of New York, said he had waited to see whether the mover of the memorial, or some other gentleman, would rise and repel the allusions of the gentleman who had just sat down. Since this had not been done, he felt himself called upon to speak as a representative of the State from which the memorial emanated. This was not the result of "a meeting in a grog shop," as had been so unjustly insinuated, but one of the utmost respectability, and held in an enlightened and moral community. The chairman of that meeting was a Revolutionary officer, known, respected, and beloved. Mr. S. said he knew many of the individuals whose names were attached to the memorial, and he knew their standing to be of the most respectable character; and the doctrine which had been here advanced, that they ought not to be heard—that their respectful memorial ought not to be received by this House, was one which he had not expected to hear advanced, and against which he must enter his solemn protest. The language of the memorial was decorous and respectful. It was true it was upon a delicate as well as an important subject; but, however unfashionable the doctrines which it advocated were upon this floor, or however much they might clash with his own sentiments, or those of others, it was not to be submitted to, that the respectable memorialists should be refused to be heard. He hoped, therefore, that the memorial would have its appropriate reference to the Committee

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on Indian Affairs, and meet with that consideration and respectful treatment to which it was entitled.

Mr. WILDE, of Georgia, said, in as much as the memorial had been laid upon the table, at his request, a few days since, for the purpose of giving time to examine its contents, it might be expected of him to say a word or two on the subject. Without professing any particular skill in the signs of the times, it seemed to him, from movements in that House and elsewhere, that the question of our Indian policy was destined to create much feeling and discussion. He did not mean to say that party feeling would mingle with their deliberations, though he feared they would not be entirely free from it.

He rose, not to express, in advance, opinions upon matters of high moment, worthy of grave deliberation; nor should he oppose the reference of this memorial, however objectionable he considered its language. It did not become him, as one of the representatives of a State interested in this question, to manifest any undue degree of sensitiveness to the terms in which the memorialists had been pleased to express their sentiments. But it might not be improper for him to offer a few words by way of comment.

The memorial appeared to have two objects. One was to remonstrate against the opinions of the present Chief Magistrate, in regard to the Indian tribes. The other to stigmatize the legislation of particular States. He did not understand, from reading the memorial, that the memorialists complained of any injury or injustice to themselves. The suggestion was, that other persons, not citizens of the United States, have reason to apprehend evil from the course pursued towards them by the President and some of the States. Now, sir, [said Mr. W.] when any one is injured, it is time enough to complain; and it is well enough, usually, to let those who are injured complain for themselves. For though it has been said by a great moralist that the fate of complaint is to excite contempt rather than pity, no one has been persuaded by the sledge to suffer and be silent.

Whence, then, the necessity of the petitioners' interference? Might they not be told that every one was ready enough to detail his own grievances? Was it less true now than formerly, that, if every body would take care of themselves, and of their own business, every body and every body's business would be well taken care of? Give me leave, sir, [said Mr. W.] to ask why, according to their own statement, these petitioners came before this House? They set forth no grievance of their own or of their fellow-citizens. They suggest no remedy resting in the action of this House for the real or imaginary grievances of others. Why may we not as well entertain applications in behalf of the suffering people of Ireland or Hindostan? In what character, he inquired, did the memorialists present themselves? Was it as self-constituted guardians of the public faith? Were they voluntary superintendents of the treaty making power? Curators by assumption of the persons and property of the Southern Indians? or censors—he knew not by what right—of the Legislatures of sovereign States of the Union?

Taking their own showing, they applied to us, because the President refused to recognize the sovereignty and independence of some savage tribes; and because certain States, within whose territory they were at present found, contemplated extending their laws over all persons included in their constitutional and chartered limits.

And what then, sir, [continued Mr. W.] if these barbarous hordes are indeed sovereign powers, it belongs exclusively to the President to regulate the diplomatic intercourse with them. If an ambassador acceptable to the Cherokees should be required, the deep learning of the memorialists in the law of nations, he trusted, would not be overlooked. But at present it was the pleasure of the President only to maintain an agent near the new Government.

If the Executive should refuse to receive an embassy from the king of the gypsies, were we to entertain an appeal from his decision? And yet Meg Merillies might be almost as interesting a personage on canvas as Pochontas.

If the British Parliament will persist in legislating for that amiable and oppressed race of vagrants, or the Legislature of New York will pass laws to regulate the Brothertown or other Indians, have we any cognizance of the matter? If the faith of treaties is about to be violated, it is the duty of the President to see that it be preserved; and, if he fail, it is our duty to impeach him. Is any such measure prayed for or intended? If the laws of the United States should be broken, the courts of the United States, he presumed, would be ready to afford redress. Is there any danger that they would decline jurisdiction? If, on the other hand, these Indians are alien infidel subjects, the remnants of a conquered people, under the protection of the States within whose jurisdiction they reside, does it not belong to the States to regulate them as the public good may require? Have we a veto upon their legislation?

Have gentlemen considered what legislative act they can ground upon this memorial, taking it, fact and argument together, as far as any one who professes to understand the subject can or will receive it? What is the relief sought, and how are they to administer it? What is the prescription? Sir, [said Mr. W.] I am not apprised that our interference is at all called for by any exigency. I do not perceive that the memorialists have made out their case either as patrons or clients. This kind officiousness in the affairs of our neighbors, [continued Mr. W.] by which we exhibit our benevolence at their expense, is a great and growing evil. Gentlemen from all quarters of the country have taken so much care of us, that they have scarcely left us any thing at all to care for.

These everlasting political homilies—this nawkish mixture of sentiment and selfishness—this rage for instructing all the world in their appropriate duties, was to him at once ridiculous and disgusting. Let the painter stick to his pallet, and the sculptor to his chisel. Sir, I mean no disrespect to the chairman of the meeting. I voted for his pictures, sir, but I cannot vote for his petition. We want no more artists to encumber our capitol with Indian caricatures. Our walls already bear witness to their works.

Sir, [continued Mr. W.] I had not intended to say so much. The sum of the matter seemed to him to be this: it had pleased these memorialists, in their wisdom, to censure the President, to reproach certain legislative bodies, and to show forth their own logic, rhetoric, and philanthropy. Having effected these important objects, he presumed this specimen of their learning and eloquence might be consigned to oblivion without injury to the republic.

Mr. BELL, of Tennessee, said he did not rise to enter into the discussion of any matter connected with the question of the policy which this Government should pursue towards the Indians. He wished, however, to express his regret that, upon a mere question of reference, any thing should be said by gentlemen from any quarter, tending to call forth a discussion, which was premature, which could result in no good, and for which the House could not then be prepared. Mr. B. said, he had not availed himself of the privilege of examining the language of the memorial for himself, but he had learned from others, who had done so, that it was not of such a character as to exclude it from the House; he could, therefore, see no good objection to its reference to the proposed committee, and he hoped it would be so referred without further argument. He concurred with the gentleman from New York, [Mr. SENECA] that the subject referred to by the memorial was one of great delicacy and importance. It was necessary that this House should come

to a decision upon some of the questions, presented by the present condition of the Indians, at this session of Congress. The whole subject would shortly be presented to the House by the committee which had it in charge; and when, in this way, some distinct proposition was presented, gentlemen would have ample opportunity of expressing their views upon whatever side of the question they might feel it their duty to array themselves. As an individual member of the House, and looking to the necessity of forming some opinion upon the subject to which the memorial related, he was pleased that all the information, in the power either of individuals or public meetings to give, should, in some shape, be brought to the notice of the House. He would not object to memorials, that they contained nothing more than expression of feeling in relation to this subject; but he was particularly gratified with the presentation of memorials coming from a source so respectable and enlightened, as the gentleman from New York (Mr. SPENCER) had assured us this one had come. He trusted it contained some original matter, some new views upon a question of so much importance. As a member of the committee which had this subject under consideration, he would feel obliged by the reference of as many such memorials as might be presented from any quarter.

Mr. B. again expressed a hope that any argument upon the subject of our Indian affairs might be withheld until it should be fairly before the House.

Mr. DRAYTON, of South Carolina, said, the sole ground upon which he opposed the commitment of this memorial was the language in which it was couched. The memorialists, in common with other citizens, [said Mr. D.] have the constitutional right to petition Congress for the redress of grievances. As they possess the right, it is for them to decide what are the proper occasions for its exercise. The only limitation which has been, and which, in my judgment, ought to be imposed upon those who address the Legislature, is, that their language should not be indecent or disrespectful. But this memorial so plainly offends against decorum, that we should, it appears to me, be wanting in what is due to ourselves and to those whom we represent, were we to permit it to be referred to any committee of the House. Having taken it up within a few minutes, I have not been able to peruse it entirely. I have glanced over it, so as to collect its object—the temper of its framers—the general scope of their reasoning, and the conclusions at which they have arrived. Although the proposed object of the paper is to demonstrate that to the Indians, rightfully, belong the territories which they occupy, yet it is evident that the real intent of those who subscribed it is to show that the State of Georgia, in her conduct towards the Cherokees, has committed an infraction of the constitution, and departed from the obligations imposed upon her by treaties and by the principles of justice and humanity. The memorialists “call the attention of Congress to the relations which have always existed between Georgia and the Creek and the Cherokee nation of Indians. Treaties [they state] were repeatedly made between the colony of Georgia and Indian nations residing, &c. &c., and always upon the ground of the distinct national character of the Indians,” and of their right of soil and “of sovereignty within their national limits.” Reference is then made to treaties between Georgia and the Cherokees, upon the same basis, since she became an independent State, “which are binding upon her, in honor, law, and conscience.” It is a fact of which none of us are ignorant, that the Legislature of Georgia passed a law before the date of this memorial, directing, at a future period, a division of some of the lands of the Cherokees, (considered to have been ceded to the State by treaty,) and declaring that the laws of Georgia, after a certain time, should be binding upon the Cherokees within her limits. Of the propriety or impropriety of this legislation, I shall not now

speak. I have noticed it merely to show the application to the State of Georgia of the following passages:

“Your memorialists cannot avoid the conclusion that the bringing of State laws to bear upon the Cherokees without their consent, or the division of their lands among the citizens of any State, would bring great and lasting disgrace upon our country, and would expose us as a people to the judgment of Heaven.” Congress is then implored to interpose, in order that our national character may be preserved “from so indelible a stigma, and is solemnly invoked, by that abhorrence which every upright legislator will feel at the suggestion of measures that will rest upon the brute force, by the apprehension of Divine displeasure, &c., by all these considerations to interpose and save the Cherokees from such injustice and oppression as can hardly fail of accomplishing our ruin, and of bringing opprobrium and perpetual shame upon our country.” Sir, no one can doubt, for a single moment, that the passages which I have extracted from this memorial, directly and unequivocally charge one of our sister States with trampling upon all laws, human and divine, under the instigation of the most foul and criminal motives—with the perpetration of deeds which ought to excite the abhorrence and execration of civilized man, and call down the malediction and vengeance of an offended Deity. Can petitions for the redress of grievances not be preferred, without abuse and crimination? I do not attempt to take away, or in the slightest degree to impair, the right of petitioning Congress. All I require is, that this right should be so exercised as not to be diverted from its true intention by grossness and abuse; with this limitation, the right will be preserved, without being degraded. We ought surely to pay as much respect to a sovereign confederated State, as to an individual; and would any member of this body feel himself authorized to present the memorial of an individual, containing such language as I have quoted? The questions involved in this memorial are of momentous interest. I have reflected upon them sufficiently to convince me of their complexity and their delicacy. However embarrassing they may be, we shall be compelled to examine into, and to decide upon, them. I do not desire to postpone their consideration. All I desire is, that a constitutional right should not be converted into a vehicle for opprobrious epithets, and that the Legislature should not lend its aid to the circulation of what grossly violates common propriety and common decency. With this view, Mr. D. moved that the memorial be laid upon the table. He, however, withdrew the motion at the request of

Mr. LUMPKIN, of Georgia, who acknowledged (for it was known to all his acquaintance) that he was sufficiently sensitive upon subjects relating to himself; and it was known to this House that he was equally so upon all subjects relating to the rights, honor, and character of the people and State which he had the honor in part to represent. Moreover, he believed he had not one constituent who would suspect him of being deficient in zeal and fidelity upon all subjects relating to their interest. Nevertheless he must express his deep regret that this memorial, emanating from a few enthusiastic citizens of New York, was not permitted to go to the Committee on Indian Affairs without opposition, and thereby have prevented this premature discussion. He regretted the motion of his colleague (at the time it was made) to lay this paper on the table, because, if it had been permitted to go to the committee, we should have avoided this untimely consumption of time, and premature excitement of feeling, upon a subject of deep and grave importance, not only to Georgia, but to the whole Union.

Mr. L. said, that, for two years past, by day and by night, in sickness and in health, he had used his best efforts to get the Indian subject in a general and dignified form before this House. The records and proceedings in

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this House would bear him out in saying that the general plan for Indian emigration, now under the consideration of Congress, had been repeatedly urged by him [Mr. L.] for two years past; and he would now take the liberty of saying that one of the greatest obstacles which had impeded his progress, and, as he believed, his success, might be traced in the disposition in this House prematurely to enter upon the discussion of the Indian subject.

It is known to this House that the whole subject of our Indian relations has been brought before Congress by the President of the United States in his message at the commencement of the present session; and has been referred to the Committee on Indian Affairs, of which he was a member; and, therefore, he felt himself justified in saying that that committee is and has been assiduous in labor and industry, in endeavoring to perform the important duties confided to its charge. He, therefore, regretted, that any portion of the delegation from Georgia, or any other member of the House, should subject themselves to the imputation of stifling the most full, free, and ample investigation upon this subject, in all its various bearings. As regards the paper which has given rise to this discussion, his views coincided with the gentleman from South Carolina, [Mr. DRAVTON] and that of his colleagues. He considered this officious act of the petitioners (to speak in the mildest terms of it) as an impertinent intermeddling with other people's concerns. But, sir, [said Mr. L.] I would most gladly hear and carefully examine all that can be said by every individual in this Union who thinks with these memorialists, including all the William Penns of the whole land. I want the whole subject fully and fairly before Congress. Sir, I am not vain in believing that the conduct of Georgia, in relation to the Indians, in the prosecution of her rights, will not only be justified to this House, but to nine-tenths of the people of this Union, if we can have an ample discussion upon the subject in all its bearings. Instead of a Georgia question, in relation to Indians, I wish to present to the consideration of Congress, and the people of the Union, a systematic plan and policy in relation to the Indians, which shall not only relieve my own State, but every other State and territory in the Union, of their present perplexities in relation to the rights of the States—the rights of the Indians, as well as the rights of this Government, in relation to this Indian subject. Sir, it is time to have a definite policy upon this subject! The jurisdiction of all the conflicting parties must be defined. Your committee, upon this subject, are using their best exertions to lay before you all the facts which they can collect, connected with the subject, and which are calculated to aid in arriving at a just decision. I, therefore, do hope we shall not again suffer ourselves to be excited into a premature discussion of this subject, by those whose ignorance of the subject is the manifest cause of their zeal and forwardness.

Mr. SPENCER said, he owed it to the gentleman from South Carolina [Mr. DRAVTON] to explain some of his former observations. When he [Mr. S.] was up before, he had said the memorial was, in his opinion, couched in decorous language. He meant, it was respectful towards that House, and he believed that was the question to be decided. Mr. S. said, that, so far from wishing for discussion on this subject, he really deplored it; and he appealed to the gentlemen from Georgia to bear him out in the assertion, that he had requested of them to let the memorial go to the committee without opposition, and consequently without a painful debate. It was a discussion which he had avoided as much as was in his power, consistent with his duty to vindicate the character of the memorialists, which had been so unwarrantably aspersed. He said the gentleman from South Carolina [Mr. DRAVTON] had read a clause in the memorial, which he considered indecorous. He would ask if the memorialists—he would ask if any of the free citizens of this Union, had not the right to

express their opinions upon any subject of national importance to this House? Whether they are right or not [said Mr. S.] in the opinions which they advance, still they cannot be debarred the right of respectfully expressing those opinions to their representatives. Mr. S. said the time had not yet come for the inquiry whether these memorialists were right in their sentiments. When the time does come [said he] for that discussion, it must be approached with awe. It is one of great magnitude, and must involve the most solemn considerations. The only question now for us to decide is, whether the memorial is a respectful one in relation to this House, and if it was not, he had perhaps contributed to mislead the House, in as much as he had expressed a contrary opinion. Is it [said Mr. S.] indecorous for a portion of the people to express their sentiments freely on any subject they may think proper to bring before us, or which may already be before us? If so, [said Mr. S.] there might be some ground for the opposition to the reference; otherwise no such ground could exist. In relation to the memorial itself, and the condition of the Southern Indians, [said Mr. S.] there at least appeared some color for complaint; if it was true, as stated, that, in the proceedings of judicial tribunals, an Indian's oath was not allowed against a white man, whilst that of a white man was valid against an Indian. Mr. S. concluded by enforcing the right which he contended petitioners and memorialists had to be heard upon that floor; and said, when he had stated that the memorial was not an indecorous one, he only referred to its relation to that House.

Mr. WAYNE said, he was in favor of the proposition of the gentleman from South Carolina, [Mr. DRAVTON] and he should vote with him on the present question. He took this occasion to return his thanks to that gentleman for the stand which he had taken, in making his motion to lay the subject on the table; and he should have done so himself, had it not more properly devolved upon an older member of that body. He hoped the memorial might be read, that gentlemen might judge for themselves, whether it was couched in decorous terms. He therefore moved its reading.

[The reading of the memorial at length, by the Clerk of the House, here took place.]

Mr. MALLARY observed that he was not aware that difficulties could ensue upon the subject before them. A great number of respectable citizens had memorialized Congress on a very important subject. It had been said by the gentleman from Georgia, that it would be much better if persons, instead of taking care of the business of others, would attend to their own affairs. But what [said he] are to be considered as our affairs, and what are the affairs of the nation? Has not the President of the United States himself recommended, in his message, the subject to the consideration of the Committee on Indian Affairs? And why, therefore, should objections be raised to the reference of it to that committee, by those who laid claim to the character of genuine republicans? Mr. M. proceeded to contend in favor of the memorialists to admonish, if he might use the term, the members of the National Legislature upon the subject of any public measure in contemplation, and also to express their opinion as to what might be the probable consequences or results of their decision. He thought that the citizens of the United States, under such circumstances, had the right not only to express their opinions, but also to urge their arguments in support of such opinions.

Mr. THOMPSON, of Georgia, said, he certainly did not rise with a few to prolong the debate. On the contrary, it was with extreme regret that he had seen that debate take the range which it had already done. But the gentleman from New York [Mr. SPENCER] had seemed to intend to fix on him [Mr. T.] the charge of having not only unnecessarily provoked debate upon the merits of the subject

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referred to in the memorial, but of having done injustice to the memorialists. Mr. T. disclaimed having said, or intended to say, any thing (when he first addressed the House) on the merits of the important subject referred to in the memorial. He had read that paper, and, as a representative of the people of Georgia, he felt indignant at the insult apparently intended to be offered by the memorialists to that State. He repeated what he said when he addressed the House before, that he had no intention of opposing the proposed reference. That he had implicit confidence in the integrity and intelligence of the Committee on Indian Affairs, who already had the subject under consideration. That he had the fullest confidence in this House, and in the American people, as well as in the perfect fairness of the claims of Georgia, and that, therefore, he did not fear the result. Mr. T. said, that, but for the assertion of the gentleman from New York, [Mr. SREXCAA] that the memorialists are gentlemen of respectability, the ungenerous, illiberal and indecorous language used by them towards Georgia would justify the belief that the memorial was the result of an accidental meeting at a grog-shop. Mr. T. said, he was a Georgian, and had the honor to be one of the representatives of the people of that State. He asked the gentleman from New York, therefore, if it were possible that an apology could be expected from him. Mr. T. repeated what he said when he first addressed the House, that a reference of the memorial in question was superseded by a submission of the subject at large to the Committee on Indian Affairs, through the President's message; and he would now add that the vast accumulation of trash which appeared in the columns of the National Intelligencer over the signature of William Penn, and circulated through the United States during the last summer, did away any necessity which ever in the conception of the memorialists might have otherwise devolved upon the people of New York to take the Indians located in Georgia under their special care and protection: for, if gentlemen would take the trouble to compare the memorial with the essays before alluded to, they would find that the memorialists have consulted their convenience, by taking such parts of the arguments used by William Penn as are the least profound, and, therefore, the least troublesome to the intellects of the memorialists. But with what grace [Mr. T. asked] do complaints against Georgia come from the land of the Mohawks, the Norridgewocks, the Pequods, and Narragansetts? Mr. T. said, the gentleman from the North [Mr. MALLARY] had taken exceptions to the maxim that "if every body would attend to their own business and let others alone, every body's business would be well attended to," as quoted by Mr. T.'s colleague, [Mr. WILDS.] Mr. T. asked how the gentleman from Vermont would like a substitution of the maxim, "Physician, heal thyself." He deprecated the idea, in conclusion, that his intention had been either to provoke discussion, or opposed the proposed reference, and expressed a hope that the discussion would for the present be discontinued.

Mr. STORRS, of New York, said that no one could deny that the subject matter of the memorial pertained to the business of the House. The President had called the subject to the notice of Congress at the commencement of the session, and invited the special attention of the House to it. The honorable gentleman from Tennessee, at the head of the Committee on Indian Affairs, [Mr. BELL] had also invited its reference to that committee as a matter to be properly disposed of in that way. If the memorial was, therefore, on a subject pending here, he [Mr. S.] could not discover, as clearly as some gentlemen seemed to, how that which was of such interest to the whole country should not have been a proper subject of petition to this House from these memorialists as well as any body else. It was said, however, that the language

of it was indecorous to the State of Georgia. He did not understand it to be objected to the memorial that it was at all disrespectful to the House—but it was said that it was not to be treated here with favor, because it imputed to other persons motives or conduct calculated to bring them into disrepute. Now, sir, [said Mr. S.] it becomes us to remember, here, that this right of petition has been deemed so sacred that its security has been provided for in the constitution itself. It is a right to be tenderly dealt with. This petition is not addressed to "His Most Sacred Majesty," or laid at the foot of a throne. The memorialists are our own constituents—the free people of this country—and addressing us, their own representatives. It is their right to speak to us—and to speak their opinions frankly and fearlessly, and it is our duty to listen to them respectfully. We can only require, on the other hand, that they speak in respectful terms of this House. Beyond that, I doubt if we have any moral right to inquire. If we undertake to criticise the language of these appeals from our constituents to this House beyond that point, we may overstep our own limits, and, under the notion of repudiating their petitions as disrespectful, we may in fact abridge the right of the people to petition their own representatives. If we are now to deny to these petitioners a respectful notice of their complaints, because they are supposed to have spoken of one of the States in terms which that State might consider offensive, why should not we at least set up the same rule for other departments of our own Government? We should then realize more distinctly the nature of the principle we have heard advanced in this debate. If our constituents were to petition us for an impeachment of the Executive or the judges of the court, and charge them with injustice, oppression, and usurpation, in unlimited terms, should we repudiate their complaints, because we might be disposed to feel a tenderness for these high functionaries? If they speak respectfully of this House, it is all which we have a right to require for ourselves. I will not say whether, if this petition was presented to the Legislature of Georgia, it should be considered so respectful to that State, as to entitle it to favorable notice there. Georgia would determine that for herself. But it is enough for us that it contains no imputations on this House. Whether the conclusions which the petitioners have drawn from their own views of the subject, to which they call our attention, are just or not, is not the question at this time. But it is a question on which we may be called at this session to act as their representatives: and, as they have the right, as our constituents, to be heard on any question here, which in their opinion may affect the interests or the character of the country, we are bound to treat their complaints with great respect. If we are to err at all on so delicate a point as the right of petition involves, we had better err on the other side. Mr. S. then proceeded to examine the passages which had been alluded to as particularly disrespectful to the State of Georgia, and said that he considered the terms used as founded entirely on the hypothetical correctness of the conclusions which the petitioners had drawn from the documents to which they referred. But whether these terms were in any sense disrespectful to that State or not, he did not admit the right of the House to determine for the petitioners. If they treated the House itself with respect, it was all that the House had any right to require of them.

Mr. FOSTER, of Georgia, said it was little matter how much gentlemen may deplore the agitation and discussion of this question. They had got into it, and it was impossible for them to retreat. They might as well encounter it first as last. We have heard much [said Mr. F.] on the constitutional impossibility of refusing to listen to this memorial, or rather argument, for he was in favor of calling things by their right names. Gentlemen were mistaken in the name which had been given to the instrument

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*Distribution of Public Lands.*

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before them; but the gentleman from Vermont [Mr. M. L. LARR] had explained the whole matter. The paper is sent here, not only as a petition or memorial, but as an argument in opposition to the views expressed by the President on this subject, in his last message to the House. For his own part, he, in common with others, had full confidence in the Committee on Indian Affairs; and he did not oppose the reference of the subject to them; but he was desirous of stripping it of its fictitious character. The many delicate terms made use of in the paper, in relation to the State of Georgia, and its policy, were sufficient indications of the motives which prompted it. It had become fashionable [he said] to lavish abuse upon Georgia and its policy, both in the newspapers and in popular assemblies, and she was now considered fair game—a fair mark for all the shafts of ribaldry; but he could say of that State, in the language of a distinguished individual on another occasion, the policy of Georgia “would stand the scrutiny of talents and of time.” The paper referred especially to the conduct of Georgia; the conduct of the sovereign State of Georgia, (he was glad to see that term had become more fashionable lately than it was two or three years ago,) in her internal relations—and contains threats of the vengeance of Heaven against her. Mr. F. said, if it was desirable that the sentiments contained in this document should come before this House, the gentlemen who advocated it could express them there without referring them to the committee. He said the weakest member from New York could enforce those sentiments as strongly as they were set forth in the document in question. Mr. F. here referred to the condition in which other States stood upon this subject; and said, if this sort of investigation was proper in relation to one State, it was equally applicable to others. But what [said he] would be thought of the citizens of Georgia, should they call upon New York to make restitution to the Indian tribes who once resided within her territory? The doctrine would be considered as monstrous; but now [said Mr. F.] that the memorialists reside in the great commercial emporium, they are entitled to all deferential consideration; and it is matter of surprise that their right to interfere in the matter is questioned. Mr. F. concluded by repeating his dissent from opinions expressed in that House on the subject of the memorial.

Mr. CAMBRELENG remarked that, as this debate was on a mere question of reference, and as the House would probably not object to the reference, he hoped the debate would not be continued. The President had called the attention of Congress to the subject; but the House seemed prematurely and rapidly approaching an Indian war on this preliminary and unimportant question. He hoped Mr. DARTON would not press his motion, but permit the question to be taken on the reference.

Mr. ARCHER feared that this question would produce a feeling in the House, mischievous, and prejudicial to the performance of the public business. He agreed with Mr. CAMBRELENG on the subject, but would say a word or two on the question which had been debated. It was said the memorial contained language disrespectful towards one of the States of the Union. He confessed he did not perceive it. He had read the petition, and did not find any thing disrespectful; and he quoted the language deemed exceptionable, to show that it was so. The memorial spoke merely of a hypothetical course of measures on the part of Georgia, which would lead to certain consequences, which the petitioners deemed grievous, and to be deprecated. It was the right of all men—not merely freemen, but all men, [said Mr. A.] to express their fears of what would grow out of an apprehended course of public measures.

‘This was a memorial of a respectable meeting of citizens—on what sort of a subject? Why, relative to Indian affairs. It would be their just right—no one would deny

it—to address us on any of our foreign affairs [said Mr. A.] and should we think of meting out to them the ardor with which they should express themselves to us on that subject, or any other subject of public concern? He put it to the gentlemen of Georgia themselves, whether there was any part of the Union where the people would brook such an assumption by this House, if it were attempted in regard to a memorial from their own State. They were the last people in the Union by whom ardor of language on public topics should be rebuked. Mr. A. concluded by saying that if the gentleman from South Carolina should press his motion to lay the memorial on the table, he, [Mr. A.] though a Southern man himself, must object to it, and favor the reference of the petition.

Mr. McDUFFIE said that, if the discussion upon the matter were further prolonged, it was obvious that the presentation of petitions on the part of the States which had not yet been called over by the Speaker, must be deferred until Monday next, and thus a week’s time be lost to the petitioners. He saw no prospect of utility from a continuation of the debate in the present stage of the affair; and he should therefore move the previous question.

The motion was sustained; and the main question resolved as to referring the memorial to the Committee on Indian Affairs.

Upon this Mr. REED asked for the yeas and nays; but the call was not sustained, and the question was, upon a division, carried in the affirmative.

So the memorial was ordered to be referred to the Committee on Indian Affairs.

TUESDAY, JANUARY 12, 1830.

## DISTRIBUTION OF PUBLIC LANDS.

The House again resumed the consideration of the resolution moved by Mr. HUNT on the 17th December ultimo.

The question recurred on the motion made by Mr. MARTIN, on the same day, to amend the same.

Mr. BURGESS, of Rhode Island, resumed the remarks interrupted by the last adjournment. He had not concluded when the hour allotted to the consideration of resolutions had expired.

WEDNESDAY, JANUARY 13, 1830.

The House resumed the consideration of the resolution moved by Mr. HUNT on the 17th of December ultimo, concerning a distribution of the public lands among the several States.

The question recurred on the motion made by Mr. MARTIN, on the same day, to amend the said resolution.

Mr. BURGESS resumed, and concluded his remarks.

[The remarks of Mr. B. as delivered on three several days, follow:]

Mr. BURGESS said, that whatever might aid education and extend intercourse among the people throughout the various parts of the country, always did, when brought to the consideration of the House, appear before its members attended by circumstances of deep and vital importance. The resolution offered by the gentleman from Vermont [Mr. HUNT] proposed to give such appropriation to some portion of the national funds, as would facilitate the operations of both these sources of national improvement. However desirous I may be to aid this proposition, [said Mr. B.] yet, feeling myself within the interdiction of that rebuke so graciously bestowed on a gentleman whose State had ceded no lands to the Union, I shall, first of all, offer some reasons why a representative from such a State may be permitted to mingle in any debate concerning a disposition of the public lands. It is true, Rhode Island neither did nor could, in the great revolutionary conflict, make any cession of broad lands or more extensive claims, in aid of the war, or of the confederation. The great founder of

that State was able to find no longer space than its very limited territory, wherein, for the first time, among all the kingdoms and colonies of this world, a Christian man might, at that time, obtain full permission "to hold forth a lively" experiment, that a civil State could best stand and flourish, with the utmost freedom, in religious concerns." Although Rhode Island could not do what more fortunate conditions enabled other States so liberally to perform, yet, in every great passage of arms, and in all which might illustrate patriotism or signalize valor, she stood in the very first rank of devotedness and achievement. History will continue to do justice to all the efforts of all the States in their revolutionary contest. Should it ever be otherwise, and the North become oblivious of these things, the honor and magnanimity of the South will not suffer them to be forgotten.

The lands comprehended in the resolution have been acquired by disbursements from the common funds of the nation. The history of your finances will disclose the several amounts contributed to these funds by the several States. New Orleans is the great port of entry for nearly the whole valley of the Mississippi. Since Louisiana became a part of the United States, and up to the year 1826, about fifteen millions of dollars have been paid into the United States' Treasury by the collector of that district. If all the goods on which this revenue was collected were consumed in the States on the right and left banks of the great river, the division of this amount among those States will show, for twenty-three years, their several contributions to the national funds. Averaged upon the whole nine, the annual amount of each is about sixty thousand dollars. The little State of Rhode Island has, yearly, ever since becoming a member of this Union, contributed not less than four times that amount. If it be contended that those States have paid more, because they have consumed large amounts of commodities, brought coastwise to New Orleans, or over land from Atlantic ports, it may be replied that Rhode Island has likewise paid more, by consuming goods brought into that State by the same kind of trade. If this statement do not give an accurate view of the relative contributions of these States to the national funds, it will give, what it was intended to give, something like a sufficient reason for permitting Rhode Island to be heard on any question concerning lands acquired or purchased at the national cost.

Neither the patriotism or the efforts of other States is drawn into question. In the revolution each of the "old thirteen" did all which courage could dare, liberality contribute, or unwearied labor perform. The new States, had they at that time been in existence, would not have deserted the cause, or dishonored the generous stock from which they are descended. Could the patriotism of our days be warmed by the spirit of those times, and every lip be purified by fire from the hallowed altar of the revolution, this debate might receive a new character; and in the generous strife for the general welfare, each State, not unmindful of our high character in former times, would struggle for pre-eminence in liberality of contribution. With as much of these feelings and principles as I can bring myself, and as much as I can invoke to my aid from others, I ask for the indulgence of this House while I go into some consideration of this amendment.

It may not be in order to consider the resolution itself, unless it can first be demonstrated that the amendment, if it prevail, will, in effect, destroy this resolution. If that can be evinced, then every argument in support of the resolution will be an argument against the amendment.

The resolution proposes "That a select committee be instructed to inquire into the expediency of appropriating the net annual proceeds of the sales of the public lands among the several States and territories, for the purposes of education and internal improvement, in proportion to the representation of each in the House of Repre-

sentatives." It is moved by the gentleman from South Carolina [Mr. MARTIN] to amend this resolution, so that the committee should further inquire "into the amount and value of the public lands which have been given by Congress to any State, or to any public institution in said State." The gentleman from Indiana [Mr. TAYLOR] has, in debate on this subject, announced his intention to move an amendment of this amendment, should it prevail, to the intent that the same committee may further inquire, and report to this House, the whole amount expended for national purposes in all the other States.

Now, sir, can any proposition be contrived, more effectually calculated to subvert and destroy this resolution, than those contained in these proposed amendments? If the first prevail, the second will be offered; and, if justice govern the decisions of this House, it will as certainly be adopted. With these two amendments incorporated into this resolution, what Representatives, from what States, will be disposed to vote for it? Under the first branch of the amendment, your committee would be charged to inquire what quantity of public lands, and what amount of money, have, at any time, been granted to any of the new States. These must comprehend the reservations, whether of sections or townships, for primary, academical, or collegiate education; the grants, at various periods, for roads and canals; the expenditures for improving the navigation of rivers, together with the whole amount disbursed, during almost thirty years, on the great national highway from the Atlantic waters far into the Western States. If true to the principles of justice, and to the interests of the United States, though forgetful of their own, the gentlemen from the Western States can never vote for this resolution, so amended, as to induce a report upon such inquiries. Such a vote will acknowledge those States to be accountable for those grants and expenditures; and that their several portions of them ought to be charged upon their several annual dividends arising from the sales of public lands under the system proposed by this resolution. It can never be expected that men will ever be found in such hostility to their own interest, when un-called to it by any great claims of justice. The representation from these States will, therefore, be found unanimous against the resolution, when thus amended.

The committee, under the second amendment, will look into all the old States. They must then take account of all expenditure, since the establishment of the Federal Government, made for national purposes. The items of this account will be all the numerous and heavy appropriations, from year to year, for clearing rivers and harbors; for the building of moles and breakwaters; for light-houses upon the whole coast; for custom-houses in every collection district; for armories, arsenals, fortifications, dock yards, and naval stations, together with all other the immense and necessary expenditures for land or maritime defence, on the whole Atlantic frontier. What gentleman, representing any of these States, will sit here, and by his consent sanction this inquiry? The very supposition is preposterous. If, therefore, the amendment moved by the gentleman from South Carolina, and that suggested by the gentleman from Indiana, are adopted, the resolution will never be passed by this House. Place them upon it, and, like the asp on the bosom of the Egyptian queen, they will bring death with their contact.

Under this view of the question, the whole subject of the resolution, with all the reasons for adopting it, are so many arguments for consideration in discussing the amendment. This resolution places before the House, as upon a great chart, the public lands, the extensive national domain. The gentleman from Indiana [Mr. TAYLOR] has called our attention to a consideration of the manner of acquiring some parts of it. We are cautioned by him against appropriating these lands to any object which may come in conflict with the will of the donors, in their

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deeds of cession to the United States. Men may fairly differ concerning the pecuniary value of those cessions made by the several States; but no one, conversant with the history of our revolution, independence, and confederacy, can for a moment question their high and patriotic motives. Those motives ever have been, and always will, as I trust, be duly appreciated; nor shall any examination by me of the history and condition of those lands, either before or since their cession, deny to Virginia her merited pre-eminence in these deeds of devotedness to the union and interest of our common country.

We must not, however, imagine that the region covered by those cessions, and which is now separated into seven new States and two large territories, was, at the time of making them, any thing like so many millions of acres of fee simple, then in possession and at the disposal of the ceding States. Not a foot of all which is comprehended in those States, or in the proposed resolution, was then holden, or claimed to be holden, as land, as freehold, under any of its legal descriptions. The ceding States claimed, and they relinquished claims; but they neither claimed nor relinquished to the United States' fee simple. The House will excuse me if I go into some history of this subject, when it is observed that gentlemen discuss this question, as if the United States had acquired by this cession, and for no valuable consideration, a title to many hundred millions of acres, then held by certain of the several States quietly, and in the very highest degree of ownership.

History does not authorize us to say that the sovereigns of Europe ever claimed soil and freehold in the New World by right of discovery. Navigators and travellers in the employment of those sovereigns discovered the several parts of this continent for their respective princes; and they, under those discoveries, claimed all the rights, whatever they may be, so acquired, to their own use, and to the exclusion of all other people and potentates. These claims always recognised the rights of the aboriginal owners of the country; and, however incompatible with those rights any project of colonization in North America might have been, no European prince, either temporal or spiritual, ever denied them. No one of these princes ever attempted to plant colonies by force of conquest. They claimed, by virtue of discovery, the exclusive right to purchase the soil of the primitive owners. This was, then, precisely what is now called the right of pre-emption. The acquisition of fee simple, in this country, by conquest, papal proclamation, or royal charter, was unknown in the theory of North American colonization. The charters of those sovereigns might sometimes convey less, but they never conveyed more, than this right of pre-emption. Under such charters, and by the exercise of this right, American land titles in our country, whatever they may be, have been acquired.

It will be recollected that the first charter was granted to the London Company by the Sovereign of England for the settlement of Virginia. This covered all the lands from Old Point Comfort, two hundred miles south, and two hundred miles north; and thence, "west and north-west, to the Pacific Ocean." A charter for the settlement of New England was soon after granted to the Plymouth company, by the same power, and with still more extensive limits. It covered all the region, from the fortieth to the forty-eighth degree of north latitude, lying between the two great oceans which wash the shores of our continent. A subsequent charter, for settling the Southern States, was, in like manner, granted to another company. This extended, on the coast, from twenty-nine to thirty-six and a half degrees north latitude, and covers the whole region from the Atlantic to the Pacific Ocean.

The opinions of the geographers and voyagers of those days should not be forgotten. They regarded these continents as narrow belts of land, obstructing their course

to the much richer regions of the eastern India. Every bay and inlet was explored; and they thrust their ships into them, expecting to shoot through into the great Pacific Ocean. The English monarchs, who granted, and the companies who received, these charters, could never have expected that the States formed under them would contain more territory than they, at this time, actually cover. Nor was it believed that the prerogative of the English crown had exhausted its power to grant new charters, within the grants to those companies. The great right of pre-emption, or power to treat with the Indians for the title to lands, might be resumed, whenever the interests of the crown, or the colonies, should require such resumption. On this principle, the charters of all the colonies west of Connecticut, and within the charter of New England, were afterwards granted.

While the English colonies were forming under these charters, the French monarch had pushed his discoveries and settlements from the Gulf of St. Lawrence, up the river, to Quebec and Montreal, and from New Orleans almost to the source of the Mississippi. The condition of things produced by these events, both in Europe and America, excited between France and England, and between the American colonies, the war of 1756. It is well known that France claimed not only the whole pre-emption right of the whole territory north and west of New England, but also that of the entire region between the high lands and the Mississippi, on the left bank of that river, from the lakes to the Gulf of Mexico. During that war, the famous family compact between the two great monarchs of the house of Bourbon was made, and brought to bear on the conflict.

The English colonies had a full view of this important controversy. They knew it involved the great question whether Englishmen should colonize and settle the whole region, from the Gulf of Mexico to Hudson's Bay, and from the ocean back to the fountains and stream of the Mississippi; or whether France and the colonists of France should be settled around throughout those extensive regions, and cut them off from the waters of the North and the West. Neither nation claimed the soil, except where colonies were established; but both did claim the right of discovery, pre-emption, and settlement. This great question of arms involved these claims and rights to one large part of the lands now under consideration; and the English colonies, making it a common cause with the mother country, sent into the field of conflict all their force and valor. It was a seven years' war, exhausting, bloody, and exterminating; for the colonies, on their part, contributed to it an army of twenty-five thousand men. All made their best and bravest efforts; but New England, never in arrears in the contribution of toil and blood, furnished full two-thirds of this army. The contest was terminated, the question for ever settled by the treaty of Paris, in 1763.

The crown of France relinquished to the crown of England all her North American claims. This relinquishment comprehended the French claim, by discovery or otherwise, to the right of pre-emption, in all the region now covered by the limits of the seven States on the left bank and in the valley of the Mississippi, and the two territories between the lakes and that river.

It should be remembered that no settlements had, at this time, been made by the Atlantic colonies, so far north as the great lakes, or so far west as the ridge of the Appalachian mountains; nor had, or did any of them, under their charters, claim the right of pre-emption to any of the lands bounded by those lakes and the Mississippi, or watered by the streams falling from those mountains into that river. The right was then claimed by the crown of England, as the head and sovereign of the British empire. This fact is established by the proclamation of that monarch, made and given by him, in council, on the 7th of October, 1763. Among other extensive colonial provi-



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sions, it announces that, "whereas it is just and reasonable, and essential to our interest and the security of our colonies, that the several nations or tribes of Indians with whom we are connected, and who live under our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories as, not having been ceded to or purchased by us, are reserved to them or any of them, as their hunting grounds; we do, therefore, with the advice of our privy council, declare it to be our royal will and pleasure that no Governor or Commander in Chief, in any of our colonies or plantations in America, do presume for the present, and until our further pleasure be known, to grant warrant of survey, or pass patents for any lands beyond the heads or sources of any of the rivers which fall into the Atlantic Ocean from the west or northwest, or upon any lands whatever, which, not having been ceded to or purchased by us, as aforesaid, are reserved to the said Indians, or any of them."

The rights claimed, and the rules promulgated by this proclamation, have never been questioned by any of the colonies. They demonstrate and lay before the world the great principle and laws of Indian relations with the whole English race, whether with the British crown, the colonies, or the United States; and that, too, from the first settlement in our country up to the present hour. From that time to the commencement of the revolutionary war, in 1775, many and grievous were the impositions and injuries committed by the English Government against the claims and rights of the thirteen colonies. These colonies lacked neither the vigilance to see, nor the ability and spirit to set down in order, and to expose to the English nation and to the world the whole inventory of those injuries and impositions. Examine the entire catalogue, and you will find that the American patriots of those times have not exhibited one allegation against the crown, on account of those claims contained in that proclamation. Colonial vigilance had never discovered in them any infringement of colonial rights.

The Atlantic States, in their struggle for existence with Great Britain, faced the enemy, and kept a steady eye on their powerful adversary. They did not, they could not, look to the West, until success gave some pause to the conflict. After the declaration of independence, after the capture of Burgoyne, and after the treaty of amity and defence with France, the Continental Congress were called, by the minister of that Power, then newly arrived in the United States, to deep and anxious consideration of the western boundary. That monarch, mindful of the Bourbon family compact of 1753, had contracted with his brother of Spain to conquer from Great Britain, by American arms, his claims to the western regions, relinquished by him in the treaty of Paris to the English crown; and, having thus obtained all his former rights under those claims, to transfer the whole territory to the Spanish monarch, and thus unite in that crown the jurisdiction, together with the right of pre-emption and settlement, to the whole valley of the Mississippi, from its source to the Gulf of Mexico.

It is true, the States within the letter of whose chartered limits this territory lay, had, before this time, moved their claims in their legislative deliberations; but this had ever been done with a patriotic view to ulterior measures in favor of the whole confederacy. In Congress it had been looked at as one of the results of a successful conflict with England. Without knowledge of the arrangement of France and Spain, ministers had been sent to both these Powers, to negotiate for aids in the war; but, at the same time, to claim for the United States the centre of the great river as their western boundary.

Among the States, the relinquishment of State claims to the western territory laid, with some of them, become a sine qua non to the Union; and unless this was done,

protests were entered against the articles of confederation. Congress, on the 6th September, 1780, "*Resolved*, That it be earnestly recommended to such of those States which have claims to the Western country, to pass such laws, and give their delegates in Congress such powers, as may remove the only obstacle to a final ratification of the articles of confederation." In furtherance of this object, Congress, on the 10th of the following October, "*Resolved*, That the unappropriated lands that may be ceded or relinquished to the United States by any particular State, shall be disposed of for the common benefit of the United States; and be settled, and formed into distinct republican States, which shall become members of the Federal Union, and have the same rights of sovereignty, freedom, and independence as the other States." These resolutions of Congress finally resulted in such measures in the several States "which had claims to the Western country," that all those claims, under certain reservations, have been by them ceded to the United States for the great objects of those resolutions.

Before these events, and while the war was in progress, the French minister had placed before Congress the right of his royal master to reconquer from the British crown the "Western country," for himself and the King of Spain, and had insisted on that right, because that country was a part of the British empire, and a fair subject of conquest. Congress replied, in a most able paper, said to have been drawn up by Mr. Madison, that France had, by the treaty of 1763, relinquished all right in that country to the British king, as the sovereign of the British empire in America, and to the use of his British subjects in America, and not to the use of such subjects in Europe. The United States had by the revolution succeeded to all those rights, and that, therefore, any claim of France or Spain to that country would not be a claim against Britain, their common enemy, but against the United States, their friend and ally. Notwithstanding the unanswerable force of these arguments, France and Spain persisted in their claims, and the Spanish court would not receive the American minister. In this condition of our affairs, so anxious were some of the States to obtain the aids expected from that monarch, and to secure, if possible, the independence of the United States, as then weak and limited, that Virginia, to induce Spain to come into our alliance, did, in the year 1780, instruct her delegates in Congress to procure an amendment of the instructions Mr. Jay, directing him to relinquish the western boundary, and the right to navigate the Mississippi. France was wearied in her efforts to procure a relinquishment by the United States, to all claims to the Western country; and at last prevailed on Congress, in their final instructions to their ministers in Europe, to add, in reference to the French ministers, the following words: "And ultimately to govern yourselves by their advice and opinion." This clause was adopted by all the States, except Delaware, Connecticut, Rhode Island, and Massachusetts. These States would vote for nothing which might impair our claims to the Western country, and the navigation of the Mississippi.

From these instructions, fortunately for this country, our ministers dared to depart. Had they concluded nothing without the knowledge of the King and ministers of France, and "ultimately been governed by their advice and opinion," the western boundary of the United States would have been fixed on the highest ridge of the Alleghany mountains; and the whole "Western country" again placed under the jurisdiction and control of the Bourbon family. The English Government, aware of this, and preferring us as neighbors to their northern colonies, let the fact be known to the American ministers; and Adams, Jay, and Franklin, without being governed by the advice and opinion of the royalty of France, first had and obtained, did immediately, with the English commissioners,

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make and execute a provisional treaty, not only acknowledging our independence, but establishing the great river as a western boundary. This event, when communicated by Dr. Franklin to the Count de Vergennes, produced his angry letter, disclosing, at once, the policy and intentions of France on the great boundary question; and the reply of Franklin evinced how far the American philosopher excelled the French courtier, not only in sound policy, but likewise in "a point of bienséance."

The House has been detained by this historical sketch, that a full demonstration might be placed before us, of the exact political condition of the "Western country," in relation, not only to the colonies, but also to the European powers, from the time when it was claimed by France, to the date of our definitive treaty with England, by which all claims to it was, as I trust, for ever relinquished by those powers to the United States. By this it appears that the whole claim was a claim to the right of pre-emption and settlement, whether vested in France, England, the colonies, or our whole nation; and it moreover appears that this claim, once vested in England, by the common consent, and to the use of all the colonies, afterwards devolved on them collectively by the revolution, and as a necessary appurtenance of independence, won by the common blood and treasure of them all. Within the limits defined by our treaty with Great Britain, all things whatever, which had theretofore been vested in the British crown, were, by our independence, *ipso facto* vested in the United States, to the sole use of the American people; and that treaty did neither more nor less than acknowledge that fact, and establish a solemn covenant between the parties, to govern themselves accordingly. The patriots of those times in each State not only acknowledged this great principle, but contended for it. The cessions of the several States never conveyed, and were never intended to convey, any right to the United States, not already vested in them. These cessions were nevertheless made upon great and patriotic considerations, worthy of the times, and the men who made them. They were each of them parts of a great system of accord and satisfaction, made and executed to strengthen the Union, by extinguishing for ever all State claims to the right of pre-emption and settlement in the "Western country," and thus leave the United States in the unquestionable exercise of all the rights, in that respect, acquired by our revolution and independence. The reservations made by any of the States do not controvert, but confirm, these principles. Provision for these had been made by Congress, in their resolution of October, 1780. Under the principle of that resolution, the ceding States might and did reserve so much interest in the territory so relinquished, as would cover any expenditure by them made upon it.

By the principles of the revolution, vested with the great right of pre-emption and settlement, and by the cessions of the several States, disencumbered of any conflicting claim, the United States have gone into the exercise of that right, for the common benefit of all the Union. They have by treaties, at various times, made with the Indians, the owners of the soil, purchased it of them for a valuable consideration, either in hand paid, or by annuities stipulated to be paid to them in coming years. By this process, the United States have changed what was, in 1783, in them a mere right of pre-emption into a clear and unquestionable title of soil and freehold throughout almost the whole of that extensive region, divided into seven States and two territories. Large tracts of these lands, so acquired, have been sold and conveyed to the people of those States and territories; and many grants made to them for public purposes, to encourage settlement, and thereby enhance the value of lands remaining unsold, as a common fund, and for the common benefit of the whole nation. These lands, so remaining, are one part of the subject now under consideration.

Another part of the national domain was obtained by purchase from Spain under what is commonly called the Florida treaty. It is pleasant to look back, and call up the course of events which put the nation in possession of the "Western country." This was the purchase of our first and, I trust in God, it may be the pledge of our perpetual union. Every man in the nation paid his share of the price. We were united and equal in the toil and the success. In the name of justice, I wish we could so regard our acquisition of territory from Spain. That nation, stately and dilatory in every thing; slow even in her revenge; but magnificent in purpose, and just, when, having gone through all the forms, she arrives at the time of doing justice; that nation, I say, did ample justice to this; when, after years and years of delay, she remunerated our country for depredations committed by herself and her colonies, on property owned, and long claimed, by citizens of the United States. Justice, ample, magnificent justice was done by Spain in that treaty; but unfortunately it was done, not to those citizens claiming, and of right entitled to receive it. No, sir; it was done to the United States, the agents and trustees of those citizens. The lands ceded to the United States by that treaty are immense, and of unknown value. The mere territorial jurisdiction, acquired by that cession on the east side of the Mississippi, would have been a cheap purchase for the United States, at five millions of dollars. Would you sell it, sir, for twice that sum?

The United States, by that treaty, sold and relinquished to Spain all the claims of American citizens for all depredations committed by Spanish subjects on their property. Had our country covenanted, in the same instrument, to remunerate those citizens for such depredations, justice might have been done. This was the intention of Spain, and this must have been the intention of the United States. The supposition that those depredations could not exceed five millions, and the limiting remuneration to that amount, and the time of seeking it to so short a period, have brought on those citizens extensive and flagrant injustice. Permit me, sir, to demonstrate this assertion. Nearly all these depredations had been done before 1807. In June, 1824, when the time of receiving claims had expired, and the five millions were distributed, the interest, on that amount of claims allowed, exceeded the principal. It is evident, therefore, that, though five millions were paid, much more than five millions were left unpaid. I pass over all those claims, excluded for want of time, within the limits of the treaty. Their amount is several millions. Not less than two hundred thousand dollars were by this lost to me and those with whom I was concerned. One claim, half a million, eminently just, and distressing in its circumstances, has been before this House. It was the fruit and the reward of a life of toil, peril, and disaster in Spain; but by these limitations, and by the manner prescribed for conducting such claims, it was lost, and a very meritorious family are left dependant and destitute.

It is therefore seen that the common funds of the nation did not purchase one-half of Florida, and the other extensive regions obtained by this treaty from Spain. If justice be denied to the merchants of the Atlantic cities, from Maine to Georgia, whose funds purchased two-thirds of these territories, I pray you, sir, do not refuse to their States which have lost, with them, the benefit of this large capital; do not, I say, refuse to them a just and reasonable share in the common benefits resulting to the United States from this purchase.

The other division of the public lands was acquired by negotiations with France. They comprehend the whole region conveyed in the cession of Louisiana. In treaties connected with this cession, the United States contracted to pay to France, and for her use, eighty millions of francs; and virtually to relinquish all claims of American citizens on that Government for all demands prior to April 30th,

1800. One-fourth of this amount was agreed to be paid to such of those citizens as had claims of a certain description, and who should prove their right of recovery in one year from the date of the treaty. By this arrangement, the United States received from France an immense country, in jurisdiction and in fee simple, together with the exclusive navigation of the Mississippi, and all its western tributary streams. For this the United States paid fifteen millions of dollars in money, and relinquish to France, I will not say as much, but certainly one-half as much more, in claims due before April, 1801, from France to American citizens. Nor is this all. In the Louisiana treaty of cession, the United States contract to admit the vessels of France into the ports of that State, on the terms of the most favored nation. Under this stipulation, France claims to be admitted on the same terms as British vessels, but without paying for it the equivalent paid by the British Government, the admission of American vessels into French ports on the like conditions. Under this claim, and because the United States will not so admit French vessels, the French Government, by way of offset, have hitherto refused indemnity to American citizens for all the spoliation committed by their armed vessels on the property of our merchants since April, 1800. It has thus come to pass, that Louisiana, though on the face of the contract costing the nation but fifteen millions of dollars, has actually been purchased by a further sum of twenty millions, paid by American merchants. With what justice, then, can gentlemen contend that the Atlantic States are not entitled to call, and call loudly, for something like an equal apportionment of the benefits resulting from those lands, when the property of their merchants has been so largely sacrificed for the purchase of them?

The resolution of the gentleman from Vermont (Mr. HUNT) covers the public lands comprehended in these three great divisions, and proposes, without looking back to the cost of acquisition, or any expenditure for improving their value, to introduce and establish a system, which will give, to each State and territory a share of the proceeds of annual sales, in proportion to its congressional representation. It is intended, by the amendment, to inquire concerning, and to take account of all such dispositions of any of these lands, and all such expenditure of money, as may have been made to any of those several States and territories throughout the whole region.

The great argument of the gentleman from South Carolina, in support of his amendment, is drawn from principles of the English common law, regulating the settlement and distribution of intestate estates. These, it is contended by him, require that all such parts of the inheritance as may, at any time, have been bestowed upon any of the heirs at law, should first be brought into the account before any division of the whole can be made. I acknowledge the force of the principles, but cannot admit that any facts in question give warrant for their application. No part of the inheritance has ever been distributed to any of the heirs, otherwise than for the common benefit of the whole freehold; and our avuncular relative is now in the prime of his days; "a hale and prosperous gentleman," likely to live, and continue to use his own for the general welfare of the whole family. If, however, the gentlemen from South Carolina please, I am willing, for the purpose of the argument, to admit that the event supposed has already happened, or is very likely, in some short time, to take place. Let it then be granted that this Union, the work of patriotism, the theme of promise and hope to the wise and good of all nations, shall terminate—forgive, my country, forgive the supposition!—shall terminate to-morrow. In that event, would justice to the several States demand this inquiry and account?

For what purposes, and with what effects, has all been done, which has been done by the United States in the Western country, and in all other parts of our acquired

territory? They were won or purchased from the European powers, or ceded by the several States, and the aboriginal titles to them have been extinguished, that they might be a common fund for the benefit of all. With the same object in view, they have been divided into States, and sold, so far as they have been sold, that this fund might become productive. To induce settlements in these States, and augment the price of lands, appropriations of money have been made to build roads from other States into these. Your national highway, the Cumberland road, has been constructed, and carried on, under this principle. The millions expended on that great work were expended to accommodate, and, by accommodating, to induce migration and settlement in the West. Lands reserved in all these States for schools, academies, and colleges, have been reserved, not only to form a better condition of society there, but to induce purchase, and augment price. Grants made for Government purposes, to locate houses of legislation, and tribunals of justice, were they gifts merely, and exclusively, for the accommodation of the people of those States? Were not the United States amply remunerated by the increased demand and value of all lands neighboring on these locations? Moneys, voted for clearing rivers, and donations of land, to aid in forming canals, will, when these great works shall be completed, expedite and cheapen travel and transportation, approximate the markets of the ocean to the lands and produce of the West, and thereby increase the value of both.

If these bestowments have been made in a spirit of magnificence, so have they produced magnificent effects. Education, laws, justice, and intercommunication among these States, and with the whole Union, have resulted from this great system of pre-emption and settlement. All these, carried out from the parent States by this system, and established in the West, comprehending and surrounding your residuary lands, have already replaced, and much more than replaced, the expenditure from the common fund. What would have been the condition of the West, had the United States, in the spirit of this amendment, either done nothing in that region for the benefit of the national domain, or wrought there with a niggardly hand; and with a view to ultimate account, charged every thing, and annually placed a transcript of their ledger along the road of migration, that every man, moving thither, might read the terms and conditions of settlement? You would have turned back, or so obstructed, the current of population, that these extensive, cultivated, and prosperous communities would not now have been in existence. The United States might have been rich in her number of acres, but poor indeed in their value and current price. Allowing, then, the existence of the fact supposed by the gentleman from South Carolina, that the intestacy has happened, and the estate is to be divided, no account is to be taken for the great outlay by the common ancestor on the freehold, for clearing, improving, enclosing, and for other suitable fixtures; because all this expenditure was made by him for the common benefit of all the inheritance, and has thereby mightily increased in value the residuary undivided part of it.

It is, therefore, most clearly evident, that, if the Union were dissolved, and the whole concern must be settled next summer, no inquiry concerning western disbursements could be requisite for this purpose, because no account of them could, with any justice, be brought into the settlement. Would you, sir, in that event, push inquiry into the cost, and call for any account of the great national disbursements in "the old thirteen?" Will you call on those States to place before your committee for examination, and for report to this House, a list of light-houses, established to conduct commerce along your coasts; of custom-houses in all their districts, located for the collection of your revenue; of labors performed in re-

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moving obstructions to river or harbor navigation; of works done and in progress to erect moles and breakwaters to shelter ships laboring and in peril on your coasts; of armories, arsenals, and fortifications, founded to prevent wars, or to repel invasion; of dock yards, naval depositories, materials, structures unfinished, and ships now successfully conducting your commerce over every sea, and exhibiting the untarnished symbol of our Union, and power, and prosperity, in the ports of every quarter of the earth? Must they add to this catalogue of great national works an account of all and singular the appropriations made in furtherance of them, and for annual expenditure in keeping on foot, and afloat, your whole land and maritime establishment for national defence and security? No, sir, we shall in no event ever demand or render any such an account. Are we curious on these questions? Let the Land Office and the Treasury Department furnish all the facts and details for our gratification. If the copartnership be indeed terminated, then let us, in modern style, bring every thing to the hammer, "to close a concern." Our great arbitrator of the Netherlands might act as our auctioneer. Russia, fond of territory, would buy your "new lands." France and England, doubtless, might bid on your fortifications. The navy? No, not at auction. England well knows the weight and value of our ships. Let her take them at private sale. Who that remembers how gloriously their decks have been defended by American seamen, would ever suffer them to be trodden by men who do not fight their battles, and send up orisons and thanksgivings in the English tongue? The public buildings? You cannot expect this city would purchase these. Reserve them as monuments that you once were a nation. Let your Presidential mansion be made a monastery—a shrine, where the pilgrims of patriotism and piety may meet, and mingle their tears over the evanescent hopes of the world. Make this edifice, the ornament of our Union, its mausoleum. Call together the reverend and the holy of the land, and solemnize the funeral of our nation. Bring to this place the mouldering bones of Washington; bury them under the central dome; and then inscribe on these walls, "this was once the legislative hall of a nation having too much knowledge to be wise, and enjoying too much liberty to be free."

If, at the close of the Union, and on a final settlement of all national concerns, no such inquiry and account could be required, shall it be ordered now for any anterior purpose, and when no such event can be found within the range of human probability? What then is the object of the amendment? I cannot believe it was intended, though it seems most aptly contrived, to destroy the whole purpose and effect of the resolution. If, other than this, it have any purpose, it must be to inquire into these expenditures, that the several States, where they have been made, may be called upon to reimburse them. Can it then be the intention of gentlemen to demand from the West an equivalent for lands bestowed by this nation for education, government, justice, or improvements on highways by land or water? Has not the progress of population and settlements, induced by this system, amply repaid you in the augmented price of lands already sold, and in the increased value of those still remaining? Before this region was peopled, these lands were not worth five cents an acre. Your system, and its concomitants, have raised them to one hundred and twenty-five cents. The money account against all our lands, if we exclude the claims of citizens relinquished, amounts to about thirty-two millions of dollars. Already more than forty millions have been received from sales; and more than two hundred and ten millions of acres are surveyed and ready for market. This having been acquired, ceded, purchased, and improved, by common labor and treasure, is a common fund for the whole Union. Will it not, thus increased in value, amply remunerate you for any reservations, grants, or donations,

made in the progress of settlement, for any peculiar benefit of the Western States?

Will you call for any account or compensation for these, merely because they were made for national purposes within their limits? You may, be assured of it, call with equal justice on the other States to repay you for expenditures made for commercial or defensive purposes, whether maritime or on land, within their limits. Who but the nation, shall pay the nation for her navy, her fortresses, and her marine establishments? Shall Rhode Island repay you the sums expended so needfully and skillfully at Brenton's Point? Will Virginia, sir, refund to you the disbursements on her own Potomac? Is it intended to look to that State, and to Maryland, Pennsylvania, and Ohio, for the national cost on the Cumberland road? If you can do all or any of these, you can, with equal claims of justice, charge to Delaware and Jersey, and exact from them repayment of the immense amount already, or in future, to be expended for erecting, in the waters of their bay, that mighty mole, behind which not only the legitimate navigation of all nations may take shelter, and be in safety, but where, too, the very corsairs of the ocean shall be permitted to escape the perils of the seas, and be reserved for that justice awaiting them on land. There is but one great rule in all such cases. Whatever may have been expended for national purposes, cannot, by any principle of justice, be ever made an item in the account, charged against any individual State. Under this rule, every grant of land in the new, and every expenditure of money in the old States, is excluded from inquiry under this amendment, unless we make the inquiry with no view to ulterior legislation, but solely to gratify a very laudable but very useless historic curiosity.

Neither let it be said that proximity to the place where such grants or expenditures are made, enhances the value of all neighboring lands, and, therefore, such States ought to make some remuneration to the United States in consideration of them. National prosperity requires these grants and expenditures to be made; and necessity compels the United States to make them in some specific place. By unalterable laws in the production of value, wherever you locate the employment of capital, you increase the value of lands immediately surrounding that location. A city, a village, or even a single establishment, collecting and employing capital, invariably enhances the value of adjoining lands. Was it ever heard that the owners of such capital ever called on the owners of such lands for compensation, because they chose to make these locations in their neighborhood?

Many men are desirous that all public expenditures should be made in their State and vicinity. This cannot be done; and, because it cannot, we are perpetually, like children about their toys, inquiring and contending concerning who has received the most. Bring such inquiry into this House, sir, and we shall inquire into nothing else, until men give up their avidity, or the nation can spread public expenditure, like the dew of Heaven, over every square inch of your territory.

Since these things are so, no inquiry should be made, no account be taken; because no account can, if taken, ever be adjusted, settled, and paid. No account can be adjusted, settled, and paid, because but one party has ever been concerned in these transactions. The United States having made all grants of land and expenditures of money to their own use, and for their own benefit, no principle of law, equity, or justice, will now permit them to take the items of their own account, and transfer them to the debt of any one of the several States.

The whole argument against the amendment has hitherto been governed by the supposition that this amendment admits the title to the public lands to be in the United States. The amendment, however, does not make this admission. By the principle of the resolution, the nation

owns these lands; but by the principle of the amendment they are owned by the several States where they are located. For, if we are to make this inquiry, we are to make it because those States are to be charged with the expenditure made upon the lands; but they cannot be so charged if these lands are not the lands of those States. The amendment, therefore, ought not to prevail, unless their ownership appear conclusively.

I beg the indulgence of the House while I examine this amendment from this point of view. This certainly is a new claim. It is but a very short time since it was made. New and most remarkable, however, as it is, this claim has been publicly made by men in those States, high in responsible station; and that, too, in their official character. The gentleman from Missouri [Mr. PATTIS] has told us that this resolution involves delicate questions. This question of State ownership must be one of them. On what ground is it raised?

When opinions cannot be sustained by facts, men resort to metaphysics, and draw from that exhaustless store some dogma by which facts may be removed out of their way. State ownership of these lands is established by this process. It is made a necessary attribute of State sovereignty. The proselytes of this creed tell us that these States were, by the deeds of cession, to have, hold, and exercise all the rights and powers of free, independent, and sovereign States. Sovereignty, when located, is, they say, exclusive, within its territorial jurisdiction; because the very idea of one sovereignty in one place must exclude the idea of all other sovereignty in the same place. The United States, being a sovereignty, therefore, cannot hold lands within the limits of these new States, because they are exclusively the sovereigns within those limits. I will not answer this by any history of sovereignties, in either ancient or modern times; or, drawing from the same magazine of argument, reply that all human institutions of power are, in their very nature, limited; and that, therefore, where the power of one ends, that of another may well begin; but I will solicit the attention of the House to things as they are, to simple matters of fact.

It will not be pretended that the new are vested with more of the attributes of sovereignty than the old States; for the same deeds of cession provide that they shall, in sovereignty and in freedom and independence, be equal with them. The constitution, made not by the States, but by a power more sovereign than the States, by the people themselves, has provided that the United States may purchase and hold lands within the territorial limits of the several States. It is true this was made, at first, for the "old thirteen;" but the "new eleven," if they have received its privileges, cannot now disengage themselves from its obligations. Under this constitution, the United States have purchased and do hold lands to their own use, and for purposes of national commerce, revenue, and defence. They hold these lands not only in property, but also in sovereignty, and to the exclusion of all State power within their limits. Here is empire within empire established, to the utter discomfiture of all the disciples of mere abstraction. If, therefore, the United States can purchase and hold lands within the several States, it cannot be incompatible with the constitutional sovereignty of such States. How, then, can it conflict with that attribute, so to hold lands already purchased?

The right of taxation, co-extensive with their territorial limits, is claimed as another attribute of sovereignty in the new States. The lands of the United States within those limits are not taxable by these States; and, therefore, this ownership of those lands is in conflict with State sovereignty in this respect, and deprives them of the legal exercise of it. Here, again, all the States are alike limited. The lands of the United States cannot, in any of the old States, be taxed; and why, then, I pray, sir, should the new States have the right of taxing them? Not only the

freehold, but the goods and chattels, rights and credits, of the United States, are covered by this principle of exemption. It extends to all your establishments for commerce or revenue; all your provisions for defence, whether fixed or floating; and also to all munitions of war, both military and naval. Would you tax the millions of your revenue deposited in the United States' banks, when it has been solemnly decided by your Supreme Court that you cannot tax the rights granted by you, and exercised in their daily operations by those banks?

This exemption from taxation claimed for the public lands, is, therefore, not incompatible with the rights of sovereignty in the States where they are located.

It would, moreover, be unjust in those States to tax these lands, even if they now had the legal power to do it. It is agreed that the reservations, grants, donations, and expenditures made in those States, have been remunerated to the United States, by inviting settlement, increasing population, and thereby augmenting the price of lands sold, and increasing the value of each particular acre still remaining on hand. How has this effect been produced, and by what principle? It was because all those bestowments were privileges, anxiously desired and highly valued; and the people were willing to pay, and have paid, a fair equivalent for them. What was this exemption from taxation? Was that a privilege anxiously desired, and highly valued, by all who purchased lands and settled in those States? No, sir; it was an incumbrance, and has diminished the price of all the lands sold, in exact proportion to its weight and extent. The purchasers have received, in this diminished cost of their lands, a full compensation for this privilege of the United States to hold the residue, exempted from taxes. The exemption has, therefore, been purchased; the consideration paid; and not only law, but justice itself, forbids it again to be exacted.

If, however, the new States persist in their claim, let it be allowed; but so allowed, that no injustice shall be done to the United States. Let it be settled as all such cases are settled in new countries. When one man sits down upon the lands of another, with the knowledge of the owner, and having purchased, supposes it to be his own; when, after years of labor, he has converted a forest into orchards, cornfields, grazing grounds, and meadows; and when the owner, after looking on during all this process of labor and improvement, comes to call for his land, with all these improvements, what shall be the measure of your justice between him and the occupant? Such cases are so frequent in our country, that a word, homely but very significant, has been coined, and made current in our language, for adjustment of them. The word is "betterments;" and, in the case supposed, if the land be adjudged to the claimant, a full compensation for the betterments would be awarded to the occupant. No matter what these betterments may have cost, they would be appraised at their then present value. Had they cost twice that amount, the claimant must not suffer by it, and, were they worth twice their cost, the occupant shall not suffer by his enterprise, skill, and economy.

This scale of decision is quite large enough, and sufficiently accurate to decide the question before us. If it were needful, we could not estimate the value of what these lands have cost this nation. The toil, valor, and blood of the colonies and the United States are not items to be set down in the every day books of ordinary labor and occupation. The jurisdiction has already been conveyed to the new States. That is worth more than the French right of discovery; but all which has since been added to that right, has been added by the United States, at the common cost of the whole. What, then, have the United States done to these lands? How have they bettered them? They have, by a great system of improvement, changed the French right of discovery, and the

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English right of pre-emption, into an estate better than European fee simple; into allodial right; estate of inheritance, indefeasible under our constitution, by bill of attainder, or judicial corruption of blood. This improved title, and the incidents connected with it, are the betterments made upon these lands by the United States. The question is not, what have they cost? for that, if it could be counted, cannot be exacted in payment. What, then, are these betterments worth? What will each acre of this clear and indefeasible estate of inheritance bring in the market? The answer to this question will settle the amount payable by the several States claiming these lands, and payable for the betterments done on them by the United States, whilst they have been the occupants; and, as every body believed till quite within a short time, with a very fair and legal title to them.

Perhaps, so far as surveys and returns have been made, the United States would now, on this principle, if agreed not to be drawn into precedent, settle with the new States. About two hundred and ten millions of acres are in that condition. Let these States take that quantity; and, since it would be something like a wholesale transaction, let them take it at the minimum price, one hundred and twenty-five cents the acre. The whole amount for this two hundred and ten millions of acres will, at that rate, amount to but two hundred and sixty-two million five hundred thousand dollars. Cash in hand will not, I presume, be exacted. If payment be well secured "by bond and mortgage," with stipulation for interest, to be paid, not so often neither as the United States pay, quarterly, but as all banks make their dividends, semi-annually, the arrangement will, it may be fairly supposed, satisfy all concerned. Nor will the elder States exact hard conditions from their youthful companions in this sisterhood of States; but to convince them that "the whole land is not filled with covetousness," not the highest, but the lowest legal rate of interest would doubtless be satisfactory. At six per centum, and no law in any of the several States gives less, the annual amount is fifteen million seven hundred and fifty thousand dollars. In the distribution of this sum, the new and the old States will alike, by the system proposed in the resolution, receive their yearly dividends, and according to the ratio, and for the purposes therein proposed.

Another "delicate question" concerning these lands doubtless refers to the famous graduation laws, which have heretofore produced such singular effects in the West. These laws propose to sell, at a fixed price, the whole, and thereby quiet conflicting claims.

This project to dispose of these lands, at a fixed and certain price, will, it is believed, settle the question of ownership. The two hundred and ten millions of acres, now surveyed and ready for market, are to be disposed of under this project. For this purpose, the whole is distributed into five allotments. These are to be graduated by a scale of prices, comprehending five grades, and extending to five years. The first year, lands are not to be sold for less than one hundred and twenty-five cents per acre; the second, for not less than one hundred; the third, not less than seventy-five; the fourth, not less than fifty; and the fifth, at not less than twenty-five cents. In the course of these five years, it is intended to dispose of the whole quantity. This is, neither more nor less, than a project to divest the United States of their title to the whole of these lands; and, for twenty-five cents an acre, to transfer them, to whom? To the new States? No, not so; but to place them in the hands of speculators. The movers of this project intend it shall be believed, by the people of those States, that it is moved exclusively for their benefit. This consideration alone has concealed from them the true motives of the scheme. They have imagined that this graduation of price will be made with a just reference to the different qualities and locations of these lands. In

this they are deceived. Those who purchase will purchase to sell again; for it is not pretended that the whole nation can furnish men enough to purchase the whole for immediate settlement. Who will purchase lands for sale at one dollar twenty-five cents the first year, when he knows the same kind of lands, if unsold till the fifth, must then be sold at twenty-five? The whole lands, therefore, will remain till the last sale; and then be struck down at the lowest graduation price. This is a scheme for speculation, and not for settlement; and if it divest the United States of the lands, at a fifth part of their minimum value, it will not invest the New States with any title to them. The principle of this amendment is, therefore, not sustained by any ownership of the new States in the public lands, either present or in expectancy.

Some objections have been made to the resolution; because, as is alleged, the time for moving it has not now arrived. It is premature. These were made in aid of the amendment; and I beg to detain the House by a very short answer to some of them. We are told that public excitement is too great for cool and deliberate, and successful discussion. The nation has been under much excitement. The Presidential election did, indeed, in all parts of the country, put into motion every element of political party. The great question, however, has been determined; and these elements have again subsided, and are now at rest. The conflict and the claim might, not unaptly, be compared to two conditions of the ocean. Look out upon it from some promontory, then the sun goes down behind a night of clouds and storm. The tempest, in his most terrible strength and rapidity, rushes over the boiling and foaming deep. Every billow is contending which shall lift his head highest, or give the loudest roar. A single ship, the hat of a mighty fleet, shows, by a glimpse of daylight, now her trembling side on the ridge of the surge, and now but the shivering top of her only mast. Look again from the same point the next morning, when the young sun-beams are careering athwart the level surface of the wide and undisturbed waters. The whole bosom of the ocean is still, and in repose. The morning slumbers of infancy could not be more quiet. The political storm has left our country, it is devoutly to be hoped, in something like this condition. Higher claims of our nature are calling us to better, more profitable, and congenial pursuits. The every day relations of life will have fair play; and already have they brought us back to the feelings of citizenship, neighborhood, friendship, and brotherly kindness.

A great battle has, indeed, swept through the land; but it is over and gone. The fragments of this feast of war are nearly consumed by "the beasts of the field, and the fowls of the air." The tatters and the putrescent offal of battle alone remain on the ground of conflict. The metricious and odious followers of the camp, who have hired the living to profligacy, are now in shoals, following the footsteps of slaughter, to strip and plunder the dead. Flights of foul vultures, at times, sail and scream over the field. Flocks of filthy, carrion crows creak in the air, and now and then alight on some yet unconsumed carcass. In one quarter, troops of gaunt and famished wolves howl at each other's eyes; in another, packs of lean and hungry dogs bark and growl over bones already stripped to the very last fibre. All these, unless whipt and shouted away from their foul controversy, will remain and linger about the battle ground, so long as there is one rag to pilage, or one bone to gnaw. These, what are they? Who, sir, who can call this refuse of the earth the American people? Thank God it is not so. Like the sea weed on your shores, this mass is but manure. It is no more the people, or like the people, than the sweepings of the stable are the high metted and generous war horse.

The two great parties have retired. The triumphant, satisfied, and warmed, I trust, with magnanimity. The

defeated, as I know, patriotic and patient, and deeply imbued with the fortitude peculiar to their condition. What then, at this time, hinders one united effort to carry forward a great scheme for national good? Tell us not that a Presidential election has just past. We shall shortly be told, a Presidential election will soon arrive. Devote, I pray of you, sir, devote the narrow interval, the auspicious now, to the service of the people. Put in practice the sound maxim, the vigilant diligence of the husbandman; and, like him, remember that those are

"Brightest of all the sun's bright beams,  
When betwixt storm, and storm, he gleams."

It is further said by some gentlemen that this measure is premature; because these lands are pledged for payment of the national debt, and this remains still undischarged. What are we to understand by this assertion? In England, whenever any new assessment is made, either by imposts, excise, or direct taxation, a grant is made of it to the King, as a part of the royal revenue for national purposes. The King, by his ministers of finance, disposes of this assessment for so much money as will be realized from it, or for a loan, the annual interest of which will be covered by this new grant of revenue. By the contract, the grant is pledged for the reimbursement of the loan, both interest and principal. In this manner nearly all the English sources of annual revenue are pledged for the payment of their immense loans, amounting to about nine hundred millions of pounds sterling. Do gentlemen mean that the public lands are thus pledged for the payment of the public? No such pledge has ever been made.

The financial system of this country is altogether different. Congress have, at some times, in their revenue laws, assigned certain specific parts of the revenue to the payment of the public debt; but this has never been by way of contract with their creditors; nor in but few instances, until after the debt was contracted. At any time, Congress might, with perfect good faith, appropriate any part of the revenue to any purpose, other than the sinking fund, provided the amount of that fund were, at all times, equal to the annual amount of the interest on the public debt. Large appropriations have been made to that fund, for sinking that debt; not because our creditors demanded, or good faith required it, but because the nation was anxious to discharge all its responsibilities. Accordingly, Congress have, notwithstanding these laws, appropriated at different times, out of the annual revenue, for redeeming Mississippi, Florida, and Louisiana stocks, more than thirty millions, interest and principal. The whole excise, and the direct tax, in all its branches, were pledged, if any revenue was pledged, for payment of the public debt. These have been repealed. Was the national good faith violated?

The lands in Florida, and on the west of the Mississippi, have never, even by implication, been pledged. How stands the fact with regard to lands in the "Western country?" These are the words used in the cession of Georgia: "All the lands ceded by this agreement to the United States shall be considered as a common fund for the use and benefit of the United States, Georgia included, and shall be faithfully disposed of for that purpose, and for no other use or purpose whatsoever." In a law, made by Congress after this cession, it is enacted that the proceeds of the lands so ceded shall be appropriated to the payment of the public debt in the same manner as the proceeds of all the lands north of the Ohio are appropriated. This enactment is no part of the cession, or of the consideration moving it. Neither is there any law appropriating the proceeds of those lands to that purpose. For all the other cessions, including that of Virginia, are, in this respect, almost in the same words used in that of Georgia. There is no clause in one of them, restricting the use of those lands to any particular purpose. They are all

made for the common benefit of all the States. An erroneous construction of a clause in the Virginia cession has induced the opinion that all the lands are pledged for the payment of the public debt. This clause relates to the ratio of distributing to the several States the benefits resulting to the United States from these lands. These are the words of it, "according to their usual respective proportions in the general charge and expenditure." The ratio of contribution to the expenditure for the war being made the ratio of distribution for the benefits resulting of these lands, the opinion has obtained, that this distribution was, first of all, to be made to reimburse those expenditures; or, in other words, for the payment of the public debt.

Although this opinion is altogether groundless, yet let it be allowed to be sound, and well supported. If these lands were pledged for payment of that public debt which resulted from the revolutionary war, then it is pledged for no more of the whole than such portion of that part of it as now remains unpaid. This comprehends the three per cent. stocks. The whole amount is about thirteen millions of dollars. It is not probable that the creditors, or the nation, will soon be anxious for the payment of those stocks. The money, in the people's pockets, is worth at least six per cent. to them; but if they are taxed to pay these stocks, their money must be paid to sink a debt which annually costs them but three per cent. As these stocks are payable at the pleasure of Government, and the creditors are satisfied with quarterly payments of the interest, rather than receive the principal, no more than the interest will ever be required by them. This amounts annually to about three hundred and ninety thousand dollars. The dividends on the United States' shares in the national bank are yearly about four hundred and twenty thousand dollars; and if, by a standing law, these are appropriated to the payment of that interest, the public lands would for ever be redeemed from this supposed pledge, and that, too, without any forfeiture of the national good faith.

Another objection has, by the gentleman from Alabama, [Mr. LAW] been made to the proposed system. He questions the constitutional power of Congress to appropriate the proceeds of the public lands to purposes of education and internal improvement. From what State, at what period of the history, of what nation, and in what public assembly, is this objection, for the first time, made? Why, truly, from a State which has received, and justly, too, reservations in every township, for primary schools, other lands for academics, and more than twenty-five thousand acres for a State university. A State which, two years ago, received a donation of four hundred thousand acres of rich lands on the banks of the Tennessee, for canalizing that river round the Muscle shoal, and to unite the waters of this rich stream with those of Mobile bay. Has it not been the settled policy of the United States ever since these lands came into their possession, to make in all the new States liberal bestowments of these lands, or the money arising from the sales of them, for the very purposes moved in this resolution? Nay, more, when that almost the greatest of all discoveries of this age, the art to teach, though not literally, the deaf to hear and the dumb to speak, was brought from France into this country, what did the United States do? They bestowed on Connecticut, one of the old thirteen, a lending State in all human improvements, a township of land for aid in establishing a seminary, for carrying into practice, in our nation, this interesting discovery. Shall it then be said, that, when appropriations from this fund have been made, whereby the light of science may be seen, and the voice of eternal truth be heard in the regions of darkness and silence, you will deny us the power to make them for purposes the most ordinary and common to all the people? After this objection, no new constitutional scruple can ever be astonishing. When States rise up, and deny to

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the mother which brought them into existence the natural right to cherish in her arms, and nurse from her own bosom, the children of her labor, what further discovery can confound the universal properties of things, and minister to our astonishment? Gentlemen do not seem to remember that the public lands belonged to the United States before the constitution was adopted; and that, therefore, their power to appropriate them is not derived from that instrument. For lands, those purchased since, they have, so far as obtained at the common cost, been reimbursed from sales of land, and for that reason the whole land system stands on one foundation, and is the result of ownership, and not of powers bestowed by the constitution.

The gentleman who made the last objection, has told us that all men friendly to the tariff will support this resolution. This may be true in fact, and still furnish no argument against it. Two facts may exist together, without the relation of cause and effect. This resolution proposes to appropriate a certain yearly amount of our revenue to education and internal improvement. Less revenue will, therefore, remain for all other purposes. The direct effect of the tariff is the same thing. It proposes to supply the country with the great staple necessities of life from domestic, not from foreign production. When this shall be fully effected, therefore, foreign importation of such products will cease. One great part of the revenue has been produced by impost duties on this importation. The perfect effect of the tariff will cut off this part of the revenue, by taking away such importation. The direct effect of the tariff, and of this resolution, are then the same, the reduction of the amount of revenue, disposable, for present expenditure, by the Government. How then is the allegation of the gentleman sustained? Will men who have voted to take away one part of the revenue, vote to take away another, and that, too, merely because they have voted to take away that other part? It might, with equal justice, be contended, that a man would lay aside and cease to wear his coat, because he had no occasion for his cloak. The tariff may, by its effects on domestic production and wealth, induce greater importation of the luxuries, when it has terminated the importation of the necessities of the country, and thereby sustain the revenue at its former amount. This, however, is but an accidental, not a necessary effect of the tariff system; and men might and would support that system, if its accidents ceased to follow it. The tariff is, therefore, placed on the back of this resolution, not like the hunch on the camel, because it belongs there; but like surplus weight adroitly thrown on the back of a race horse to impede him in the course, and disappoint the hope of his success.

Another objection against this measure is sustained by associating its provisions with names, rendered odious by allusions to other nations and other times. It is said, any attempt to establish this system in the new States will fill them with "taskmasters and tax-gatherers." The success of this class of arguments should not be allowed to go one step beyond their justice. I shall not, probably, disagree with the gentleman's opinion, whatever it may be, concerning those characters of antiquity. The cry of distress, raised by those under the exactions of "taskmasters," early reached the ear of Heaven; and the signal display of Divine vengeance visited upon a community of those miscreants, is found in the eldest record of God's wrath against a guilty nation. Tax-gatherers, the publicans of the Roman nation, were odious in all the provinces of that empire, because they "exacted more than was appointed to them." Hateful they doubtless were, when we are told, on the highest authority, that the whole learning and worldly wisdom of a nation rejected the greatest of blessings, and denounced, as a demon, the messenger of Heaven, because, when he came to call sinners to repentance and redemption, he did not place this descrip-

tion of them without the pale of penitence, and beyond the reach of Divine mercy.

Sir, can these classic allusions be applied, with justice, to our country? Shall men in this nation, because they employ labor, whether due by the appointments of law, or exacted by virtue of contract, or because they collect public revenue, derived either from legal assessment, or due and owing for valuable consideration, fairly conveyed, shall such men, for no other cause but their employment, and when they "exact no more than is appointed to them," shall they, by any license of sound argument, or ardent imagination, be branded, like the detested oppressors of antiquity, with the odious titles of taskmasters and tax-gatherers? In what other country, I pray, is freehold and inheritance so acquired as it is in the United States? Young men in the old States, who "work out" from sixteen to twenty-one, and whose fathers receive one-half their wages for their clothing, their home, and subsistence while not employed, can then go to the West, purchase a farm, and, with labor and economy, they are, in a few years, independent and prosperous. Many, many have followed that course—they now find themselves well off in the world and members in the first rank of flourishing and highly cultivated communities. What would fathers, in any part of Europe, not willingly lay down in exchange, could they purchase such establishments for their sons?

Our country, sir, is bountiful to all her children. She takes from the common inheritance a portion, and as much, too, as he may desire, for each. In return, she requires of him but to place a fair equivalent, as all have done, in the common treasury, for the benefit of himself and all others of the great national household. Nay, she does more. She gives day of repayment; and permits such children to occupy, each his new heritage, until he can draw from it the required equivalent. Shall these indulgent sons, when, at length, our country, the common mother of us all, comes to request this equivalent; shall these sons, thus cherished and fed with us all in her uberous bosom, shall they, because of this just and righteous requirement, denounce their mother, call her a sorceress, a jehzebél; and cry out to her servants to throw her down, "that her blood may be sprinkled on the wall," and she trodden by horse-hoofs into the mire?

Sir, I ask for the indulgence of the House for a few moments, while I offer two or three considerations as arguments against this amendment, because they are in favor of this resolution. If we adopt this resolution, and establish the system proposed by it, the great scheme of speculation, projected by the graduation laws, will be forever destroyed. Let the proceeds of annual sales of the public lands be distributed among the States for education and internal improvement, and those States will look to this as a regular undeviating supply for these purposes; and such system will soon be established for both, as may regularly be kept in motion by that supply. The supply will be governed by the sales of land, and those by the demand for settlement. This demand, governed by increase of population, will be even, uniform, and continuous. One part of the system will be adjusted to another, and to the whole; and no part can be taken away, or varied in its movements, without destroying or deranging the entire system. As the nation advances in growth, sales for settlements will increase with the increased demand made by increased population; and this increased population and settlement will call for, and consume, in education and internal improvement, the augmented proceeds of annual sales. Population, settlement, education, and improvement, will hold their united march, until your whole territory, cultivated and improved, is filled with a well educated, great, and prosperous people. At what point in this progress, when once established, can speculation find a place, and patronage to enter, derange, and overthrow this great system?



On the other hand, let this graduation scheme be established, and such a speculation will follow as the world never witnessed. Put but a part of this land, the two hundred and ten millions of acres surveyed, under this project, and at the lowest price, twenty-five cents, it will call for fifty-two million two hundred and fifty thousand dollars to purchase it. It will promise a profit of at least five hundred per cent. Men of small and large capital—the speculation of Europe and America, will be excited and roused in this career of riches. The stock speculations of former times were to this but the amusements of boys blowing up bubbles with rye straws in tumblers of water. It will expand over men's heads, like another firmament, with all its rainbows of promise, and each the pledge of a new world of wealth. Capital, labor, adventure, every thing will be left for this. Ordinary enterprise, and employments exhausted, must linger and give place to visions, each "richer than a South Sea dream." Warrants, patents, conveyances, will cover the land, and scrip, in volumes, like clouds of locusts, will devour every other species of contract.

Nor is this the whole mischief. Eagerness to acquire will induce men to purchase beyond their means. Sales, and failures of little capitalists and little companies must follow, until one great English and American land company will swallow up and engross the whole. Monopoly thus secured, will secure monopoly price. Sales will stop; settlement in the new States become difficult; but migration from the old States, though discouraged, will continue. Unlocated population, accumulated in the West, must increase demand; and this increased demand as certainly raise the price of land. The concerns of this Levathan land company, managed by men skillful in managing all these elements of speculation, will keep every acre of land out of the market until demand has become so importunate, that what has been engrossed by them at twenty-five cents, will readily sell at twenty times that amount. Let not the new States console themselves with the assurance that they could tax those lands so high as to compel sales at reasonable prices. Such a company would always have the means of preventing this, by securing a sufficient number of demagogues, if such instruments might be found in the "Western country;" and, if not, they could manufacture them on this side the mountains, and transport them over, to be set up and worked whenever they might be wanted. This machinery, put in operation, kept in gear, and skillfully managed, would soon satisfy the people of those States, that every tax assessed on these lands would be added to the price of them, and finally be a tax on settlers. Let us pause, then, before we reject this resolution, and diligently and impartially inquire whether the interests of the new and the old States do not demand the adoption of some such system as that proposed by it, to the intent that this scheme of speculation, and all its mischiefs, may be prevented, by putting down, at once, and for ever, this wild project of graduation and sale of the public lands.

Permit me to offer one other reason for rejecting the amendment, and adopting the resolution. The system proposed, if carried into operation, will settle and quiet the question of ownership between the States and the Union. It is now but incipient, not quite formed, and grown into existence. No great party has yet taken it into patronage. At this time, all, who have in any way looked at this question with an eye of cupidity or ambition, might be brought to a satisfied condition, by the awards of sound policy and equal justice. The provisions of this resolution do certainly propose something like such awards. When the system shall be arranged, modified, completed, and carried into operation, in every State, so manifest will be its justice and utility, that the people of the new, alike with those of the old States, satisfied with its common benefits, will also be satisfied that

this always was, and for ever ought to be, a common fund, for the benefit of all the States. The question of ownership will be laid to rest; and never be again raised to distract our councils or disturb our Union.

Sir, is not this "a consummation devoutly to be wished?" Who that has regarded the course and ardor of this debate, can, with this question unsettled, look forward without anxious forebodings of the possible future condition of our country? Men submit to the privation of money and movables; and, sometimes, take joyfully the spoiling of their goods. Our relations to the soil are more endeared, of higher value in estimation, and defended with a perseverance more unyielding and obstinate. We cling to our allotment of the earth with a grasp which nothing in life or death can unclench. Every man is a hero on the frontiers of his own field. We die on the ground, and are buried in its bosom.

The people of the United States have, sir, from the close of the Revolutionary war till this hour, looked on the public lands as their own, and equally the soil and freehold and inheritance of each and every one of them. This claim has been kept alive and invigorated by remembrance of its common origin, and enclaved by the various and multiplied appropriations from year to year by us made, as well for them, to their use, as for the universal benefit of this great national inheritance. When, therefore, their title is disturbed, their ownership questioned, and that, too, by brothers of the same family, how will you quiet the controversy? Will the people of the old States quit claim to the people of the new; and that in sight of the graves of their fathers, who won this region as a heritage for all their descendants? Why should they, recalcant to their illustrious ancestry, disinherit themselves and their children? Be assured, sir, they will not, while man is man, and earth is his abiding place. Let, then, every effort be made to put this question at rest, in peace and by fair and honest legislation. It may otherwise remain for adjustment, by a process, and in a tribunal over whose record the historian shall shudder as he looks at the legend.

Should it come, and without something like the proposed measure, it may come to the "trial by battle;" should it come to that trial, who will live to say the world ever witnessed such a strife of arms? The visions of fiction have sometimes arrayed against each other the most endeared relations. Here those visions shall be embodied and embattled. Not only these long United States shall sunder, and State against State fly to arms, but brother and brother, father and son, meet in exterminating hostility. Eye to eye, or hand to hand, with no exchange of greeting but the rifle—no salutation but the sword. In such a war, shall not the last red man, who fell by bullet or bayonet, lift his head from the gory sod, and gaze and die with grim delight, while looking on those whom he regards as the spoilers of his race, mingling their blood in impious butchery, on the very grounds of his fathers, and in a most unholy struggle for his and their plunder? In the noise of war and slaughter, imagination shall hear the long buried warriors, the Metacans, the Miamiomus of other fields again mingling their war whoop with the cry of the white man's battle. Men shall see, or seem to see, grim spirits, the chiefs and warriors of other days, approaching from their blessed hunting grounds, in the far-off West, or, if driven thence, from "some happier island in the watery waste," horsed on their own clouds in red brigades, "visiting again the glimpses of our moon, and making the night of war and conflagration more horribly ludicrous."

Once more, sir, and I have done. If this amendment do not prevail, and this resolution is adopted, the provisions of it, when finally adjusted and carried into full operation, will mightily strengthen the Union. For this purpose the cessions of it were originally made. It has been said,

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a national debt, divided and distributed to all its owners over the country, does form a cord of Union not easily broken. It may be so; but what is that to the almost infinite number of cords, liges, and filaments, which will, by the provisions of this system, be wound around and unite us together? Distribute to the several States the annual proceeds of the public lands, and, on its way thither, it will make the straight way broad, the rough road smooth. Travel and transportation by our present vehicles will be cheap and expeditious. When we have introduced into our country the inventions already in operation in others, movement from place to place may be so rapid, and exchange of social and hospitable intercourse between different parts of the whole country will become so easy and frequent, that men will almost forget that their homes are in different States, and become really and in fact citizens of the United States of one great republic. By roads, by railways, or by canals, by land or by water, the produce of any part may, cheaply and with expedition, be placed in the market of any other.

Distribute to every State a fund for education, and it will be divided and subdivided into streams, until it shall reach every town, every village, every plantation, farm, and family, throughout the United States. Let the people once taste of these refreshing streams, and they will look up to the United States, their beneficent source, and regard them with delight and veneration. They would turn their thoughts to them, as the inhabitants of ancient Egypt did theirs towards the fountains of the Nile; and, though not with adoration, yet surely as to the dispensers of the blessings of Heaven.

When this system shall have gone into full operation over all the land, and but one generation has been cultivated and grown up under its fertilizing nature, no demagogue will ever rise up in our country hardy and desperate enough to divert or obstruct the current of its progress. Should a man, in aftertime, on this floor, move to appropriate a single dollar of this fund to any other purpose, he would be hissed through the country by one united cry of abhorrence from every man, woman, and child in the nation.

If, therefore, the United States would make the inhabitants of every distinct district of our territory one people, a nation, united, great, wealthy, and prosperous, let them provide, and put into successful operation in every State, appropriate funds for internal improvement. If our country would render her union and existence perpetual; if she would place deep and broad the foundations of her prosperity; if she would distinguish herself eminently above all other nations of this or any other time; then let her draw high example from Divine benignity, call little children around her, take them in her arms, and bless them with the lessons of pure, early, and efficient instruction.

THURSDAY, JANUARY 14, 1830.

The House resumed the consideration of the resolution moved by Mr. HUNT on the 17th December ultimo, proposing a distribution of the net proceeds of sales of public lands among the several States.

The question recurred on the motion made by Mr. MARTIN, on the same day, to amend the said resolution.

Mr. PETTIS, of Missouri, concluded his remarks on the subject, which he commenced yesterday.

They were to the following effect:

Mr. P. began by saying, that, were he to consult his own feelings, or his own individual interests on this floor, he should not trouble the House with one word more on this subject. But, [said Mr. P.] when I see a measure pressed with all the powers of argument and of eloquence, the consequences of which will, in my opinion, be highly injurious to the State which I have the honor to represent—a measure which addresses itself to the cupidity of the

people of the old States—to the worst as well as the best passions of the human heart—a scheme, whose tendency is to mislead and corrupt the public mind, to cripple the West, and to fix a system of intolerable oppression upon the new States—I should be recreant to the interests of those whom I serve, faithless to the new States and to my own principles, if I did not raise my voice against it. These considerations constrain me to throw myself upon the indulgence of the House, and to solicit their patient attention to the views which I shall present in relation to this interesting subject. Sir, when this resolution was first offered, I was not disposed to engage in a discussion of its merits. Considering it as looking to an inquiry alone, I preferred to forbear making any opposition until something more specific and of a more serious character should be presented to the House. The friends of this scheme have, however, thought proper to enter into a general argument upon its merits, and have left us no alternative but that of abandoning the contest, or of at once meeting them in debate. They have done more, sir. With the intention, as it would seem, of forestalling public opinion, of gaining the “vantage ground,” and of inducing a belief that their arguments were unanswerable, they have intimated that those opposed to the resolution were directing their attention to the amendment offered by the gentleman from South Carolina, [Mr. MARTIN] but decline arguing the main question involved. Sir, I meet that question: I cannot say I meet it boldly, for I know the argumentative powers and the eloquence of the various interests which this resolution draws to its support. But I meet it in the full confidence of the correctness of the principles upon which I rely; and indulging a hope that, if I fail to convince this House, an intelligent, just, and patriotic people, will render a proper decision of the question, I take leave, in the outset, to repel the imputation attempted to be cast upon those who oppose the resolution, that they are influenced by selfish considerations. The people whom I represent desire no unfair advantages. They ask for nothing but their just and equal rights, and these they are determined to maintain. I trust that my conduct on this floor will not only prove that I request no more, but that, in the discussion of every question here, I shall meet gentlemen in that spirit of candor and of fairness which should characterize the representation of an honest and patriotic people. Sir, I will most sincerely pray, with the gentleman from Rhode Island, [Mr. DENNIS] that we may catch the spirit of magnanimity, of concession, of forbearance, and of disinterestedness, which animated and influenced the fathers of the Revolution. I will go with him to the altar of patriotism erected by them, and there freely sacrifice every feeling, either selfish or sectional—I will pray that the common interests of our common country, of our whole country, may alone influence us in all our deliberations. Sir, I had hoped that that gentleman had long since made this sacrifice—I had hoped to consider the gentleman as one of the connecting links in that bright chain which connected us with our liberal and patriotic ancestors.

Sir, from what has fallen from gentlemen in this debate, from what I have ascertained of the views of members on the subject under consideration, I have been astonished, and a little amused, too, to find gentlemen of all sorts of political opinions supporting this resolution. Yes, sir: I find those who maintain the power in the General Government of making roads and canals, and of providing for a general system of education, supporting it. I find some of those who deny this power supporting it; and I see that description of politicians who are in favor of a compound basis of construction. I mean those who are for splitting the difference between the demands for power on the one side, and the denials on the other, also rallying in its support. I find another description of politicians supporting it; those who express doubts as to the constitutional power of Congress to make donations of the public

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lands for any purpose, but who think it perfectly clear that we have the power to distribute the nett proceeds of the public lands among the several States for the purposes of internal improvement and of education. Not the least amusing of all are the opinions of those who think that we have no power to distribute the surplus revenue (if there should ever be any) among the several States, for the purposes mentioned, but who also think we have the power to distribute for the same purposes the proceeds arising from the sales of the public lands. The gentleman from Pennsylvania [Mr. BUCHANAN] takes a distinction. He tells us there is a manifest distinction between the two cases; but he has not thought fit to point it out. Sir, what that distinction is, I cannot conjecture; but if there be a distinction at all, it is against the gentleman, as I shall presently show. When the money arising from the sales of the public lands is paid into the treasury, how will the gentleman distinguish it from the other funds of the Government? Has it ear-mark? Can he show that the constitution gives us greater power over one description of funds than it has over another? Sir, the framers of the constitution found it necessary not to restrict the power of Congress in getting money into the treasury, but they have limited the power as to their getting money out of the treasury. They granted the power of appropriating money for the purpose of carrying into effect the powers of the Government. And I think it fair to presume that this limitation was intended as a check upon Congress, to prevent them from oppressing the people by unnecessary taxation. It was doubtless considered, that, if the power of appropriating money should be limited, there was no necessity for restricting Congress as to the quantum of revenue to be raised. Sir, the doctrine is held, that Congress can appropriate money for any purpose, even for purposes over which it is acknowledged they have no control. The gentleman from Pennsylvania seems to apply this doctrine to the case under consideration, but denies its force in relation to the distribution of the surplus revenue. Now, admitting for the sake of argument, that Congress has the power to distribute the surplus revenue arising from imports or direct taxation if you please, among the several States for the purposes of internal improvement and education, it by no means follows that they have the power to distribute the proceeds of the public lands for these purposes. In the acts of cession made to the United States by Virginia and North Carolina, are the provisions expressed, "that all the lands so ceded to the United States shall be considered a common fund for the use and benefit of such of the United States as have become, or shall become, members of the confederacy. Virginia and North Carolina inclusive, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and *bona fide* disposed of for that purpose, and for no other purpose whatever." The same is strongly implied in the cessions made by other States. At the time of making these cessions, each State had to contribute its share in the general charge and expenditure of the confederacy. These lands then were ceded for the common benefit, and for the purpose of raising funds for the support of the Government, so as to diminish the sum required by each to supply the common treasury. The proceeds of these lands are consequently directly pledged as a fund out of which to defray the expenses of the then existing government; and I ask, if, under the old confederation, it would have been competent for Congress to have distributed these funds for the purposes named in the resolution now under consideration? If not, can it be pretended that Congress under the present constitution has greater powers in relation to these lands than it had during the confederation? Can they change the objects of the grant? If they cannot, what becomes of the distinction spoken of by the gentleman from Pennsylvania?

I have alluded to the conflicting opinions of the support-

ers of this resolution, not with a view of pressing an argument on constitutional grounds, but with the intention of throwing gentlemen back on their original principles, with a view of showing a reasonable ground for my apprehensions that the friends of this measure are more influenced by feelings of interest than by their unbiassed judgment. Has the time come, sir, when we are to blot out and begin anew? Are the principles of all parties to be abandoned in this scramble for the public treasure? Are the honest opinions of the people to be brought up by the miserable pittance arising from the sales of the public lands? Sir, whenever this Government shall be destroyed—when ever this blessed Union shall be divided, (and the gentleman from Rhode Island says he expects it will be some time next summer,) whenever tyranny or anarchy shall be our portion, the faithful historian will trace the cause of such a calamity to schemes like this—to schemes which tend to corrupt the principles and feelings of the good people of this Union by the money of the General Government. I can conceive of no state of things more dangerous than that which will find the people of these States looking to the treasury of the General Government alone, expecting from that source to be fed, clothed, and educated; and ready to surrender all their principles, constitutional and moral, for the accomplishment of their objects. The time seems already come, when gentlemen, in the language of the member from North Carolina, [Mr. POWERS] are determined to get their share of every dollar in the public treasury.

The opponents of this resolution have asked why this measure is pressed upon us, while the whole subject of distributing the surplus revenue among the States has been submitted for inquiry to a standing committee of this House? We have received no answer. Sir, I rejoice, and I hope the gentleman from Rhode Island [Mr. BEANS] will rejoice with me, that the President has directed our attention to the principles upon which this Government is founded. I am glad that he has reminded us that there were limitations on the Government—for I fear that some of us would otherwise have forgotten it. We hear urged that these lands were pledged for the payment of the national debt, and have asked why this subject is pressed before that debt shall have been paid—whether gentlemen intend to prevent the payment of this debt? We are told, in reply, that they do not expect to make the distribution until that debt shall have been paid; but they desire to have an inquiry made by a committee. Sir, I think I understand gentlemen. I admire their skillful tactics: they desire to bring the subject before the public; to examine the direct interests of the people; to speak of grand plans of internal improvements and of education; to sound the tocsin that the new States are about to take all the public lands, when they were purchased by the "common blood and treasure of the country;" and in this way to excite a prejudice which will demand that the distribution shall be immediately made. The supporters of the resolution will then have accomplished the double object of preventing in part the payment of the public debt, of fixing upon the new States a system of grinding oppression in relation to these lands, and that of preventing any liberal mode being adopted for disposing of these lands.

The people of the new States have a just ground of complaint, that this Government is more close and rigid, in regard to the disposition of these lands, than any other Government on earth. They justly contend that the Government had lost sight of the chief object, that of settling the country, and looks mainly to the money that is to be made from its own citizens. We ask you to give us relief from a system which annually drains the new States of their circulating medium—a system which will for ever keep them poor. Although the graduation has been by the gentleman from Rhode Island [Mr. BEANS] mathematized in its very birth, we respectfully press the justice

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of that measure. We ask that the minimum price of the lands may be suited to their quality, or that a reduction may be made; but we pray you not to adopt the principle of this resolution. If this be done, it will be considered the interests of the people of the old States not only to relax their present system, but to adopt one more onerous. They will force their representatives here to act as a set of heartless speculators, wringing from the poor cultivator of the soil the last cent of his earnings. It is in vain that gentlemen say to us, adopt this our system of distribution, and we will give you a liberal system of disposing of these lands. We know that when their system shall have been fixed upon us, we cannot escape. According to the famous report of the committee at the last session, "a more rigid economy" will be then adopted in regard to these lands. Yes, sir, I am one of those that fear that the main objects of the prime movers and supporters of this resolution are to fix upon us this rigid economy, to prevent the growth and settlement of the new States, and to keep their population at home.

Sir, another skilful movement is to be seen in the acts of the supporters of this resolution. They propose to distribute this fund for the purposes of education and internal improvements. When the distribution shall have been made, have we any power to control the disbursement of the money? Where is it to be found? May not the States appropriate it to any purposes they may choose? May they not apply it to the worst as well as the best objects? Nay, sir, may they not apply it to schemes in furtherance of the division of the Union, alluded to by the gentleman from Rhode Island? Sir, I understand the purposes named in the resolution as lures held out to decoy the friends of internal improvement and of education into a support of this plan—as drivers to whip this resolution through. I trust in God that useful knowledge is now spread over the great body of the people, to enable them to understand and properly estimate such wily schemes.

The prejudice of the people of the old States is most ungenerously attempted to be excited on this subject, by the pretence that the new States insist that the United States have no lands within their respective limits. The gentleman from New York [Mr. SPENCER] and the gentleman from Vermont [Mr. MALLARY] have urged this as a powerful reason for the adoption of this resolution. Now where is the evidence that any State has, by any act, set up such a claim? Has any State attempted to sell or use these lands? Has any State attempted to tax these lands? No, sir. What have they done? Some of their citizens have spoken of the operation of the constitution of the United States upon such lands of the United States as fell within the limits of any new State admitted into the Union. They have said that, by the principles of that constitution, the United States had no power conferred on them to hold lands within the limits of any State, unless it be of the description specified in the constitution; and they have said that power to hold these lands is not within the specification. This is the whole offence. No overt act is complained of; nothing is charged against us but the opinion of a few individuals; and yet gentlemen press this as a reason why this subject should be speedily acted on. Sir, when gentlemen attempt to assign reasons for their conduct, and can find no better than this, I think they justly excite a suspicion, at least, that they have a bad cause. Is this the argument by which they expect to convince those citizens that they are in error? Is this the course pursued to frighten us out of our constitutional opinions? I hope gentlemen have a better opinion of us. The member from Vermont [Mr. MALLARY] seemed so desirous of bringing this claim, as he calls it, before the nation, to excite prejudices, I suppose, that he has tortured and misconstrued the remarks which I had the honor to make the other day, and has represented me as alluding to certain "delicate questions" involved, by which he most gratui-

tously supposes I meant the claim of the new States. Sir, no such expression was used by me, nor did I make any remark which in the brain of any man could have justified the construction put upon it by the gentleman. I did allude to certain "difficult questions which were constantly arising on this floor" in reference to internal improvement; and this was expressed in a way distinctly to show my meaning.

Sir, as gentlemen have so vauntingly spoken of this pretended claim of certain citizens of the new States—as they have attempted to excite a prejudice among the good people of the Union, relying, no doubt, upon the presumption that nobody would voluntarily examine a question which he was told would unjustly deprive him of all his interest in a great stock, I will take it upon myself to state the argument, and ask gentlemen, if they please, to answer it—declaring at the same time that we use it only as an argument to convince the people of the old States that it is their interest to show more liberality towards the people of the new States in relation to these lands. I state further, sir, that the people whom I represent have too much regard for this Union, too much respect for the opinions and prejudices, if you please, of the people of the old States, to press a claim resulting to them from the constitution of the country, unless that charter, the charter of their own State, or the injustice and illiberality of the old States, should compel them to such a course. We do not believe that either constitution requires it at our hands.

I insist, sir, that it is an essential attribute of sovereignty in every independent State, that, whatever is public property within the State, should be controlled by that State. We contend that, under the present constitution of the United States, each State is entitled to all the rights of sovereignty which are not taken away by the federal constitution. We urge the doctrine that the General Government can hold no property within any State unless the power to do so be either expressly given, or so strongly implied as an auxiliary to such express grants of power, that the latter could not be fairly and beneficially exercised without such implied aids; that, in ascertaining these implied powers, the whole constitution should be looked to—the history of the times at which it was made should be regarded, thereby to ascertain the true intent, meaning, and objects of the framers of that instrument.

I do not suppose that the first two propositions will be denied; the last, therefore, is the only one involved in this discussion. We contend that no power is given by the constitution of the United States to hold property of this description within the limits of any State; and that when any State is admitted into the Union upon an equal footing with the other States, (and it could be admitted in no other way,) all the lands belonging to the United States within the territorial limits of such State *ipso facto* become the property of such State. It is contended by gentlemen on the other side, that the second clause of the third section, article four, of the constitution of the United States puts this question to rest in their favor; and they will not permit it to be mooted. This claim provides that "the Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory and other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular State." Now, sir, this provision, I admit, gives the United States full power over their territories, but it by no means follows that it authorizes them to hold lands within the States. And I have the high authority of the gentleman from New York [Mr. SPENCER] to quote against him in this debate, that this clause "is clearly adapted to the territorial rights of the United States beyond the limits or boundaries of any of the States, and to their chattel interests."—See 17 Johnson's Rep. 225. Sir, to illustrate the gentle-

man's own former position, permit me to put a case. Suppose the United States, since the adoption of the present constitution, had, in extinguishing the Indian titles to lands within the limits of the State of New York, set up a claim under this clause to the lands so purchased, would not the State of New York have said, this is a question which "we will not permit to be mooted?" The State of New York has all the sovereignty within her limits, which was not taken away by the federal constitution; and as no man in his senses can pretend that the clause in question takes away any such portion of sovereignty, would not this have been the answer of New York? Sir, the United States did, I believe, extinguish the Indian title to lands within that State, but no claim to property was set up.

The gentleman from Rhode Island [Mr. BARNES] has attempted to answer the argument here before it had been urged. He declines giving us a definition of sovereignty, but contents himself by showing that, as the General Government can now hold property, and exercise exclusive legislation over it, too, within any of the old States, it therefore follows that the United States can hold the property in the public lands within the new States. Now, I would readily admit the force of the gentleman's conclusion, if the words "public lands," or any thing like them, had been inserted in the seventeenth clause of the eighth section of the first article of the constitution, to which he has referred. That clause provides that Congress shall have power "to exercise exclusive legislation in all cases whatsoever," over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings. As the public lands are not included within any of the descriptions of property mentioned in this clause of the constitution, I put it to the gentleman to say whether there is any force in his argument. I had supposed that the enumeration of powers in the constitution excluded all those not enumerated, even those of a like kind; but the gentleman's argument seems to take the converse of the proposition as true—that all powers of a like kind, not enumerated, are given. He seems to urge further, that all human institutions of power are, in their very nature, limited; that, therefore, when the power of the State ends, that of the United States may well begin; and thus he attempts to show that the United States may properly hold these lands. To this I reply, that the power of the United States begins and ends precisely where the constitution has placed it.

It is contended, however, that, as the United States held a great portion of the Western territory at the time of adopting the federal constitution, the right of the United States to these lands is guaranteed by that clause of the constitution before cited, which provides that "nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular State." Now this clause surely does not secure the rights of the United States, more than it does those of any particular State. It secures all in their just rights, and leaves this question wholly untouched. Let the argument be worth what it may, it does not apply to Missouri or Louisiana, that country having been acquired since the adoption of the constitution. I am, therefore, not called on to answer it. But I am willing to meet the whole question, and will, in answer to this argument, show that it was the intention of the old Congress, of the framers of the federal constitution, and of the several States who made cessions of territory to the General Government, that all the States, whether old or new, should possess equal rights of sovereignty, freedom, and independence. This principle pervades the whole of our constitution. It is to be found in almost every clause of that instrument, and yet it is almost wholly lost sight of in this debate.

In showing some of the acts of the old Congress bear-

ing upon this subject, permit me to take up the history of the crown lands, just where the gentleman from Rhode Island [Mr. BARNES] left it. He favored us with a clear and concise account of these lands, and the titles to them, until he came to the acts of our own Government, the acts of our own States, but not one word further. He acted as if he were approaching dangerous ground, "deficate questions," and principles established in better days, which would at once afford a triumphant refutation to the whole of his specious argument. I desire to present this view on another account. It will set the gentleman from New York [Mr. SPENCER] right on a very important point. That gentleman ridiculed the idea advanced by the gentleman from Indiana, [Mr. TAYLOR] that these lands were ceded by several of the States to the United States for the purpose of making new States. I will show that this was not only the intention of the States making cessions, but that the old Congress, before these cessions were made, gave a solemn pledge that the territory thus ceded should be formed into new States.

On the 6th September, 1780, a committee of the Congress reported, and the report was adopted, "That it appears more advisable to press upon those States which can remove the embarrassments respecting the Western territory, a liberal surrender of a portion of their territorial claims, since they cannot be preserved entire without endangering the stability of the confederacy; to renew them how indispensably necessary it is to establish the Federal Union on a fixed and permanent basis, and on principles acceptable to all its respective members; how essential to public credit and confidence, to the support of our army, to the vigor of our councils, and success of our measures; to our tranquillity at home, our reputation abroad, to our very existence as a free, sovereign, and independent people; that they are fully persuaded the wisdom of the respective Legislatures will lead them to a full and impartial consideration of a subject so interesting to the United States, and necessary to a happy establishment of the Federal Union."

A resolution was then adopted, urging the States to make the cession. Now, sir, can any man read this report without the reflection arising, that if the holding of extensive territories by any of the States endangered the confederacy, and made it unacceptable to all its respective members, that the same inequality now existing among the States should strongly plead in favor of any measure which should give all the States the right of soil to the public lands within their respective limits. If the inequality then endangered our tranquillity, "our very existence as a free, sovereign, and independent people," will not a like inequality now be attended with the same imminent danger? And does not this report afford powerful arguments to show that the new States should, in fact, be placed upon an equal footing with the old States? But this is not all, sir.

On the 10th October, 1780, and before any State had made a cession of its territory, the Congress, with a view of offering inducements to the making of these cessions, adopted the following resolution:

"Resolved, That the unappropriated lands that may be ceded or relinquished to the United States by any particular State, pursuant to the recommendation of Congress of the 6th September last, shall be disposed of for the common benefit of the United States, and be settled and formed into distinct republican States, which shall become members of the Federal Union, and have the same rights of sovereignty, freedom, and independence, as the other States."

Here is a direct pledge that the lands shall be settled, and yet the main object of the Government seems to be to sell them for the highest price. Here is a solemn assurance that the territory shall be formed into distinct republican States, having the same rights of sovereignty, free-

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dom, and independence, as the other States; and yet the other States have, and always have had, the right of soil in every foot of public land within their limits, and the new States are deprived of this right. Call you this equality in sovereignty, freedom, and independence? Is it admitted that the new States can extend their taxing power as far as the old States can extend their power of taxation? Is not the power of taxing all the property within the State, one of the essential rights of sovereignty in any State? The new States are deprived of this power; the old States possess it; and yet it is pretended that the new States have the same rights of sovereignty, freedom, and independence, as the old States. Sir, the argument is preposterous; it strikes the mind of every man as fallacy, a mere delusion, to contend that, under circumstances like these, there is an equality of sovereignty.

I will refer to another act of the old Congress, to show their opinion upon a question like this. Yes, sir, I will refer to the principles of that Congress, although we seem to be much wiser than they. Would to God we were so, in truth and in fact; would to God we were half so disinterested, half so patriotic, half so pure. Sir, if some of us had caught the mantle of those departed worthies, we should seldom be found engaged in sectional conflicts. We should show ourselves worthy descendants of worthy ancestors. In 1778, the States of Rhode Island and of New Jersey objected to that article of the confederation, which provided "that no State shall be deprived of its territory for the benefit of the United States." These States offered amendments, going to vest in the United States the title to all the lands in every State which belonged to the crown at the commencement of the Revolution. They urged then, as the supporters of this resolution urge now, that as these lands were acquired by the united efforts of all the States, they should belong equally to all the States. That as they were acquired by the "blood and treasure" of the whole country, they should be disposed of for the common benefit of the whole country. The Congress, however, negatived the proposition. Now what are we to suppose were the principles of the Congress? Are we not irresistibly led to the conclusion that Congress considered it would be improper, unwise, and unequal, that the Federal Government should hold the right of soil to the public lands within any State; that such a course would interfere with the sovereignty of the States. This idea is irresistible, when we take into consideration the fact, that the proposition from Rhode Island and New Jersey was so modified as not to interfere with the jurisdiction of the respective States over public lands within their limits. This then is a full answer to the arguments of those who insist that, as we have the jurisdiction over these lands, we have all the essential rights of sovereignty. The old Congress did not think so; and every man must at once see that there is a material difference.

Let me now examine the compacts between the United States and the States that made cessions of territory. In the deed of cession made by Virginia in 1784, of the vast extent of country northwest of the Ohio, it was, among other things, provided "that the territory so ceded shall be laid out and formed into States, and that the States so formed shall be distinct republican States, and admitted members of the federal Union, having the same rights of sovereignty, freedom and independence as the other States. North Carolina incorporated the same provision in her deed of cession; and in the Louisiana treaty, by which we acquired the extensive territory west of the Mississippi, a provision substantially the same was inserted. The new States formed out of these territories have been admitted into the Union upon an equal footing in name with the other States; and yet it is contended that the General Government can rightfully hold the right of soil in much the greatest portion of the lands within their respective limits,

and this, too, without any warrant of constitutional authority against the opinion and pledge of the old Congress, against the compact with the States making the cession, and against the provision of a solemn treaty, the supreme law of the land.

Sir, it is said that the new States have entered into compacts with the General Government not to interfere with the primary disposal of the public lands within their limits, and not to tax the unsold lands in those States. To this I reply that no compact with the General Government, by any State, is binding on either party, which contemplates the granting of powers inconsistent with the constitution. If it were otherwise, the constitution might be, in effect, changed every day. It is said that, as these lands were acquired by the blood and treasure of our common country, the people of every State have an equal share in them, and therefore it is unjust in the new States to set up this claim. Is it not much more unjust, much more dangerous, more corrupting, in the people of the old States to claim the exercise of power and right over these lands, not granted by the constitution? Missouri, however, made no compact about the primary disposition of the soil. She made no compact about the right to tax the unsold lands within her limits. But it is said that these lands were ceded and acquired to be a common fund for the use and benefit of the United States, and that this is a full reply to the supposed claim set up by the States. Is it no benefit to these United States, that each State should be equal in its sovereignty, freedom, and independence? Is there no use or benefit which is not a pecuniary one? I have always considered, sir, that there was more use and benefit in preserving, in their original purity, the true principles of the Government, than in drawing to the Government any power by which its monied interests were benefited.

I have now, sir, stated the argument which I promised; I have stated it as it presented itself to my mind, and I again request gentlemen to answer it. The member from Rhode Island, (Mr. BRIGGS) who has attempted to answer my argument before it was spoken, says, when opinions cannot be sustained by facts, men resort to some metaphysical dogmas, by which facts may be removed out of their way. He seems to think that this course has been pursued in this instance. To this I reply that it is generally the case, when men cannot fairly answer an argument, they attempt to mystify and destroy it, by pretending it is metaphysical and fallacious. The gentleman is welcome, heartily welcome, to this sort of triumph, if it affords him any gratification.

I cannot dismiss this part of the subject without taking some notice of the course invariably pursued by those who have of late argued constitutional questions involving the powers of the Government. When they, both liberals and restrictionists, find themselves in a train of reasoning, equally applicable to the question of the right of the Government to hold these lands, as to the question about which they are debating, they take care to put in a proviso, saying they do not intend their principles to be applied to the public domain. That, they say, depends on different principles. But they take care not to state those principles. Sir, if there be one evil more to be deprecated in this Government than another; if there be any political sin deserving the greatest punishment, it is the sin of permitting our supposed pecuniary interests, and the supposed pecuniary interests of those we represent, to control our opinions in deciding great constitutional questions. We have indeed fallen on evil times, when we see questions involving the very existence of the Union, endangering the peace and happiness of the people, decided with direct reference to the interests of a particular section of the country, disregarding, too, the welfare of other sections; trampling under foot their own constitution, to accomplish, in most cases, an imaginary benefit. In these days, sir, constitutional questions are discussed before the

people of this nation, by appealing to them to say whether it is not best for their particular pecuniary interest that the question should be decided either for or against the measure. This, sir, is the powerful argument. I trust, however, that such arguments will have no force in the present case.

Sir, if it should be considered that these considerations are without force, I am ready to meet gentlemen on their own principles. They insist that the acquisition of these lands, made at the expense of the whole Union, not only in treasure but in blood, marks a property equally extensive in them. That those lands being the common property of all the people, the proceeds thereof should be equally divided among the people. They contend, furthermore, that a great portion of these lands was acquired in a successful contest with Great Britain, by all our citizens, and therefore the proceeds should be equally divided. I will not stop to inquire whether the patriots of the Revolution were influenced in that contest by the consideration of the wealth in wild lands they were acquiring. I will not ask whether they were not moved by matters of higher value; but I say to gentlemen, your argument proves too much. If the crown lands acquired by the several States in our revolutionary struggle, belong equally to the people of the whole Union; if the proceeds of the public lands now should be equally divided among the people of all the States, ought not the proceeds arising from the sales of such of the crown lands as fell within the present limits of many of the old States to be equally divided also? Sir, equality is equity. If it be just and right that the old States should have a part of the lands in the new States, it is equally just and right that the people of the new States should have a share of the public lands which fell within the limits of the old States. In almost every State in this Union, according to their present boundaries, there were public or crown lands at the close of the Revolution. Each State disposed of these lands for her own interest. The State of New York retained nearly all her western lands to which she had title, and has disposed of it for her own aggrandizement. Upon the principle now contended for, should not the whole of the western part of that State have been disposed of for the benefit of all the people of the Union? The General Government has aided in extinguishing the Indian title to lands within that State, solely for the benefit of the State. Connecticut, too, reserved a tract of country, one hundred and twenty miles square, in the State of Ohio, and disposed of it for her own benefit. No, sir, she did not reserve this tract, for then she would not have had any title to it. She relinquished a shadow of a claim to the country northwest of the Ohio, and, instead of making a reservation of the tract mentioned, she demanded a warranty deed for it from the General Government, after Virginia had magnanimously ceded the whole country to the United States. Her title was a good one; that of Connecticut with scarcely the shadow of a foundation. Ought not Connecticut to render an account of the proceeds of this tract before she can with any grace ask for an equal division of the other lands? The State of Massachusetts, like Connecticut and New York, very liberal in making cessions of territory to which she had no title, took care to reserve all her public lands within the then district now State of Maine, and disposed of it for her own use. Since Maine was admitted into the Union, she and Massachusetts have been in copartnership in the public lands within the State of Maine, and have been and now are engaged in selling these lands for about five cents per acre. Now let it be remembered that these lands were acquired, not by these two States alone, but by the blood and treasure of the whole country. Should not these proceeds be equally divided, too? The States of Maine and Missouri were admitted into the Union at the same time. In each of them were large bodies of land acquired by the blood and treasure of the whole country. The lands in

Missouri have been sold and are now selling at a high price for the benefit of the General Government. The lands in Maine are sold for her own benefit to her own citizens for a few cents per acre, and yet the gentleman from Rhode Island [Mr. Burges] complains that we desire to pass the graduation bill, which will reduce the price of refuse lands in Missouri to twenty-five cents per acre. He presses this resolution also, which is to give the State of Maine seven times as much of the proceeds of the public lands within the State of Missouri, as the latter State would have. This is not all, sir. The State of Maine invites population, by selling lands for a few cents per acre, while the population of Missouri must give at least one dollar and twenty-five cents per acre, and very frequently a great deal more, or not acquire lands. Do not these things prove too much for gentlemen? The old States kept their crown lands within their limits, because the old Congress thought that the Federal Government should not hold lands within any State. These States have sold theirs as they chose, and now are anxious to have another equal share. Sir, Pennsylvania kept her crown lands, and sold them as she pleased. Will that generous State now join in this cry for a division? The State of Kentucky had all the lands within her limits, save what was covered by Virginia military warrants. She has caused it to be settled and sold; and will the people of that State now ungenerously unite with the supporters of this resolution? The State of Tennessee had two hundred thousand acres of land, besides six hundred and forty acres in every six miles square, granted her at one time; and afterwards the whole of the public lands were given to her, except those lying in the extreme western and southwestern part of the State. Will that State join in the persecution against the new States? Will one of her delegation vote for this resolution? I hope not, sir. If she should file in, I hope she will account for what she has already received.

If I do not mistake, sir, the Government has, within the last ten years, extinguished the Indian title to lands in Tennessee, for the benefit of that State, and she has been selling them for a few cents per acre.

North Carolina ceded a great extent of territory, making, however, many provisions in her own favor; and the territory so ceded has been chiefly appropriated to the citizens of that State who settled in Tennessee, and who had military land claims in the latter State. The General Government has received but little, if any, pecuniary interest from the cession. Will the people of North Carolina, under these circumstances, support this resolution? Can they support it without abandoning their constitutional principle, and without giving up their character for disinterestedness and liberality? I think not, sir. The State of Georgia ceded her territory, it is true; but it was for a fair consideration paid. The lands recently acquired by the United States for the State of Georgia are about to be equally divided among her citizens without charge. Will she support this resolution? I know she cannot. The State of Virginia, if her good old principles permitted her, might, without reproach, insist on a share of the public lands. This State, as has been justly said, always foremost in acts of magnanimity, generosity, and patriotism, will not for any consideration, much less for the paltry one of a few thousand dollars, abandon her principles, and unite in a system which is to corrupt the best principles and sentiments of the people.

Sir, is it just or equitable that this division should be made according to representation in this House? Is it fair that we should look to the present generation alone, and not to posterity at all? The State of Missouri is nearly equal in territorial extent to the whole of New England. She is capable of sustaining a population equally great. You sell all the public lands in the new States in a few years; Missouri gets one-fortieth part as much as New England; education and internal improvements are well pro-

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vided for in New England, but better sided in Missouri; and the fund is gone. How is Missouri in aftertimes to be placed on an equal footing with the New England States? The inequality is much more glaring, when we again look to the State of New York. This State reserved all the crown lands within her limits; she retained that great, fertile, and extensive country towards her western frontier. She has sold it and settled it, and thereby gained an immense population. This population, having grown up on a part of the public domain, and which they used for their own benefit, now comes in for an equal share of the residue. Sir, this State should be amongst the last in this Union to press this measure. It is unjust, unequal, and inequitable. The same remarks will well apply to Connecticut, to Massachusetts, and to Maine.

There is another objection to the proposed division. Gentlemen urge that, as the public lands are a common fund, to be disposed of for the common benefit of the United States, it is just and proper that the proceeds should be equally distributed. I will not stop to raise the objection, that, by the very terms of the resolution of Congress of the 10th October, 1780, and the terms used in the acts of cession of the several States, the conclusion is irresistible, that this fund should be used and disbursed by the General Government itself, for the common benefit, and thence deduces another conclusion, that the individual States should not control it for their common benefit; nor shall I insist that this division will put it in the power of each State to use this fund, not for the common benefit.

But I take leave to advert to the terms of cession used by Virginia and North Carolina, for the purpose of raising a different objection. And here, sir, permit me to thank the gentleman from Georgia [Mr. WILKS] for turning my attention to that which might otherwise have escaped me. In the deed of cession made by Virginia, it is provided that the lands thus ceded "shall be considered a common fund for the use and benefit of such of the United States as have become, or shall become, members of the confederation or federal alliance of said States, Virginia inclusive, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and *bona fide* disposed of for that purpose, and for no other use or purpose whatever." North Carolina made the same provision. I have already shown that this clause provided that this fund was especially set apart to defray the current expenses of the General Government; that, until this fund should be exhausted in paying those expenses, no other burdens of taxation should be put upon the States, and thence came to the conclusion that Congress had no power to divert this fund from its original object. I now contend, sir, that the proposed distribution is wholly inconsistent with the recited compact. At the time this compact was made, each State furnished its share of the general expenditure, according to white population, and three-fifths of all others, excluding Indians not taxed. Then the proportion of each State could be easily ascertained. Now, that the General Government is supported by indirect taxation, by duties and imports, how are we to ascertain "the usual respective proportions" of each State "in the general charge and expenditure?" It cannot be done, sir. And until this is done, no distribution can be made, according to the principles of this compact. Shall we guess at the usual proportions? Will it be pretended, at this day, that every State, south and west of Maryland, including the latter, does not pay a greater proportion of the revenue, according to the basis of population, than any State north of Maryland?

Let me illustrate my position by a supposed case. Suppose not one cent of the revenue, paid into the common treasury, should be expended, and a division of that revenue should be made among all the States, according to the principles laid down in this resolution, according to representation on this floor. Will any gentleman contend that

the States south and west of the line mentioned would receive in this distribution as much as they paid? I presume not, sir. How, then, can the proposed distribution be made according to the compact? This is a difficulty which gentlemen cannot surmount.

Sir, let me examine another principle advanced in this debate in support of the resolution. Divest the argument of gentlemen of all its tissue—all its decorations—all its sophistry, and it amounts to this: the distribution must be made, because we have the fund in our power; because we want it applied for the purposes of education and internal improvement—because it is a common fund, and because the funds of the Government should, in equity and justice, be disbursed equally among all the citizens of the Union. Now, sir, I admit that the last reason assigned looks very pretty in theory; but if I show that the principle is wholly impracticable—that the practice of the Government has not been on this principle; if I prove that, upon this principle, the new States have not had their share of the funds of the General Government, I take from gentlemen the basis of their eloquent arguments, and the fair, the alluring, and beautiful fabric erected by them tumbles into the dust.

With the permission of the gentleman from Rhode Island, [Mr. BUNOES] I beg leave to appropriate a part of his argument to illustrate my views on this subject. That gentleman, in resisting with me the amendment to this resolution, offered by the gentleman from South Carolina, [Mr. MARTIN] which provides that the new States shall, in this distribution, be compelled to account for all the lands given them by the General Government for any purpose whatever, very properly urged that, if the new States were to be called on to account for these lands so given, they, with the same propriety, might call the States on the Atlantic board to account for all moneys of the Government disbursed within their limits, either for naval purposes, military purposes, objects of internal improvement, breakwaters, or any purpose whatever, then to strike the balance and pay over. Now, sir, if the general principle be true, that the funds of the Government are to be divided equally among all the States, and the proceeds of the public lands are to be so divided, I demand, upon the same principle, that the new States—the States of the West and Southwest—shall be remunerated for their proportion of those enormous disbursements made on the seaboard. If the principle is to be carried out—if equality and justice are to prevail, I am very sure that, upon this general division, the new States will not complain on the score of interest, however much they might object on principle. It cannot be denied that the same States have not had their share of the disbursements of the Government. They know, however, that the principle is impracticable. They know that the united interests, the national interests of all the States will not, in all cases, permit it; therefore, they do not complain. But they ask of the old States to imitate their spirit of liberality, and not to ask for the application of the principle in relation to the public lands.

Sir, the gentleman from Rhode Island [Mr. BUNOES] has said that his State has a right to be heard in this debate. I do not deny this right. He has said, that, according to the receipts at the custom-house at New Orleans, each of the nine Western States pays only about sixty thousand dollars per annum of the public revenue, and that Rhode Island pays five times as much. Does the gentleman suppose that all the revenue paid by the Western States is paid at New Orleans? I appeal to the gentlemen around me, from the West, to say whether the duties on the one-hundredth part of the merchandise consumed in the West, and on which they pay the duty, is paid at New Orleans. What becomes of the imports which come coastwise to that city? Where is the great amount of goods carried from the Eastern cities over land to the West? But, sir, I think the gentleman from Rhode Island for another ar-



gument which he urged against the amendment. He insisted that the new States should not be called to an account for the donations of land made them, because the people of those States had, by their industry and enterprise, given all the value to the public lands which they ever possessed. He urged that they had caused lands which were not worth more than three cents per acre to be worth a dollar per acre. He told us, also, that the public lands had cost the Government about thirty millions of dollars, and that the Government had realized out of these lands about forty millions of dollars. Sir, the gentleman, in his last estimate, has a little exceeded the true amount, but it is true that the Government has received more in money than it has paid for these lands. It is true that, by the industry and enterprise of the West, lands which were not worth three cents per acre, are now worth one dollar per acre. Nay, sir, lands that were once not worth three cents per acre, have been sold by the Government for from five to ten dollars per acre; and all this was effected by the industry and perseverance of Western citizens. Yes, sir, the West has not only repaid you for their lands more than the lands cost you, but they have paid their full share of the expenses of the Government, their full share of the national debt, and they have contributed their full share, "not only in treasure, but in blood," to sustain your national character—to add to your national grandeur. Their "darling daughters," as the gentleman from Rhode Island pleased to call them, have never been unmindful of the interests of this Union. In the hour of peril and of trial, they have shown their fidelity to this Union. And, if the Union is to be divided some time next summer, I assure the gentleman from Rhode Island that posterity will not point the finger of scorn to these "darling daughters," and say, you have blasted the reputation of your virtuous mothers. Sir, I speak for the people whom I represent, when I say there is not a people under the sun who are more devoted to their Government, to the Union, than the people of Missouri.

But to return to the resolution. I have said that, if this plan be carried into effect, the people of the new States may bid adieu to the prospect of ever having the title of the United States extinguished. We shall then have the rigid system of public speculators fixed upon us; we shall then have sales of alternate sections made, so that the sale and improvement of one may enhance the value of the other. Sir, while gentlemen have been indulging in their fine feelings of philanthropy—while they are pressing this resolution forward, with a view of disseminating useful knowledge among the people, I am surprised that a little consideration should not have been bestowed on the thousands of poor non-freeholders in the several States, and in the old States, too. Would not they gladly settle and improve your wild lands? You cannot, forsooth, enable them to acquire a home by reducing the price of the public lands, and thus elevate them to the rank of the most useful and happy citizens; but you propose to educate them in poverty and starvation, and thus you sharpen their sensibilities, and make them less able to sustain themselves under their own insignificance and degradation. When we reflect on these things, sir, is it unreasonable to suspect that gentlemen are desirous of emptying the public treasury, so that they may fill it in a way more to their liking? May we not well suppose, with the gentleman from Alabama, (Mr. LAW) that the friends of this resolution know there is in this Union a tax-paying people, and then a tax-consuming people? May we not tremble for the principles of our Government when we see appeals to that description of population to support this measure, who will support it because one dollar is paid into one pocket without considering that two are taken out of the other? But the other day the proposition of the gentleman from Massachusetts, (Mr. RICHARDSON) to undertake a system of education by this Government, was rejected upon the ground,

as we all supposed, that the Government had no power over the subject. So soon, however, as a division of money among the States is proposed to effect the same object, gentlemen turn immediately round in its support. They are willing to do indirectly what they dare not do directly.

Sir, if there be gentlemen here who desire to ease the treasury of its mawes of wealth, I beg leave to recommend that they pay the just claims upon this Government. If they are at any loss to know what is to be done with their money, I point them to the war-worn soldier of the Revolution, and say, pay that debt of justice and of gratitude. Sir, when I see a poor old soldier of the Revolution penniless, houseless, comfortless; when I listen to his tales of heroic valor, and witness the ardor of his patriotism, and, at the same time, reflect on the wild, splendid, and expensive schemes of this Government, I have turned away with a bleeding heart, and blushed for the honor of my country.

Another reflection has occurred to me. I look upon the system proposed to be established by this resolution, as an anti-emigration system—a system which is intended to check the growth of the West. Has it come to this, sir? We have had American systems—anti-slavery systems—and systems, the Lord knows what; and now we are to have an anti-emigration system to cripple the West, and to prevent the poor of the East from going to the West, and cultivating the fertile lands of the West. Money is to be divided among them at home—they are to be educated at home, and, I suppose, starve at home. Do you fear the increased and increasing power of the West? I hope not. That power is your power; it is the power of the whole country, and should not be feared by any part.

Sir, I have done. I have spoken what I believed to be the sentiments of the people whom I serve. I believe they cannot be bought up in the support of this resolution by any sum, much less the paltry and pitiful sum which would fall to their share under this distribution. I beg pardon of the committee for thus detaining them. But coming, as I do, from a new State—being the sole representative of a new State, whose interests I think are vitally interested, I felt myself constrained to enter into this discussion.

#### THE JUDICIARY.

The bill establishing Circuit Courts and abridging the jurisdiction of the District Courts in the districts of Indiana, Illinois, Missouri, Mississippi, the eastern district of Louisiana, and the southern district of Alabama, being under consideration,

Mr. BUCHANAN rose, and said:

Mr. Chairman: It becomes my duty to present to this committee the reasons which induced the Committee on the Judiciary to report the bill to the House which has just been read. In rising to discharge this duty, I feel conscious that the subject is in its nature dry and uninteresting; but its importance demands the attention of every member of this committee. In vain may we pass the most wise and salutary laws, unless we provide an efficient judiciary to carry their blessings and their benefits home to the people. Without such a judiciary, they remain a dead letter upon our statute book.

This bill proposes no new theory—no untried experiment. It pursues the course which has been sanctioned by long experience. The Committee on the Judiciary did not seek to be wiser than those who have gone before us. This bill, therefore, provides nothing new for the old States of the Union. It merely extends to the new Western States that judicial system which has been found to be fully adequate to administer justice to all the States east of the Allegheny.

Before I proceed to illustrate the necessity of this measure, it is perhaps proper that I should briefly present to

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the committee some of the prominent points of the judicial history of the United States. Our present system was called into existence by the judicial act of September, 1789; and it demonstrates the wisdom and sagacity of the Congress of that day, that they should, at the very first attempt, have adopted a system, which, with but few alterations, has stood the test of an experience of forty years. Under that act, the United States was divided into thirteen districts, for each of which a district judge was appointed, who was required to reside therein, and to hold a court to be called a district court. These district courts were entirely independent of each other. Eleven of these thirteen districts, consisting of the eleven States which were then members of the Union, were divided into three circuits. These were called the eastern, the middle, and the southern circuits. The eastern circuit was composed of the States of New Hampshire, Massachusetts, Connecticut, and New York; the middle, of the States of New Jersey, Pennsylvania, Delaware, Maryland, and Virginia; and the southern, of the States of South Carolina and Georgia. The remaining districts of Maine and Kentucky, not then members of the Union, were not embraced in any circuit; but their district courts were invested with the powers of a circuit court.

Under this act, the Supreme Court of the United States consisted of a chief justice and five associate justices.

In each district of these three circuits, a circuit court was directed to be held twice in each year, to be composed of any two justices of the Supreme Court, and the judge of the district.

In June, 1790, the States of Rhode Island and North Carolina, and in March, 1791, that of Vermont, came into the Union. The districts of Rhode Island and Vermont were attached to the eastern, and that of North Carolina to the southern circuit.

The committee will observe, that the act of 1789 did not assign the justices of the Supreme Court to particular circuits, but intended that they should alternate in holding their circuit courts. It was soon found to be impracticable for them to perform the circuit duties required by this act. Under its operation, the six justices of the Supreme Court, besides the performance of their duties in bank, were required, in pairs, to hold circuit courts twice in each year, throughout the three circuits which embraced all the States of the Union. In 1792, they addressed the President of the United States upon the subject, who laid their communication before Congress. This produced the act of March, 1793, which declared that any one of the justices of the Supreme Court, with the judge of the district, should compose the circuit court. This act, by dividing their duties, diminished their circuit labors one half, and enabled them, without difficulty, to attend all the circuit courts.

Thus the Judiciary of the United States continued to be organized until the passage of the famous act of February 1801. This act produced great excitement throughout the country at the time of its passage, and met with strong public disapprobation. It withdrew the justices of the Supreme Court from the performance of circuit duties, and made them exclusively an appellate tribunal. Under its provisions, the United States were divided into six circuits, and three judges were appointed for each of the first five of these circuits. For the sixth circuit, which consisted of the districts of East and West Tennessee, Kentucky, and Ohio, only one circuit judge was appointed; who, together with the district judges of Tennessee and Kentucky, composed the court for that circuit. The district courts throughout this circuit were abolished, and their duties were transferred to the circuit court. Such was the provision which this act made for the performance of these circuit duties, which had been ably and satisfactorily discharged by the six justices of the Supreme Court previous to its passage.

The act of 1801 had but a brief existence. It was swept from the statute book in little more than one year after it became a law, by the repealing act of March, 1802. All the judges created under it were thus legislated out of office. This has been called a high-handed proceeding, and it is one which ought never to be resorted to except in extreme cases; but yet, in my opinion, experience has justified the measure, and has proved that such an extreme case then existed. But more of this hereafter.

In April, 1802, the judicial system was re-organized, and placed upon the foundation on which it now rests. The old thirteen States, together with Vermont, were divided into six circuits, the first composed of the States of New Hampshire, Massachusetts, and Rhode Island; the second, of the States of Connecticut, New York, and Vermont; the third, of New Jersey and Pennsylvania; the fourth, of Maryland and Delaware; the fifth, of Virginia and North Carolina; and the sixth, of South Carolina and Georgia. These circuits have ever since continued the same, except that Maine, since its admission into the Union, has been annexed to the first circuit. This act was the first which assigned to each justice of the Supreme Court a particular circuit. From the passage of the judicial act of 1789, until that of April, 1802, the justices of the Supreme Court alternated and travelled over all the circuits. Since that time, each one of them has been confined to a single circuit. The act of 1802 proceeded still further, and recognised the principle that the justices of the Supreme Court ought to reside within their respective circuits. At the date of its passage, four of the justices resided within the circuits to which it assigned them. Upon the resignation of Mr. Justice Moore in 1804, whose residence was in the fifth, but who was assigned to the sixth circuit, the present Mr. Justice Johnston was appointed his successor. Ever since that time, all the justices of the Supreme Court have resided within their respective circuits, except the late Judge Washington. And of that lamented judge, permit me to say, that although he was the citizen of a State out of the limits of his circuit, yet his judicial character was held in as high estimation by the people of Pennsylvania, as will be that of any man who shall probably ever become his successor.

Kentucky, which became a State of the Union in 1792, and Tennessee in 1796, were not embraced within the circuits created by the act of 1802. Each of them continued to have a district court, which, in addition to the ordinary powers of such a court, was invested with the jurisdiction of a circuit court. Ohio became a member of the Union in 1802; and, in February, 1807, Congress established a seventh circuit, to consist of the States of Kentucky, Tennessee, and Ohio. Under this act, a sixth associate justice of the Supreme Court was appointed, to reside within the seventh circuit, and to hold the circuit courts. This circuit has always been too extensive, and the duties of the judge have ever been too laborious to be performed by any one man.

After the passage of the act of 1807, each of the eighteen States which then composed the Federal Union, were provided with a circuit court. That act, in this respect, placed them all upon an equal footing.

Since the year 1807, six new States have been added to the Union: Louisiana, in 1812; Indiana, in 1816; Mississippi, in 1817; Illinois, in 1818; Alabama, in 1819; and Missouri, in 1821.

The purpose of this bill is to extend the circuit court system to these new States; and, in doing so, to make such an arrangement of the two new circuits which it proposes to establish, as will enable the courts to transact the business of the States of Ohio, Kentucky, and Tennessee.

Before I proceed to discuss the merits of this bill, it is necessary, to a correct understanding of the subject, that I should present to the committee the great outlines of the jurisdiction of the circuit courts of the United States.

I need scarcely repeat, that they are composed of one of the justices of the Supreme Court and the judge of the district in which they are held. They do not possess original jurisdiction in any case, unless the sum in controversy exceeds five hundred dollars. Above that amount they have unlimited original cognizance, concurrent with the courts of the several States, of all suits of a civil nature, at common law or in equity, in which the United States are plaintiffs, or in which an alien is one party, and the citizen of a State the other; or in which the controversy is between a citizen of the State where the suit is brought, and a citizen of another State. If an alien be sued in a State court by any State or the citizen of a State, or if the citizen of another State be sued in a State court by a citizen of the State in which the suit is brought, the defendant in either case may remove the cause into the circuit court of the United States. The jurisdiction of the circuit court also extends to controversies between citizens of the same State, claiming lands under grants of different States; and causes of this nature may be removed by either party from the courts of the States into the circuit court. Besides this extended original jurisdiction, the circuit courts are courts of appeal, in which the judgments and decrees of the district courts may be reviewed, in all civil cases in which the sum in controversy exceeds fifty dollars. When we consider that the district courts "have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction," this single branch of their power must be the fruitful source of many appeals to the circuit courts.

The judgments or decrees of the circuit courts are final and conclusive in all cases in which the amount in controversy does not exceed two thousand dollars, unless when the two judges who compose them are divided in opinion upon some point which may have arisen during the trial.

The circuit courts also possess exclusive original jurisdiction of all crimes of an aggravated nature committed against the United States; and they have concurrent jurisdiction with the district courts of all other offences. Their judgments in all criminal cases are conclusive, unless the judges are divided in opinion. If there has been such a division between them, either in a civil or criminal case, the point of disagreement may be certified to the next Supreme Court for a final decision.

Having thus given a hasty sketch of the history of the Judiciary of the United States, and of the jurisdiction of the circuit courts which this bill proposes to extend to the six new States of the Union, I shall now proceed to present the views of the Committee on the Judiciary in relation to this important subject. In doing this, I feel that, before I can expect the passage of the bill, I must satisfy the committee, first, that such a change or modification of the present judiciary system ought to be adopted, as will place the Western States on an equal footing with the other States of the Union; and, second, that the present bill contains the best provisions, which, under all the circumstances, can be devised for accomplishing this purpose.

And first, in regard to the States of Ohio, Kentucky, and Tennessee. It may be said that the existing law has already established circuit courts in these three States, and why then should they complain? In answer to this question, I ask gentlemen to look at a map of the United States, and examine the extent of this circuit. The distance which the judge is compelled to travel, by land, for the purpose of attending the different circuit courts, is, of itself, almost sufficient, in a few years, to destroy any common constitution. From Columbus, in Ohio, he proceeds to Frankfort, in Kentucky; from Frankfort to Nashville; and from Nashville, across the Cumberland mountain, to Knoxville. When we reflect that, in addition to his attendance of the courts in each of these States, twice in the year, he is obliged annually to attend the Supreme

Court in Washington, we must all admit that his labors are very severe.

This circuit is not only too extensive, but there is a great press of judicial business in each of the States of which it is composed. In addition to the ordinary sources of litigation for the circuit courts throughout the Union, particular causes have existed for its extraordinary accumulation in each of these States. It will be recollected that, under the constitution and laws of the United States, the circuit courts may try and cause between citizens of the same State, provided they claim under grants from different States. In Tennessee, grants under that State and the State of North Carolina, for the same land, often come into conflict in the circuit court. The interfering grants of Virginia and Kentucky are a fruitful source of business for the circuit court of Kentucky. These causes, from their very nature, are difficult and important, and must occupy much time and attention. Within the Virginia military district of Ohio, there are also many disputed land titles.

Another cause has contributed much to swell the business of the circuit court of Kentucky. The want of confidence of the citizens of other States in the judicial tribunals of that State, has greatly added to the number of suits in the circuit court. Many plaintiffs, who could, with greater expedition, have recovered their demands in the courts of the State, were compelled, by the impolitic acts of the State Legislature, to resort to the courts of the United States. Whilst these laws were enforced by the State courts, they were disregarded by those of the Union. In making these remarks, I am confident no representative from that patriotic State will mistake my meaning. I rejoice that the difficulties are now at an end, and that the people of Kentucky have discovered the ruinous policy of interposing the arm of the law to shield a debtor from the just demands of his creditor. That gallant and chivalrous people, who possess a finer soil and a finer climate than any other State of the Union, will now, I trust, improve and enjoy the bounties which nature has bestowed upon them with a lavish hand. As their experience has been severe, I trust their reformation will be complete. Still, however, many of the causes which originated in past years, are yet depending in the circuit court of that State.

In 1826, when a similar bill was before this House, we had the most authentic information that there were nine hundred and fifty causes then pending in the circuit court of Kentucky, one hundred and sixty in the circuit court for the western district, and about the same number in that for the eastern district of Tennessee, and upwards of two hundred in Ohio. Upon that occasion, a memorial was presented from the bar of Nashville, signed by G. W. Campbell as chairman, and Felix Grundy, at present a Senator of the United States, as secretary. These gentlemen are both well known to this House, and to the country. That memorial declares that "the seventh circuit, consisting of Kentucky, Ohio, and Tennessee, is too large for the duties of it to be devolved on one man; and it was absolutely impossible for the judge assigned to this circuit to fulfil the letter of the law designating his duties. Such has been the delay of justice in the State of Tennessee, 'that some of the important causes now pending in their circuit courts are older than the professional career of almost every man at the bar.'"

The number of causes depending in the seventh circuit, I am informed, has been somewhat reduced since 1826; but still the evil is great, and demands a remedy. If it were possible for one man to transact the judicial business of that circuit, I should have as much confidence that it would be accomplished by the justice of the Supreme Court to which it is assigned, as by any other judge in the Union. His ability and his perseverance are well known to the nation. The labor, however, both of body and mind, is too great for any individual.

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Has not the delay of justice in this circuit almost amounted to its denial? Are the States which compose it placed upon the same footing in this respect, with other States of the Union? Have they not a right to complain? Many evils follow in the train of tardy justice. It deranges the whole business of society. It tempts the dishonest and the needy to set up unjust and fraudulent defences against the payment of just debts, knowing that the day of trial is far distant. It thus ruins the honest creditor, by depriving him of the funds which he had a right to expect at or near the appointed time of payment; and it ultimately tends to destroy all confidence between man and man.

A greater curse can scarcely be inflicted upon the people of any State, than to have their land titles unsettled. What, then, must be the condition of Tennessee, where there are many disputed land titles, when we are informed, by undoubted authority, "that some of the important causes now pending in their circuit courts are older than the professional career of almost every man at the bar." Instead of being astonished at the complaints of the people of this circuit, I am astonished at their forbearance. A judiciary, able and willing to compel men to perform their contracts, and to decide their controversies, is one of the greatest political blessings which any people can enjoy; and it is one which the people of this country have a right to expect from their Government. The present bill proposes to accomplish this object, by creating a new circuit out of the States of Kentucky and Tennessee. This circuit will afford sufficient employment for one justice of the Supreme Court.

Without insisting further upon the propriety, nay, the necessity, of organizing the circuit courts of Ohio, Kentucky, and Tennessee, in such a manner as to enable them to transact the business of the people, I shall now proceed to consider the situation of the six new States, Louisiana, Indiana, Mississippi, Illinois, Alabama, and Missouri. Their grievances are of a different character. They do not so much complain of the delay of justice, as that Congress have so long refused to extend to them the circuit court system, as it exists in all the other States. As they successively came into the Union, they were each provided with a district court and a district judge, possessing circuit court powers. The acts which introduced them into our political family declare that they shall "be admitted into the Union on an equal footing with the original States, in all respects whatever." I do not mean to contend that by virtue of these acts we were bound immediately to extend to them the circuit court system. Such has not been the practice of Congress, in regard to other States in a similar situation. I contend, however, that these acts do impose an obligation upon us to place them "on an equal footing with the original States," in regard to the judiciary, as soon as their wants require it, and the circumstances of the country permit it to be done. That time has, in my opinion, arrived. Louisiana has now been nearly eighteen years a member of the Union, and is one of our most commercial States; and yet, until this day, she has been without a circuit court. It is more than thirteen years since Indiana was admitted; and even our youngest sister, Missouri, will soon have been nine years in the family. Why should not these six States be admitted to the same judicial privileges which all the others now enjoy? Even if there were no better reason, they have a right to demand it for the mere sake of uniformity. I admit this is an argument dictated by State pride; but is not that a noble feeling? Is it not a feeling which will ever characterize freemen? Have they not a right to say to us, if the circuit court system be good for you, it will be good for us? You have no right to exclusive privileges. If you are sovereign States, so are we. By the terms of our admission, we are perfectly your equals. We have long submitted to the want of this system, from deference to your judgment; but the day has now arrived when we demand it from you

as our right. But there are several other good reasons why the system ought to be extended to these States. And, in the first place, the justices of the Supreme Court are selected from the very highest order of the profession. There is scarcely a lawyer in the United States who would not be proud of an elevation to that bench. A man ambitious of honest fame ought not to desire a more exalted theatre for the display of ability and usefulness. Besides, the salary annexed to this office is sufficient to command the best talents of the country. I ask you, sir, is it not a serious grievance for those States to be deprived of the services of such a man in their courts? I ask you whether it is equal justice, that whilst, in eighteen States of this Union, no man can be deprived of his life, his liberty, or his property, by the judgment of a circuit court, without the concurrence of two judges, and one of them a justice of the Supreme Court, in the remaining six the fate of the citizen is determined by the decision of a single district judge? Who are, generally speaking, these district judges? In asking this question, I mean to treat them with no disrespect. They receive but small salaries, and their sphere of action is confined to their own particular districts. There is nothing either in the salary or in the station which would induce a distinguished lawyer, unless under peculiar circumstances, to accept the appointment. And yet the judgment of this individual, in six States of the Union, is final and conclusive, in all cases of law, of equity, and of admiralty and maritime jurisdiction, where in the amount of the controversy does not exceed two thousand dollars. Nay, the grievance is incomparably greater. His opinion in all criminal cases, no matter how aggravated may be their nature, is final and conclusive. A citizen of these States may be deprived of his life, or of his character, which ought to be dearer than life, by the sentence of a district judge; against which there is no redress, and from which there can be no appeal.

There is another point of view in which the inequality and injustice of the present system, in the new States, is very striking. In order to produce a final decision, both the judges of a circuit court must concur. If they be divided in opinion, the point of difference is certified to the Supreme Court, for their decision; and this, whether the amount in controversy be great or small. The same rule applies to criminal cases. In such a court, no man can be deprived of life, of liberty, or of property, by a criminal prosecution, without the clear opinion of the two judges that his conviction is sanctioned by the laws of the land. If the question be doubtful and important, or if it be one of the first impression, the judges, even when they do not really differ, often agree to divide, *pro forma*; so that the point may be solemnly argued and decided in the Supreme Court. Thus, the citizen of every State in which a circuit court exists, has a shield of protection cast over him, of which he cannot be deprived, without the deliberate opinion of two judges; whilst the district judge of the six new Western States must alone finally decide every criminal question, and every civil controversy in which the amount in dispute does not exceed two thousand dollars.

In the eastern district of Louisiana, the causes of admiralty and maritime jurisdiction decided by the district court must be numerous and important. If a circuit court were established for that State, a party who considered himself aggrieved might appeal to it from the district court in every case in which the amount in controversy exceeded fifty dollars. At present there is no appeal, unless the value of the controversy exceeds two thousand dollars; and then it must be made directly to the Supreme Court, a tribunal so far remote from the city of New Orleans, as to deter suitors from availing themselves of this privilege.

I shall not further exhaust the patience of the committee on this branch of the subject. I flatter myself that I have demonstrated the necessity for such an alteration of

the existing laws, as will confer upon the people of Ohio, Kentucky, and Tennessee, and of the six new Western States, the same benefits from the judiciary, as those which the people of the other States now enjoy.

The great question, then, which remains for discussion is, does the present bill present the best plan for accomplishing this purpose, which, under all circumstances, can be devised? It is incumbent upon me to sustain the affirmative of this proposition. There have been but two plans proposed to the Committee on the Judiciary, and but two can be proposed, with the least hope of success. The one an extension of the present system, which the bill now before the committee contemplates, and the other a resort to the system which was adopted in the days of the elder Adams, of detaching the justices of the Supreme Court from the performance of circuit duties, and appointing circuit judges to take their places. After much reflection upon this subject, I do not think that the two systems can be compared, without producing a conviction in favor of that which has long been established. The system of detaching the judges of the Supreme Court from the circuits has been already tried, and it has already met the decided hostility of the people of this country. No act passed during the stormy and turbulent administration of the elder Adams, which excited more general indignation among the people. The courts which it established were then, and have been ever since, branded with the name of the "midnight judiciary." I am far from being one of those who believe the people to be infallible. They are often deceived by the arts of demagogues: but this deception endures only for a season. They are always honest, and possess much sagacity. If, therefore, they get wrong, it is almost certain they will speedily return to correct opinions. They have long since done justice to other acts of that administration, which at the time they condemned; but the feeling against the judiciary established under it remains the same. Indeed, many now condemn that system, who were formerly its advocates. In 1826, when a bill, similar in its provisions to the bill now before the committee, was under discussion in this House, a motion was made by a gentleman from Virginia [Mr. MANCINI] to recommit it to the Committee on the Judiciary, with an instruction so to amend it, as to discharge the judges of the Supreme Court from attendance on the circuit courts, and to provide a uniform system for the administration of justice in the inferior courts of the United States. Although this motion was sustained with zeal and eloquence and ability by the mover, and by several other gentlemen, yet, when it came to the vote, it was placed in a lean minority, and, I believe, was negatived without a division. It is morally certain that such a bill could not now be carried. It would therefore have been vain and idle in the Committee on the Judiciary to have reported such a bill. If the Western States should be doomed to wait for a redress of their grievances, until public opinion shall change upon this subject, it will, probably, be a long time before they will obtain relief.

But, sir, there are most powerful reasons for believing that public opinion upon this subject is correct. What would be the natural consequences of detaching the judges of the Supreme Court from circuit duties? It would bring them and their families from the circuits in which they now reside; and this city would become their permanent residence. They would naturally come here; because here, and no where else, would they then have official business to transact. What would be the probable effect of such a change of residence? The tendency of every thing within the ten miles square is towards the Executive of the Union. He is here the centre of attraction. No matter what political revolutions may take place, no matter who may be up or who may be down, the proposition is equally true. Human nature is not changed under a republican Government. We find that

citizens of a republic are worshippers of power, as well as the subjects of a monarchy. Would you think it wise to bring the justices of the Supreme Court from their residence in the States, where they breathe the pure air of the country, and assemble them here within the very vortex of Executive influence? Instead of being independent judges, scattered over the surface of the Union, their feelings identified with the States of which they are citizens, is there no danger, that, in the lapse of time, you would convert them into minions of the Executive? I am far, very far, from supposing that any man, who either is or who will be a justice of the Supreme Court, could be actually corrupted; but if you place them in a situation where they or their relatives would naturally become candidates for Executive patronage, you place them, in some degree, under the control of Executive influence. If there should now exist any just cause for the complaints against the Supreme Court, that in their decisions they are partial to federal rather than to State authority, (and I do not say that there is,) that which at present may be but an imaginary fear might soon become a substantial reality. I would place them beyond the reach of temptation. I would suffer them to remain, as they are at present, citizens of their respective States, visiting this city annually to discharge their high duties, as members of the Supreme Court. This single view of the subject, if there were no other, ought in my judgment to be conclusive.

Let us now suppose, for the sake of the argument, that the withdrawal of the justices of the Supreme Court from their circuit duties, and their residence in this city, would produce no such effects, as I apprehend, upon the judges themselves; what would be the probable effect upon public opinion? It has been said, and wisely said, that the first object of every judicial tribunal ought to be to do justice; the second, to satisfy the people that justice has been done. It is of the utmost importance in this country that the judges of the Supreme Court should possess the confidence of the public. This they now do in an eminent degree. How have they acquired it? By travelling over their circuits, and personally showing themselves to the people of the country, in the able and honest discharge of their high duties, and by their extensive intercourse with the members of the profession on the circuits in each State, who after all are the best judges of judicial merit, and whose opinions upon this subject have a powerful influence upon the community. Elevated above the storms of faction and of party which have sometimes lowered over us, like the sun, they have pursued their steady course, unswayed by threats, unseduced by flattery. They have thus acquired that public confidence, which never fails to follow the performance of great and good actions, when brought home to the personal observation of the people.

Would they continue to enjoy this extensive public confidence, should they no longer be seen by the people of the States, in the discharge of their high and important duties, but be confined, in the exercise of them, to the gloomy and vaulted apartment which they now occupy in this capital? Would they not be considered as a distant and dangerous tribunal? Would the people, when excited by strong feeling, patiently submit to have the most solemn acts of their State Legislatures swept from the statute book, by the decision of judges whom they never saw, and whom they had been taught to consider with jealousy and suspicion? At present, even in those States where their decisions have been most violently opposed, the highest respect has been felt for the judges by whom they were pronounced; because the people have had an opportunity of personally knowing that they were both great and good men. Look at the illustrious individual who is now the Chief Justice of the United States. His decisions upon constitutional questions have ever been hostile to the opinions of a vast majority of the people of his own State; and yet with what respect and veneration

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has he been viewed by Virginia? Is there a Virginian, whose heart does not beat with honest pride when the just fame of the Chief Justice is the subject of conversation? They consider him, as he truly is, one of the greatest and best men which this country has ever produced. Think ye that such would have been the case, had he been confined to the city of Washington, and never known to the people, except in pronouncing judgments in this capitol, annulling their State laws, and calculated to humble their State pride? Whilst I continue to be a member of this House, I shall never incur the odium of giving a vote for any change in the judiciary system, the effect of which would, in my opinion, diminish the respect in which the Supreme Court is now held by the people of this country.

The judges whom you would appoint to perform the circuit duties, if able and honest men, would soon take the place which the judges of the Supreme Court now occupy in the affections of the people; and the reversal of their judgments, when they happened to be in accordance with strong public feeling, would naturally increase the mass of discontent against the Supreme Court.

There are other reasons, equally powerful, against the withdrawal of the judges from the circuits. What effect would such a measure probably produce upon the ability of the judges themselves to perform their duties? Would it not be very unfortunate?

No judges upon earth ever had such various and important duties to perform, as the justices of the Supreme Court. In England, whence we have derived our laws, they have distinct courts of equity, courts of common law, courts of admiralty, and courts in which the civil law is administered. In each of these courts, they have distinct judges; and perfection in any of these branches is certain to be rewarded by the honors of that country. The judges of our Supreme Court, both on their circuits and in bank, are called upon to adjudicate on all these codes. But this is not all. Our Union consists of twenty-four sovereign States, in all of which there are different laws and peculiar customs. The common and equity law have thus been changed and infected into a hundred different shapes, and adapted to the various wants and opinions of the different members of our confederacy. The judicial act of 1789 declares "that the laws of the several States, except where the constitution, treaties, or statutes of the United States shall otherwise require or provide," shall be regarded as rules of decision in the courts of the United States. The justices of the Supreme Court ought, therefore, to be acquainted with the ever-varying codes of the different States.

There is still another branch of their jurisdiction, of a grand and imposing character, which places them far above the celebrated Amphiprotic council. The Constitution of the United States has made them the arbiters between conflicting sovereigns. They decide whether the sovereign power of the States has been exercised in conformity with the constitution and laws of the United States; and, if this has not been done, they declare the laws of the State Legislatures to be void. Their decisions thus control the exercise of sovereign power. No tribunal ever existed, possessing the same, or even similar authority. Now, sir, suppose you bring these judges to Washington, and employ them in bank but six weeks or two months in the year, is it not certain that they will gradually become less and less fit to decide upon these different codes, and that they will at length nearly lose all recollection of the peculiar local laws of the different States? Every judicial duty which each of them would then be required to perform, would be to prepare and deliver a few opinions annually in bank.

The judgment, like every other faculty of the mind, requires exercise to preserve its vigor. That judge who decides the most causes, is likely to decide them the best. He who is in the daily habit of applying general principles

to the decision of cases, as they arise upon the circuits, is at the same time qualifying himself in the best manner for the duties of his station on the bench of the Supreme Court.

Is it probable that the long literary leisure of the judges in this city, during ten months of the year, would be devoted to searching the two hundred volumes of jarring decisions of State courts, or in studying the acts of twenty-four State Legislatures? The man must have a singular taste and a firm resolution, who, in his closet, could travel over this barren waste. And even if he should, what would be the consequence? The truth is, such knowledge cannot be obtained; and after it has been acquired, it cannot be preserved, except by constant practice. There are subjects which, when the memory has once grasped it, retains for ever. It has no such attachment for acts of Assembly, acts of Congress, and reports of adjudged cases, fixing their construction. This species of knowledge, under the present system, will always be possessed by the judges of the Supreme Court; because, in the performance of their circuit duties, they are placed in a situation in which it is daily expounded to them, and in which they are daily compelled to decide questions arising upon it. Change this system, make them exclusively judges of an appellate court, and you render it highly probable that their knowledge of the general principles of the laws of their country will become more and more faint, and that they will finally almost lose the recollection of the peculiar local systems of the different States. "Practice makes perfect," is a maxim applicable to every pursuit in life. It applies with peculiar force to that of a judge. I think I might appeal for the truth of this position to the long experience of the distinguished gentleman from New York, now by my side, [Mr. SPENCER.] A man, by study, may become a profound lawyer in theory, but nothing except practice can make him an able judge. I call upon every member of the profession in this House to say whether he does not feel himself to be a better lawyer at the end of a long term, than at the beginning. It is the circuit employment, imposed upon the judges of England and the United States, which has rendered them what they are. In my opinion, both the usefulness and the character of the Supreme Court depend much upon its continuance.

I now approach what I know will be urged as the greatest objection to the passage of this bill—that it will extend the number of the judges of the Supreme Court to nine. If the necessities of the country required that their number should be increased to ten, I would feel no objection to such a measure. The time has not yet arrived, however, when, in my opinion, such a necessity exists. Gentlemen, in considering this subject, ought to take those extended views which belong to statesmen. When we reflect upon the vast extent of our country, and the various systems of law under which the people of the different States are governed, I cannot conceive that nine or even ten judges are too great a number to compose our appellate tribunal. That number would afford a judicial representation upon the bench of each large portion of the Union. Not, sir, a representation of sectional feelings or of the party excitements of the day, but of that peculiar species of legal knowledge necessary to adjudicate wisely upon the laws of the different States. For example, I ask what judge now upon the bench possesses, or can possess, a practical knowledge of the laws of Louisiana? Their system is so peculiar, that it is almost impossible for a man to decide correctly upon all cases arising under it, who has never been practically acquainted with the practice of their courts. Increase the number of judges to nine, and you will then have them scattered throughout all the various portions of the Union. The streams of legal knowledge peculiar to the different States will then flow to the bench of the Supreme Court

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as to a great reservoir, from whence they will be distributed throughout the Union. There will then always be sufficient local information upon the bench, if I may use the expression, to detect all the ingenious fallacies of the bar, and to enable them to decide correctly upon local questions. I admit, if the judges were confined to appellate duties alone, nine or ten would probably be too great a number. Then there might be danger that some of them would become mere non-entities, contenting themselves simply with voting *aye* or *no* in the majority or minority. There would then also be danger that the Executive might select inefficient men for this high station, who were his personal favorites, expecting their incapacity to be shielded from public observation by the splendid talents of some of the other judges upon the bench. Under the present system we have no such danger to apprehend. Each judge must now feel his own personal responsibility. He is obliged to preside in the courts throughout his circuit, and to bring home the law and the justice of his country to his fellow-citizens in each of the districts of which it is composed. Much is expected from a judge placed in his exalted station; and he must attain to the high standard of public opinion by which he is judged, or incur the reproach of holding an office to which he is not entitled. No man in any station in this country can place himself above public opinion.

Upon the subject of judicial appointments, public opinion has always been correct. No factious demagogue, no man, merely because he has sung hosannas to the powers that be, can arrive at the bench of the Supreme Court. The Executive himself will always be constrained by the force of public sentiment, whilst the present system continues, to select judges for that court from the ablest and best men of the circuit; and such has been the course which he has hitherto almost invariably pursued. Were he to pursue any other, he would inevitably incur popular odium. Under the existing system, there can be no danger in increasing the number of the judges to nine. But take them from their circuits, destroy their feeling of personal responsibility by removing them from the independent courts over which they now preside, and make them merely an appellate tribunal, and I admit there would be danger, not only of improper appointments, but that a portion of them, in the lapse of time, might become incompetent to discharge the duties of their station.

But, sir, have we no examples of appellate courts consisting of a greater number than either nine or ten judges, which have been approved by experience? The Senate of the State of New York has always been their court of appeals; and, notwithstanding they changed their constitution a few years ago, so much were the people attached to this court, that it remains unchanged. In England, the twelve judges, in fact, compose the court of appeals. Whenever the House of Lords sits in a judicial character, they are summoned to attend, and their opinions are decisive of almost every question. I do not pretend to speak accurately, but I doubt whether the House of Lords have decided two cases, in opposition to the opinion of the judges, for the last fifty years. In England, there is also the court of exchequer chamber, consisting of the twelve judges, and sometimes of the lord chancellor also, into which such causes may be adjourned from the three superior courts, as the judges find to be difficult of decision, before any judgment is given upon them in the court in which they originated. The court of exchequer chamber is also a court of appeals, in the strictest sense of the word, in many cases which I shall not take time to enumerate.

I cannot avoid believing that the prejudice which exists in the minds of some gentlemen, against increasing the number of the judges of the Supreme Court to nine, arises from the circumstance that the appellate courts of the different States generally consist of a fewer number.

But is there not a striking difference between the cases? It does not follow that because four or five may be a sufficient number in a single State where one uniform system of laws prevails, nine or ten would be too many on the bench of the Supreme Court, which administers the laws of twenty-four States, and decides questions arising under all the codes in use in the civilized world. Indeed, if four or five judges be not too many for the court of appeals in a State, it is a strong argument that nine or ten are not too great a number for the court of appeals of the Union. Upon the whole, I ask, would it be wise in this committee, disregarding the voice of experience, to destroy a system which has worked well in practice for forty years, and resort to a dangerous and unfried experiment, merely from a vague apprehension that nine judges will destroy the usefulness and character of that court, which has been raised by seven to its present exalted elevation?

It will, no doubt, be objected to this bill, as it has been upon a former occasion, that the present system cannot be permanent, and that, ere long, the judges of the Supreme Courts must, from necessity, be withdrawn from their circuits. To this objection there is a conclusive answer. We know that the system is now sufficient for the wants of the country, and let posterity provide for themselves. Let us not establish courts which are unnecessary in the present day, because we believe that hereafter they may be required to do the business of the country.

But, if it were necessary, I believe it might be demonstrated that ten justices of the Supreme Court will be sufficient to do all the judicial business of the country, which is required of them under the present system, until the youngest member of this House shall be sleeping with his fathers. Six judges have done all the business of the States east of the Alleghany mountains, from the adoption of the federal constitution up till this day; and still their duties are not laborious. If it should be deemed proper by Congress, these fifteen Eastern States might be arranged into five circuits instead of six, upon the occurrence of the next vacancy in any of them, without the least inconvenience either to the judges or to the people; and thus it would be rendered unnecessary to increase the bench of the Supreme Court beyond nine, even after the admission of Michigan and Arkansas into the Union. The business of the federal courts, except in a few States, will probably increase but little for a long time to come. One branch of it must, before many years, be entirely lopped away. I allude to the controversies between citizens of the same State claiming lands under grants from different States. This will greatly diminish their business both in Tennessee and Kentucky. Besides, the State tribunals will generally be preferred by aliens and by citizens of other States for the mere recovery of debts, on account of their superior expedition.

I should here close my remarks, if it were not necessary to direct the attention of the committee for a few minutes to the details of the bill. And here permit me to express my regret that my friend from Kentucky [Mr. WICKLIFFE] has thought proper to propose an amendment to add three, instead of two, judges to the Supreme Court. Had a majority of the Committee on the Judiciary believed ten judges, instead of nine, to be necessary, I should have yielded my opinion, as I did upon a former occasion, and given the bill my support in the House. This I should have done, to prevent division among its friends, believing it to be a mere question of time: for ten will become necessary in a few years, unless the number of the Eastern circuits should be reduced to five.

[Here Mr. WICKLIFFE asked if it were in order to refer to his amendment, as it was not yet before the committee.]

Mr. BUCHANAN said, he would not further refer to it at present. The bill proposes to create one new circuit out of Mississippi, the eastern district of Louisiana, and

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the southern district of Alabama. Nature has united these three districts. They cannot be separated without violence. There is a communication by water, between Natchez, New Orleans, and Mobile, the places at which the circuit courts will be held for the whole distance, which is always safe and expeditious. No other arrangement could have been made, unless Alabama had been connected with Tennessee; and that would have been extremely inconvenient. I have a certificate from the Post Office Department in my possession, stating the distance from Nashville to Mobile to be four hundred and thirty-nine miles. The road is not good, the streams are not bridged, and it passes through a new country, and part of the way through an Indian nation. In order to attend the circuit court at Mobile, the judge would be compelled to travel over this road, from a healthy into a sickly climate, twice in each year, a total distance of one thousand seven hundred and fifty-six miles; and this, when he could reach Mobile, either from Natchez or New Orleans, by water, in two or three days.

The circuit court cannot be removed from Mobile, and placed nearer to Nashville. It is there that admiralty and maritime causes arise and must be decided in the district court, from which an appeal is allowed to the circuit court. It is at that commercial point the citizens of Alabama chiefly come into contact in their commercial transactions with the citizens of other States and with foreigners; and there the chief civil business of the circuit court must arise. But, above all, it is there, near the verge of the Gulf of Mexico, where offences against the United States committed upon the high seas must be tried and punished.

Kentucky and Tennessee, under this bill, compose the other new circuit; and however reluctant these States may be to go together, I do not perceive how they can be separated, without imposing more labor upon some one of the Western judges than he ought to be called upon to perform.

In regard to the other Western circuit, consisting of Ohio, Indiana, Illinois, and Missouri, I admit that it will embrace a large extent of territory. I am sorry for it, but it cannot be avoided. We ought, however, to consider that, if the judge shall be compelled to travel much, a great part of it will be by water. He will have but little business to transact in any of the States of which it is composed, except Ohio. It is probable, too, that ere long public convenience will suggest the removal of the circuit courts of Ohio, Indiana, and Illinois from the seats of government of those States to the Ohio river; and I am at a loss to conceive any good reason why the circuit court of Missouri should not be held at St. Louis.

After all, I regret that necessity has compelled the Committee on the Judiciary to report a bill, which, if it should pass, will impose so much travel on the judge of the seventh circuit. No man would be more disposed to relieve that distinguished individual from unnecessary labor than myself. I feel confident he will never complain. The man who, by the exertion of great ability, incessant labor, and untiring perseverance, brought the Post Office Department from chaos into order, will never shrink from the performance of any duty required of him by his country.

Another remark, and I have done. This bill does not provide a circuit court for the western district of Louisiana, and the northern district of Alabama. In this respect, these districts are placed upon the same footing with the northern district of New York, the western district of Pennsylvania, and the western district of Virginia. I possess no actual information concerning the amount of business in the northern district of Alabama; but from its position it cannot be great. I have the best information that there is but little business in the western district of Louisiana. At all events, neither Louisiana nor Alabama will complain, when they are placed upon the same footing with New York, Pennsylvania, and Virginia.

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FRIDAY, JANUARY 15, 1830.

The House was this day chiefly occupied in the consideration of private bills.  
Adjourned to Monday.

MONDAY, JANUARY 18, 1830.

## DISTRIBUTION OF PUBLIC LANDS.

The House resumed the consideration of the resolution moved by Mr. HUNT on the 17th of December ultimo: when

Mr. HUNT modified his said resolution, so as to read as follows:

*Resolved*, That a select committee be appointed to inquire into the expediency of appropriating the net annual proceeds of the sales of the public lands among the several States and Territories for the purposes of education and internal improvements, in proportion to the representation of each in the House of Representatives; and that the said committee have leave to report by bill or otherwise.

The question recurred on the motion made by Mr. MARTIN, on the 17th December ultimo, to amend the said resolution, by inserting after the word "Territories," these words, "the amount and value of public lands given by Congress to any State, or to public and private institutions in any State."

Mr. SPEIGHT said that, when this subject was first brought to the consideration of the House, he had not intended to have participated in the debate; but in consequence of the amendment which had been offered by the gentleman from South Carolina, and the disposition which gentlemen had manifested to meet the resolution at the threshold, he felt it his duty to submit a few remarks explanatory of the vote he should give. It might [said Mr. S.] at the first glance appear highly improper to arrest the progress of a proposition so simple in its character—one which simply proposed inquiry—but he contended it was the proper time for those opposed to the resolution to come forward, and show to the House the impropriety of the measure; but if, on the contrary, it should be deemed expedient, and finally should be adopted, it would go to the committee clothed with all the information a discussion could throw on it. Mr. S. said, there was still a stronger reason why he wished to express his sentiments in regard to the resolution. He said he had seen that the Legislature of the State from which he came had been engaged in discussing the same proposition which we have now before us; and whilst he had heard, with deep regret, that they had had the subject before them, he was more than gratified to see that they had consigned it to its mother dust, where (not envying its repose) he hoped it would sleep through a long eternity. He hoped that he should not be understood as speaking in the slightest degree disrespectful of that distinguished body, or that he denied the right of instruction. By no means; far be it from him. He had ever believed, and still believed, that Congress should reserve to themselves the control of their funds; and that in all works of improvement in which the aid of the Government is to be given, they should be the sole judges. Sir, [said Mr. S.] permit me for a moment to call the attention of the House to the purport of this resolution. It proposes to raise a select committee, to inquire into the expediency of dividing among the States, according to the ratio of representation in this House, a certain portion of its surplus funds, for education and internal improvements; and that these improvements be effected by the funds of the General Government, to be placed under the control of the State Legislatures; that we, the Representatives of the people, constituting what may be said to be a part of the Federal Government, have not judgment and discretion, yes, sir, nor honesty enough, to apply these funds. That we shall



not be the judges of the legitimate scope to which we are privileged by the constitution to go; but that we will transfer our funds to the States, and that they may go without limit. This, sir, is the language, in substance, which this resolution is made to speak. Mr. S. said, the construction of the constitution might be classed into three divisions. There was one class which, following the express letter of the constitution, was necessarily precluded from exercising any other power than what was expressly delegated. On the other hand, there was another, which was for doing every thing not expressly prohibited. But, for my own part, whilst I would gladly avoid being considered one of those who concede no power by implication or construction, I would carefully avoid being of that number who construe the constitution to answer their own ends. I prefer a third class, who are for giving to the constitution a liberal interpretation; concede to it incidental powers which necessarily belong to those expressly delegated, and without which the constitution is a perfect dead letter. This Government, he conceived, was one of delegated powers; its limits were marked out. But, within these limits, its sphere of action was sovereign. It was clothed with a power to pass all laws which might be deemed necessary to carry its powers into effect. And [said Mr. S.] a power to carry on a well digested and judicious policy of internal improvement was as necessary to the efficiency of the Government as any other power. A system which had for its object the opening of water or land communications between the several States, for military or commercial purposes, should, at all times, when he had a voice, have his support. But, [said Mr. S.] I am in favor of the right of Congress to judge of the constitutionality of the improvement. He would not trust the States to judge for him, for no gentleman would contend that all works of internal improvement, carried on by the State, come within the constitutional powers of Congress. But, [said Mr. S.] after you have given the States this money, what assurance have you, on their part, that they will apply it as specified in your resolution? What control have you over the money after it is out of your possession? None, sir. Your money, which you have given to the States for education and internal improvement, may, when out of your control, be squandered upon objects not worthy the patronage of a State, much more a General Government. But [said Mr. S.] there is a still stronger objection to this policy. Can any gentleman be so blind as not to see the odious effect which this policy may have on the State Legislatures? Adopt this measure, and you make a majority of the State Legislatures subservient to the will of Congress. Any measure which the General Government might propose, would be responded to by the States, to court their favor and patronage. Sir, the true policy, in my opinion, for this country to pursue, is to keep the General and State Governments (I mean their influence) separate and independent. Again, sir, what a spectacle will this present to the world—a General Government set up in the capacity of a tax collector, not competent of its own judgment to carry on internal improvements, but which will furnish the States with money, and become their guardians! Sir, I confess my objections to the measure are not so much on constitutional grounds as on expediency, and I will proceed, in as few words as possible, to explain them. I contend that the public lands are pledged to pay the public debt, and that the general welfare of this country requires that this debt should be paid as speedily as possible.

After the war of the Revolution, and when the present Government went into operation, the United States had, for supplies and expenses incidental to the war, contracted a debt nearly to the amount of eighty millions of dollars, partly foreign and partly domestic. To reduce this credit, a plan was submitted to the then Secretary of the Treasury, which was adopted. And a part of the policy

pursued by the administration was to create new loans, to extinguish the foreign, and to reduce the interest of the domestic debt. And to enable the United States to borrow this money, it absolutely became necessary to give a pledge or surety for the forthcoming of the same; and this led to the passage of the act of Congress of the 4th August, 1789, by which the sales of the public lands were pledged to reduce the public debt.

Suppose there had been no cession of the public lands, what, he asked, must have been the consequence? Direct taxation. For, without the public lands, the United States had no means whereby to redeem their loans. They could not have borrowed money to have redeemed the credit of the country, because they had no surety to pledge for the forthcoming of the funds. The constitution which they had adopted gives them no power to levy and collect imposts, further than to meet the contingent expenses of the Government. And [said Mr. S.] this is the precise light in which the States viewed the whole matter. They saw that, without a cession of their territory, direct taxation would follow, and they stepped forth in liberal and patriotic terms, and ceded their territory; and his bosom swelled with emotions indescribable, while recounting over the history of the cessions. It was the fact, that his native State stood foremost in the rank of liberality. Yes, sir; and what has she received? Nothing; and, I will add, nothing will she receive, unless she can obtain it on just and equitable terms; while some of those States which are clamorous for a division of the public land funds have contributed nothing. North Carolina, which has borne the burden and heat of the day, has remained silent. She needs the funds, but she wants them on honorable terms or none. North Carolina is in favor of internal improvements by the General Government, but she wants the funds judiciously applied. She has, for the last ten years, had the mortification to see her funds misapplied by unskillful managers, her funds frittered away, by embracing too many objects at once, for the money on hand. And just so will be the effect of this. By division, North Carolina will get about sixty thousand dollars; and this divided on all the objects to which the attention of the State is directed, will end a miserable shortness, like all the rest of her enterprises. Sir, the policy which this Government ought to pursue is, in few words, this: Improve your inlets and harbors, make military roads; but when you do it, keep the control of your funds. What, he asked, was the use of the United States keeping a corps of military and topographic engineers, if they do not intend to carry on internal improvements? and, if you intend to carry on internal improvements, why give the States your money? How are you to wait when your money is gone? Sir, you have no right to touch this public land fund, until the public debt is paid. To show that I am not mistaken in the position which I have advanced, I beg leave to refer the House to the message of President Washington, in 1790.

MESSAGE OF 1790. \*

"Allow me, moreover, to hope that it will be a favorite policy with you, not merely to secure a payment of the interest of the debt funded, but, as far and as fast as the growing resources of the country will permit, to exonerate it of the principal itself. The appropriations you have made of the western lands explain your dispositions on this subject; and I am persuaded that the sooner that valuable fund can be made to contribute, along with other means, to the actual reduction of the public debt, the more salutary will be the measure to every public interest, as well as the more satisfactory to our constituents."

Again, sir, his message in 1791, which speaks in language more emphatic:

MESSAGE OF 1791.

"A provision for the sale of the vacant lands of the

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United States is particularly urged, among other reasons, by the important considerations that they are pledged as a fund for reimbursing the public debt; that, if timely and judiciously applied, they may save the necessity of burdening our citizens with new taxes for the extinguishment of the principal; and that, being free to discharge the principal, but in a limited proportion, no opportunity ought to be lost for availing the public of its right."

What, sir, I ask, would have been the situation of this country, if we had pursued the policy of the father of his country? Instead now of owing a debt of near fifty millions of dollars, we should have paid it years ago, and have saved the country near one hundred and fifty millions of dollars interest, which we have actually paid on the public debt since the year 1790.

But [said Mr. S.] it has been urged why this division should take place, that the sinking fund will, in a very few years, entirely reduce the public debt, and that therefore this resolution should pass. He should like to be informed what constituted the sinking fund. If he had understood the history of the sinking fund correctly, he thought the money derived from the sales of the public lands formed a part. Mr. S. said, Congress in their wisdom had devised a plan, whereby the public debt should be paid off in a few years. They had enacted (he spoke at present from report, for he had never read the law) that the sum of ten millions of dollars should annually be applied to the payment of the public debt, out of the sales of the public lands, and the duty on imports. And that, after the contingent expenses of Government had been paid, the balance (reserving two millions of dollars for contingencies) to be also applied. This, [said Mr. S.] in a few words, was what constituted the sinking fund. Now, [said Mr. S.] take away the proceeds of the public lands, and adopt the American system, to its full extent, as admitted by the gentleman from Rhode Island the other day, and where is your sinking fund? The gentleman has told us, in his remarks the other day, that the wish of the friends of the American system is to furnish the country with all the necessities of life, and stop importation. I will give his own words:

"He would briefly glance at another objection. It was said that this was a branch of the tariff policy, and that it would be supported as such by all tariff men. He would say in three words what the advocates of the American system require. That system proposes to supply the country with all the great staples from our own sources. The importation of those staples constitutes at present the great source of our public revenue. The friends of the American system know that, when that importation shall cease, the revenue from that source must be discontinued. He begged of the gentleman from Alabama to understand, that, when these importations shall cease, there will be no longer any revenue from foreign goods to our Government. If, then, the importation shall terminate, and with it the revenue, the friends of that system must wish to keep up a revenue from the sales of the public lands. If, therefore, the gentleman could imagine that any friend of the American system would support the resolution on the ground he had stated, it was more than he [Mr. B.] could imagine. If the gentleman supposed that he [Mr. B.] and the friends who voted with him were gifted with greater obliquity of intellect, or greater want of intelligence, than any other human beings, it was too much to accuse us of possessing both those disqualifications together."

Mr. S. said, he was not mistaken in his view of the wishes of the manufacturing States. This was just what he expected they had arrived at, and he would in a very few words call the attention of the House to what he conceived would be the effect of such an oppressive policy. It would operate precisely on the Southern States, as cords and bandages would, if applied to the human sys-

tem. It would retard the circulation, and suddenly all the vital energies would become extinct.

What, sir, I ask all reflecting gentlemen to say, must be the inevitable result? Take the public lands away from the sinking fund—have a tariff sufficient to prohibit exportation, and I say, what, sir, is to be the result? Why, direct taxation! And, next to that, follows ruin to the Southern States; our slaves, our land, &c. will be taken and sold to pay the tax. Importation being stopped, it necessarily prohibits exportation, and our staple being cotton, just as much as is wanted for consumption, by the manufacturing States, will be bought at their own price, and the balance will sink with us. Sir, I was not prepared to hear such language uttered on this floor. I have always had my doubts as to the sincerity of the policy; now they are confirmed. I had hoped at this session we should so modify the American system as to unite all parties; but, sir, I must confess, all hopes now are lost. The gentleman from Rhode Island has gravely told us that he supposes the Union is to be divided next summer, and then we shall divide.

Sir, in the section of country from which I have the honor to come, I have heard no such intimation. Respectable meetings have been held in the Southern States, in which they have set forth their grievances, and urged a speedy redress. Justice, sir, is what the South wants; and justice she will have. And the gentleman from Rhode Island will pardon me for telling him, that should disunion of this empire take place, oppression and injustice will be the cause. And, sir, it is lamentable, if, after a bloody struggle with Old England to resist a three-penny tax per pound on tea, in which lives, property, and treasure were sacrificed, we must now burst asunder the political bands of this confederacy to resist an unconstitutional impost on the South, to support the pride and arrogance of New England. Sir, I pray God, none of these evils may befall us. I feel sorry that this subject has been unnecessarily lugged into this debate. But, sir, when I hear doctrines advanced on this floor, which sap the independence and liberty of the people, I feel bound to resist it. Yes, sir, regardless of consequences, I will do it. Mr. S. said he feared there was something contained in the body of the resolution, which was not expressed on the face of it. I hope, sir, it is not the result of any determination to further the cause of the tariff.

In regard to the amendment of the gentleman from South Carolina, although he saw no very good effect it would have, yet he could not agree that its intention or effect was such as had been attributed to it by the gentlemen who had participated in the debate. He did not consider the amendment as intended to raise an account current between the old and the new States, and that the effect would be to require the new States to pay back, but on the contrary to ascertain, as near as possible, the amount they had received, and, should a division now take place, withhold from them a proportion which they might have received heretofore. Much [he said] had been said in regard to donations from the General Government to the States, for fortifications, &c. which, by the bye, he considered as foreign altogether from the subject under consideration. He would ask the gentleman from Rhode Island, if what was given to one member of the Union in a national point of view, was not so much given to the whole. That which contributes to the defence of his State, is properly the defence of the whole country. This was the correct view, he conceived, to be taken of the subject. Now, in regard to the donations of public land made to the new States, it was wholly different. They had received a large amount of this fund from the General Government, for the very purposes contemplated by this resolution; and the amendment of the gentleman from South Carolina is intended to require an account to be taken of what they had received—not to compel them to pay back,

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but, as he had before stated, in the division now proposed to hold back in proportion to what they have received. He considered the donations heretofore made, just what the General Government was by the terms of the cession bound to do. It was, if not expressly implied in all the cessions, that new States were to be formed out of the territory ceded to the General Government. We held out inducements to our people to remove to the new lands, and "we would do them good," and for one he did not feel disposed to press them. They are bone of our bone, flesh of our flesh. They are our children. They have, in times of peril and danger, stood between us and the tomahawk and scalping knife, for which we owe them a debt of gratitude. They have protected us. And what we have done for them is but a small compensation for the hardships and toils they have endured for us. I hope, sir, we shall not now require them to pay us back what we have given them. Mr. S. said, if the division was to take place of what remains, he for one was willing for the new States to come in, and, regardless of what they have received, let them have their equal share. For these reasons, he hoped neither the resolution nor the amendment would be agreed to. He had heard no gentleman in the debate intimate that the division should take place until the public debt be paid. Then, and not until then, will be the proper time to talk about the division, for, until the debt should be paid, we in fact had no surplus funds. The President had manifested a desire to pay off the debt, and redeem the credit of the country; and he sincerely hoped that Congress would adopt no measure in relation to the pecuniary affairs of the country, that would thwart his views. The people of the country were responding to the views of the Chief Magistrate, and it afforded abundant proof that their sentiments were that the country should be out of debt. This country [said Mr. S.] (a majority) is composed of economical men, and they look upon it in the same light as they would with regard to individuals. They know it is the interest of the nation as well as individuals, to be out of debt. When, sir, the time shall have arrived (and he hoped it would speedily come) that the public debt shall be discharged, and he should have a voice in the councils of the nation, if the policy of the country require it, and the people should wish it, let a division of the surplus revenue take place. But, for one, he doubted the policy. It was the honest conviction of his mind, and ever had been, that this Government has authority to carry on works of internal improvement in a national point of view in the States, but that they should be the sole judges of the propriety of the work, and direct all appropriations for objects of that kind.

Mr. WICKLIFFE moved that the resolution be committed to a Committee of the Whole House on the state of the Union.

And pending the question on this motion, The previous question was called for by Mr. INGERSOLL, and was demanded by a majority of the members present.

The said previous question was then put, and decided by yeas and nays, as follows: yeas, 127—nays, 59.

So the House decided that the main question be now put.

The main question was then stated, that the House do agree to the resolution as herein before recited; when

Mr. HAMMONS called for a division of the question on the said resolution, the division to take place between the words "Territories" and the word "for."

The SPEAKER decided that the resolution was susceptible of this division.

From this decision of the Speaker, Mr. BARRINGER appealed to the House; and, after some brief debate on the question—"Is the decision of the Speaker correct?"

It passed in the affirmative.

The question was then put, Will the House agree to the

first member of the said resolution, in the following words, viz.

"Resolved, That a select committee be appointed to inquire into the expediency of appropriating the nett annual proceeds of the sales of the public lands among the several States and Territories."

And it was decided as follows: yeas, 113—nays, 70.

So the House agreed to this clause of the resolution.

A further division on the second member of the said resolution was then called for by Mr. BUCHANAN, so as that the question be taken separately on so much of the said resolution as is contained in these words, "for the purposes of education and internal improvement."

A further division of the question on the said second member of the said resolution was then called for by Mr. TAYLOR.

And then the House adjourned.

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The House resumed the consideration of the resolution moved by Mr. HUNT on the 17th December ultimo.

The question recurred on agreeing to that member or portion thereof, which is contained in the following words: "for the purposes of education;" and decided as follows: yeas, 98—nays, 84.

So this part of the resolution was agreed to.

The question was then put, Will the House agree to that member or portion of the said resolution which is contained in the following words: "and internal improvement?" and decided as follows: yeas, 92—nays, 94.

The question was then put, Will the House agree to that member or portion of said resolution which is contained in the following words: "in proportion to the representation of each in the House of Representatives, with leave to report by bill or otherwise?" and decided as follows: yeas, 117—nays, 75.

So the first, second, and fourth members of the said resolution were agreed to by the House, and the third member thereof was rejected.

The resolution agreed to by the House is as follows:

"Resolved, That a select committee be appointed to inquire into the expediency of appropriating the nett proceeds of the sales of the public lands among the several States and Territories for the purpose of education, in proportion to the representation of each in the House of Representatives; with leave to report by bill or otherwise."

#### THE JUDICIARY.

Mr. BUCHANAN moved that the House now go into Committee of the Whole, with the view of resuming the consideration of the Judiciary bill; but waived his motion at the request of

Mr. SPENCER, of New York, who desired to introduce in the House an amendment to the bill, that it might be ordered to be printed. The House gave leave for the reception of the amendment, which was ordered to be printed; and then

The House resolved itself into a Committee of the Whole on the state of the Union, Mr. CAMERON in the chair, and took up the Judiciary bill; the question being on the amendment thereto offered some days ago by Mr. STROBE, of New York.

Mr. STRONG rose, and proceeded to address the committee in support of his amendment. He had spoken about an hour, when the usual time of adjournment having arrived, he gave way for a motion to that effect.

WEDNESDAY, JANUARY 20, 1830.

#### CONDITION OF THE INDIANS.

The following resolution submitted to the House on the 15th instant by Mr. THOMPSON, of Georgia, and laid upon the table for one day, was taken up.

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"Resolved, That the Secretary of War be directed to lay before the House a statement of the number, with the moral and political condition of any Indians located within the jurisdictional limits of the States of Maine, Massachusetts, Connecticut, New York, Rhode Island, and Pennsylvania, respectively: such statement to be accompanied by as critical a showing as can be furnished by the department, of the forms of government to which they have been heretofore and are now subjected, with the names of the respective tribes, which tribe or tribes (if any) have been, or are now, permitted to exercise the right of self-government, independent of the State or States in which they are located; and (if any) which tribe or tribes is, or are now, or have been subjected, in any degree, by the Government of the State or States in which they are located, to the municipal jurisdiction of such State or States; and the extent to which they may have been, or are now, so subjected."

Mr. STORRS, of New YORK, offered the following amendment:

Insert after the word "Indians," as follows: "residing on lands which they claim to hold or possess, under their native or original title; and."

Mr. STORRS said, that the bearing of the resolution of the gentleman from Georgia [Mr. THOMPSON] was too plain to be misunderstood. The House could not fail to see, without any particular explanation, to what subject the information called for was expected to apply, and in what way it might possibly be used. It was therefore quite proper that the resolution should be so amended, as to bring from the War Department that kind of information, if any exists there, which may have some real application to any subject with which it may be hereafter supposed to have any connexion. There are many Indians [said Mr. S.] residing among the white population, cultivating their farms like others, distinct from any of their original tribes, and virtually incorporated into the body politic of the State of New York, and there were some tribes, too, in the State, who held their lands directly under the grant and authority of the State; there were others which had voluntarily surrendered their lands, and now held their possessions under compacts with the State. He thought it would be found, too, that the present relation of some of them to the State had been amicably settled long before the revolutionary war. He supposed that no one could desire to consult the Secretary of the War Department as to the political condition of any Indians of those classes. The House was quite as competent as that officer to form a correct opinion of their civil condition and their political relation to the State. If the War Department can furnish or procure for us any information as to those Indians who hold their lands under their native title, I shall certainly [said Mr. S.] throw no obstacle in the way of his researches. But I shall still think that we already have in our power quite as full and authentic historical materials as the War Department can find or furnish, to guide us to a safe conclusion on that subject. He hoped, therefore, that the gentleman from Georgia would think with him, that the adoption of the amendment would bring to the House a kind of information (if it should bring any at all) which would bear somewhat more directly on any question likely to come before the House, than the original resolution could furnish.

Mr. THOMPSON said that the gentleman from New York appeared to have widely mistaken the object of his [Mr. T.'s] resolution. He had seemed to suppose that it referred to New York alone; whereas, it not only specifically included several other States within its scope, but was manifestly intended to comprehend the whole question. Not [he observed] to refer simply to particular communities in New York, but to ascertain what had been the exercise of the rights of sovereignty within the various States, in reference to that important matter. If, for in-

stance, the Secretary of War should, in reply to that resolution, inform the House that lands had been wrested from the Indians by violence, or obtained by duplicity, would not such a fact have an important bearing upon the discussion of a subject of such magnitude and importance, as the one then under discussion? The State of Georgia had been complained of on account of alleged cruelties to the Indians within her jurisdiction; and he wished to know whether any gentleman on that floor would say that Georgia should be subject to a rule to which others would not and ought not to submit. He might suppose a case, for example, of Indians having been sold for debt, and such a fact might be developed by the answer to this resolution. Was the gentleman from New York [Mr. STORRS] apprehensive of the information which it might be the means of eliciting? It was his [Mr. T.'s] sole wish to obtain such information as would lead them to some practical conclusion upon the subject, in order that they might be enabled to render even-handed justice. Although the gentleman from New York might be right in the position he had assumed, yet Mr. T. said that he could not be wrong in the view he had taken of the subject. If it should be the fact that Indian lands had not been improperly obtained, such would be apparent; and, on the contrary, if such were found to be the case, it would be made equally evident by the response of the Secretary to that resolution.

Mr. HOFFMAN, of New York, hoped the amendment would not be adopted. He would not hear the remarks of his colleague, and knew not the ground of his motion, but supposed the rule of law applied to those Indians who reside on lands the title of which had been extinguished, as well as to those on lands whose title was not extinguished. He, for one, believed that the sovereignty of the States over the Indians was not affected by either condition, and he hoped the resolution might be adopted in its fullest extent, and complete information be obtained relative to the moral and political condition of the Indians in all the States.

Mr. BELL, of Tennessee, expressed himself opposed to the resolution, as not, in his opinion, conducive to any valuable end. Many of the inquiries contained in it were of a merely speculative nature, on which difference of opinion might naturally exist between persons actuated by the same motives, and looking forward to the same object. The sources whence those opinions emanated were accessible to all; and why then should the Secretary of War be called upon to express an opinion which every member could best form for himself? Besides, the introduction of this resolution went to precipitate a discussion upon a subject which it was confessed by all was of the first importance, and upon which it was necessary, considering its extreme delicacy, and the consequences which might result from the decision upon it, that every member of the House should be prepared to enter into by a previous investigation of its merits. It would be brought forward, he would take it upon himself to say, before the House as speedily as possible by the Committee on Indian Affairs, at which period it could be with more propriety discussed. He, therefore, moved that the resolution be laid upon the table.

Mr. FOSTER called for the yeas and nays on the motion to lay the resolution on the table, but they were not granted by the House.

Mr. WAYNE preferred, should it meet the object of the gentleman from Tennessee that the resolution should be postponed to a day certain, instead of being laid on the table.

Mr. BELL said, he should be happy to accommodate the gentleman from Georgia, but it would not meet his object so well, as his wish was to put an end at once to what he deemed a premature and useless discussion.

The question was then put on laying the resolution on the table, and carried—101 to 62.

## THE JUDICIARY.

The House then again went into Committee of the Whole on the state of the Union, Mr. CAMBERLEN in the chair, and took up the bill to alter and extend the Judiciary system.

Mr. STRONG rose, and concluded his argument in support of his amendment.

[The remarks of Mr. STRONG were to the following effect:]

Mr. STRONG said, that, on most occasions, he was content to give a silent vote; but, on the present subject, so important in its character and consequences, and holding the opinions he did in regard to it, he hoped a departure from his accustomed rule would not be deemed improper.

The amendment which I have submitted, [said Mr. S.] the committee will recollect, proposes to transfer all the powers and duties of the circuit courts to the several district courts of the United States, and to require the justices of the Supreme Court, being thus relieved from their circuit duties, to hold annually two or more terms of that court. To avoid embarrassment in discussing the principle upon which the plan depends, I have purposely omitted some necessary provisions. These, however, should the plan be adopted, may be readily supplied, either here, or by sending the subject back to the Committee on the Judiciary. This amendment opens the whole field of debate. It does more. Contrasted with the bill, it presents plainly the two great alternatives, either to go on increasing the number of the justices of the Supreme Court, for the performance solely of mere incidental and subordinate duties, or to require, in another form, and of others, the performance of those duties. It seems clear to me that the federal judiciary must be organized upon the one or the other of these cardinal principles.

I suppose it will not be denied that the benefits of the federal judiciary ought to be extended equally to all the States, and to all the people. Any plan which falls short of this will be partial and unjust, because it will give to some, and deny to others, privileges which are common to all, and which all have an equal right to possess.

Nor do I think it will be denied, as a general rule, that the number of judges should be fixed with a sole view to the performance of those duties which cannot be performed by others, and the court so organized as to secure independence, soundness, and efficiency in its members. Any deviation from this rule ought to be sustained by clear and conclusive reasons.

The existing inequality in the distribution and character of the federal courts among the several States, may be remedied, either by adding to the number of justices on the bench of the Supreme Court, or by separating them from their circuit court duties. Now, sir, if the remedy be by addition, the first idea that forces itself upon the mind is, that we must add to the number until we get up to twenty-four, thus making the number of the justices of the Supreme Court equal to the whole number of States in the Union. Any less number will approach towards equality, but can hardly attain it. But if the remedy be by separation, perfect equality may be produced by the institution of independent circuit courts and judges, or by adopting the plan which I have proposed; that is, by transferring the jurisdiction, powers, and duties of the circuit courts to the existing district courts.

As several of the Western States do not enjoy the benefit of circuit courts, which are common to the others, I shall take it for granted, without inquiring into the wants or desires of these new States, that this inequality ought to be remedied; because, when each State, in this respect, can be put upon a footing of perfect equality with every other, without any additional expense, without appointing

any more judges, and without trying any new experiment, it is difficult to conceive any good reason why it should not be done.

Should the opinion prevail, that separate, independent circuit courts ought not to be adopted, it will seem to follow that we must take the plan proposed by the bill, with the certainty that the number of the justices of the Supreme Court will be increased beyond what convenience and efficiency require in performing their original and appellate duties; and with the further certainty that the desired equality will not be attained, or that we must take the plan proposed by the amendment, with the certainty that it will be simple, cheap, uniform, and efficient in its operation, and with the further certainty that it will produce exact equality in the order and administration of justice throughout the Union.

The alleged incompetency of some of the district court judges is no argument against the plan. Were the fact so, the fault would not be in the system. But there is no evidence of the fact. And the fair inference is, that they are able men, competent judges, and worthy of the high stations they occupy. And why should they not be? Their jurisdiction embraces more matters, and covers a larger field of property and of human life, than that of the circuit courts.

The honorable chairman, [Mr. BUCHANAN] after having described, in fresh colors, the deprivations and wants of Indiana, Illinois, Missouri, Alabama, Mississippi, and Louisiana, contended that the circuit court system ought to be extended to those new States, in order that they might be put upon an equal footing with the older States of the Union. I have admitted that the benefits of the federal judiciary ought to be distributed equally among the twenty-four States. But, sir, does the bill do this? It clearly does not. It makes no provision for having one of the justices of the Supreme Court hold a circuit court in the northern districts of New York and of Alabama, or in the western districts of Pennsylvania, Virginia, and Louisiana. These are left with district courts only; and this is certainly the more remarkable, as two of these districts are in the States for whose benefit and relief we are urged to pass the present bill. Without stopping, therefore, to inquire into the practical operation of the plan which the honorable gentleman proposes, it is apparent, on the face of it, that it does not do equal justice.

But we are again earnestly entreated by the honorable gentleman [Mr. B.] to pass this bill, because the decisions of the district courts, in the districts to which the circuit court system has not been extended, are, in certain cases, final and conclusive upon the property and life of the citizen. If there be any thing hard or unmerciful in this, the remedy is easy, and should be applied without delay. We should at once give an appeal in those cases, directly to the Supreme Court of the United States. This would obviate the evil, and is one answer to the argument. The bill, however, is exceedingly objectionable for another reason; it is partial and unequal. It withholds the circuit court system from five large districts, and thus leaves the property and lives of the citizens in these districts at the mercy of district court judges—thereby entailing upon a large portion of our fellow-citizens the very evils which the gentleman so eloquently deprecated. No such objection exists against the plan I have proposed. It removes all these evils; it presents an equal and uniform system; it carries this equality and uniformity into every part of the Union.

If I did not misapprehend the honorable gentleman, he seemed to take it for granted that the bill involved no new principle, that it merely extended the present circuit court system, which he told us had been sanctioned by long experience. Sir, plans may appear the same on paper, and yet widely differ in principle and practical results. Had he proposed to increase the number of the justices of the

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Supreme Court to one hundred, instead of nine, and to create a new circuit for each, would not the committee have instantly perceived that the plan, though the same to the eye, was founded upon a new principle, and for the attainment of purposes different from those which the framers of the present circuit court system designed? It appears to me that the bill contains a new principle. I may be wrong. And should the committee think I am wrong, still I hope they will bear with me, while I state some of the reasons which have led me to the conclusion, that, by passing the bill, we shall not only depart from the old, but shall adopt a new system, highly dangerous in its character and consequences.

The duties of the justices of the Supreme Court are of two distinct kinds. One kind consists of those duties which grow out of the original and appellate jurisdiction of the court, and which they must, and they only can, perform. These, therefore, are their principal duties. The other kind consists of those duties which Congress has, from time to time, imposed upon them, by requiring them to hold circuit courts. These duties are performed by them, not as justices of the Supreme Court, but as judges, of an anomalous character. These duties can and may be performed by others. They are, in fact, now performed by some one or other of the district court judges. It seems, therefore, too plain to be controverted, that these duties are merely and wholly incidental and subordinate to their principal duties.

Now, sir, the honorable gentleman having relieved me from the trouble of proving that the justices of the Supreme Court are sufficiently numerous, by distinctly admitting that seven, the present number, are enough, and that nine would be too many for the convenient and efficient performance of their original and appellate duties, does it not follow that this new court, of nine, is to be created for the purpose avowedly of performing those duties which, we have seen, are merely and wholly incidental and subordinate, and which may be performed by others? The present court is admitted to be large enough for the business of the bench. Wherefore increase the number of the justices? If you do increase the number, do you not depart from the old, and adopt a new system, resting upon a new principle? What is this but changing the principle into the incident—thereby making the secondary duties of the old court the main object and excuse for creating the new court? Ought we not to pause before we adopt a plan which, while it fails to produce the desired equality among the States, may prove fatal to the soundness and efficiency of the court itself? And if we increase the number beyond what is wanted on the bench, where shall we stop? what is the limit? The honorable chairman admitted that soon another must be added to the number; but contended that ten would answer the exigencies of the country for some hundred years to come. Sir, if we add two now, for the purpose of doing circuit duties, and for that purpose only, what shall we say when, at short intervals of time, two more, and two more, and so on, (until the court comes to consist of twenty or thirty justices,) are demanded at our hands for the like purpose? Shall we say that the duties of the bench require no addition? But if this objection be of no avail now, when we have not passed the safe boundary, of what avail will it be then, when we have passed that boundary? Again, sir, the number of circuits must always depend more upon the extent of territory to be traversed, than upon the quantity of business to be done. Look over the vast territories of the United States! When these come to be divided and admitted into the Union, must they not be provided for? What assurance have we that the States, if we sanction the principle of this bill, will not successively claim the right of having a justice of the Supreme Court? Think you that such claims would or could be rejected? If, then, we pass this bill, and incur these dangers, what

security remains for the independence, or soundness, or safety of the Supreme Court.

But, in order to weaken the force of these objections, the honorable gentleman insisted, with much apparent zeal, that there ought to be a judicial representation upon the bench of the Supreme Court! A representative court! And for what purpose? Is it to be of State courts, of State rights, or of State laws? Then ought not each State to have her own separate representative on the bench? Sir, to me this doctrine is alarming. I have hitherto heard it suggested; but this is the first time I remember to have heard it seriously urged. Is it not fallacious, and full of mischief? What is it? Is it not this—that a judge, having acquired at a circuit court all the knowledge he can of the local law, first decides what the law of the particular State is, and then represents his own decision to his brethren on the bench as the law of the State? Will any great good be likely to result from this sort of judicial representation? I think not. But I ask the committee, whether, in a court organized upon these principles, there may not necessarily be another sort of representation? Will not such a court too often and too faithfully represent the prejudices, and passions, and partisan spirit of the day?

I agree with the honorable chairman, that we ought not to resort to independent circuit courts and judges, if a better plan can be devised. Still, I think the circuit court system less objectionable than the plan proposed by the bill; and the plan I have submitted less objectionable than either, because it is simple, cheaper, more efficient, and more uniform. But I cannot agree with him, that the prejudices of the people against the old system of 1801 still exist. Sir, I know nothing of the men, or the motives, or the measures of that day, except from history. I am no advocate of that system; it will not do for the present day; it lived but a year, and I will not open its grave, nor disturb its ashes. By recurring, however, to the history of that stormy period, the committee, I think, will find that that system was abolished, not because it proved to be intrinsically or practically wrong, but because the people thought such a number of judges unnecessary and burdensome. So in the present case. Is not the honorable gentleman in danger of falling into the same difficulty? Is not his plan obnoxious to the same objections? Are nine justices of the Supreme Court necessary? They are not for the security of the constitutions, or laws, or liberty of the country. As their numbers are increased, their individual responsibility will be less felt, and their high powers will be exercised with less and less consideration and care. Nor are nine necessary for the prompt and discreet administration of justice. But all the purposes of justice will be readily and equally attained by adopting the plan which the amendment proposes. Should experience prove that intermediate courts are convenient and desirable, they may be easily formed of the district court judges, without at all disturbing the harmony or uniformity of the system. There are now twenty-seven district judges, and thirty-two or three districts. Courts may be organized, composed of three of these judges. Take New York and New Jersey, for example. They are divided into three districts, and have three judges. It is so also with Pennsylvania and Delaware. In this way, nine courts may be organized, with appellate jurisdiction, or with the jurisdiction which the present circuit courts possess, with the merit of embracing all the States, and of producing entire equality among all, without the appointment of a single new judge.

Against the separation of the justices of the Supreme Court from the circuit courts, the honorable chairman strongly objected, because, in that event, the justices might become idle, rusty, and corrupt. These are not the terms he used; but if I did not mistake the design of his remarks, these were, in his judgment, the probable conse-

quences which might flow from withdrawing the justices from the circuits.

I freely admit that I feel great difficulty on this point. This difficulty, however, does not arise from a conviction of the soundness of the objections; for, on the contrary, I am convinced that they are unsound. But it arises from the strong prejudices, which, I am aware, are entertained by many against separating the two courts—from the fact, that we are quick to perceive present good, and slow to apprehend future evil; and from the known propensity men have, of being thought economical and prudent to-day, at whatever expense to-morrow; and of contenting themselves with partial remedies for growing and inveterate evils; which, being thus tolerated, sometimes end in the destruction of property and liberty and life.

The existing prejudices upon this subject cannot be the fruits of experience. This plan, in regard to the Supreme Court of the United States, has never been fairly tried. And the experience of State courts, in this respect, will be found to have little application to the case before us. I readily admit that the justices of the Supreme Court will derive some advantages from attending the circuits. But I cannot admit that those advantages, be they what they may, will countervail the evils of increasing the number of justices on the bench, or that they will be such as the honorable gentleman supposed. It is true, that riding the circuits will keep them from idleness. So will travelling for any other purpose. So the time thus employed, if applied in examining the laws of the country, will not only keep them from growing idle and rusty, but will make them abler lawyers and better judges.

The same advantages, moreover, will result from attending the different terms of the Supreme Court, if my amendment be adopted. But they are to learn the laws and practice of the States, by holding the circuit courts! How is this to be done? Is it by traversing the States in stage coaches or steamboats? Or is this knowledge to be acquired from the contradictions of lawyers during the trial of a cause? To what extent? Is the circuit judge to attain a profound knowledge of all the laws, customs, and practice of the States in which he holds, and while he is holding his court? This will not be pretended. It appears to me, therefore, that, to sustain this argument, it must be shown that the knowledge of the law or the practice thus acquired at the circuits, be it much or little, cannot be obtained in any other way, and that, without it, the Supreme Court cannot come to a just decision upon causes brought up from the circuit courts. The honorable gentleman, in support of his argument, referred to the Supreme Court of England, and seemed to conclude that, as the justices of that court were benefited by performing *nisi prius* duties, so ours would be alike benefited by performing circuit court duties. Sir, to judge of this matter rightly, we must attend to the facts in the two cases. What are they? The Supreme Court of England has no jurisdiction of equity or of admiralty causes. The Supreme Court of the United States has jurisdiction of matters at law and in equity, and of admiralty and maritime causes. In England, there is but one constitution of Government. In the United States, there are twenty-five distinct constitutions of Government. There, one code of statute law prevails. Here, there are twenty-five different codes of statute law. There, we find, with trifling exceptions, but one system of common law. Here, we find twenty-four systems of the common law, each varying from the other. There, the rules of practice and the law of evidence are the same in all her courts of *nisi prius*. Here, the rules of practice and the law of evidence are different in every circuit court in the Union. What next? Why, the justices of the Supreme Court of England, when in consultation, compare the knowledge which each has acquired, of the same constitution and laws and practice, and by which each has been always and every where

governed. But when the justices of our Supreme Court are in consultation, is it so with them? It is not—because the local constitutions and laws and practice are not the same in any two of their circuits. Now, according to the argument, the justice allotted to one circuit is supposed to rely upon his brother justice for information as to what the law, or the practice, in each particular case, is in another circuit. But, if each justice possesses a thorough knowledge of the whole law of the case, then such information will not be sought or required, and the decision of the case will be the judgment of the court. Whereas, if this sort of information be material and necessary, then the decision of the case is no longer the judgment of the court, but of a single member of the court.

But permit me to give another view of the matter. Take this new court of nine, as it is proposed to be organized. After it has been in operation a sufficient length of time, suppose the justices to be assembled in consultation. Nine causes, one from each circuit, are before them for examination and decision. The cause from the ninth circuit (of which Louisiana is a part) is taken up, and is to be decided according to the civil law of Louisiana. Now, if the whole nine have acquired a full knowledge of so much of the civil law as is applicable to the cause, then it cannot be necessary for one of the number to go into that circuit to acquire and impart to his brethren on the bench a knowledge of the law which they already possess. If, however, they do not possess this knowledge, but eight of them are obliged to rely upon the ninth for information respecting any portion of the law or the practice material to a correct decision of the cause, then it is plain that the judgment in the cause is that of a single judge, and not the judgment of an intelligent court. The same may be said respecting each circuit. And is this among the advantages contended for? Sir, it seems to me that the argument, which proves that the plan proposed by the bill may be a very good one for a State, is a strong argument to prove that it is a very bad one for the United States. And will not increasing the justices of the Supreme Court rather aggravate than lessen the mischief? I do not mean to intimate that the learned justices of that high tribunal do not understand fully the law applicable to every case that comes before them. Far be it from me to impute such wrong to them. But it is said, that, if they are detached from their circuit duties, they will not have the means of obtaining all the necessary books of law and practice, from which to acquire a competent knowledge of the laws of the several States. Then let Congress furnish a library at each place where a term of the court is to be held—for it cannot be more necessary for the United States to provide courts, than to provide able judges. And if the necessary knowledge be beyond the reach of individual means, the Government should furnish the means, that the laws may be executed, and justice be done.

The honorable chairman apprehended that the justices, if withdrawn from the circuits, would probably come to the city of Washington to reside, where they might possibly, in future time, become corrupt. Sir, if I thought the political influences of the day would act more strongly upon them, than upon other men here, I should agree with him. But is there danger that corruption will insinuate its way into the bosom of the court? If so, where is it most likely to effect its purpose? Is it here, when the eye of the nation is continually upon them, and where the concurrence of three or four, at least, is necessary to decide a cause; or at the circuits, where they may be taken in detail, one by one, and where, too, both the property and the life of the citizen may depend upon the decision of a single circuit judge?

I very much regretted one remark which fell from the honorable gentleman. I was sorry to hear him invoke, in advance, the public indignation upon the court, by charging

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racterizing it as fulminating its decrees from a dark and vaulted chamber, declaring State laws unconstitutional. Wherefore utter a doubt as to the exercise of powers which are clearly constitutional? Wherefore seem to impugn the members of a court justly distinguished, as well for their learning and integrity, as for their republican meekness and simplicity? And wherefore cast the dark shades of suspicion over this high tribunal? It is the only strong barrier between armed power and the unarmed citizen. It should be cautiously touched. Sir, much handling soils the whiteness of the ermine, as it dims the lustre of fine gold. And though it do not destroy, it deeply injures.

The honorable gentleman gives me to understand that he did not deny this high power to the court, of deciding upon the constitutionality of laws. I know, sir, he did not. But his language implied that the exercise of it was odious. It is of that I complain. What is doubted, soon comes to be denied. Is not this great power indispensable to our safety? And if so, ought it to be impaired? Suppose Congress should suspend the writ of *habeas corpus*, when there was no war, nor insurrection, nor rebellion—in a time of profound peace, and when every man would admit the suspension to be unconstitutional? An innocent citizen is arbitrarily seized and imprisoned; what redress has he? Will he come to Congress for it? Congress is his oppressor. Where then must he go? He must go to this same "dark and vaulted chamber." There is no other power that can open his prison doors and set him free. Again—suppose a State Legislature should revive the old law of *attainder*, or make bank bills, for example, a legal tender, instead of "gold or silver?" Where else than to this court can the citizen go, for the protection of his property and his blood? But if the war be carried further, as it might be, and a State Government should wantonly *attain* federal officers—and the Federal Government should arbitrarily imprison State officers, who could stay the strife, and redress the wrong, but the Supreme Court? It is the constitutional judge, and there is none else. The court may sometimes err. But what then? Shall we destroy all respect for it, by direct or implied charges of usurpation? Sir, it appears to me that the fear which leads some to think that the court may wantonly abuse or usurp power, rests upon no good foundation. The justices are liable to impeachment. If they wantonly abuse their high trust, they may be impeached, and turned out of office. This is a strong security. But there is still a stronger. Congress can at any time diminish, or wholly take away, their appellate jurisdiction; and thus leave them nearly powerless. Suppose, however, that we had not this security. Will adding to their number increase their responsibility, or diminish their power, or prevent error in judgment? Directly the contrary.

Should my amendment be adopted, the permanent residence of the justices of the Supreme Court at the city of Washington would not be a thing of course. There would be no necessity for it. But suppose they should come to this city to reside, could they not acquire as much valuable information from the lawyers, and judges, and other citizens, who resort to this place, from the several States, as they could obtain while on their circuits? Besides, if it requires any eye to watch over them, would they not be subjected here to the severe scrutiny of the President, the Senate, and the immediate representatives of the people? If, however, the residence of the justices at Washington be objectionable, it affords an additional reason for having two or three terms a year of the Supreme Court, instead of one. If one term of the court be held at the city of Washington, and one or two other terms be held at one or two of the following places, namely, Cincinnati, Philadelphia, or New York, some of the advantages would be obvious. It would remove the objection, if there be any thing in it, against the justices residing at

any one place. They would naturally reside at different places about the country, as they now do. It would prevent delay, and make justice more prompt, by the frequency of the terms. It would be a great accommodation to suitors, by the great saving of time and expense to them. It would carry the court home to the people, and among the people. Sir, I agree that judges, to be good judges, should be employed, and constantly employed. But it is the employment of the mind that makes the judge. It is the time spent in the study, in the acquisition of legal science, and not in stages, in traversing the country, that makes the profound jurist. I have not been able to ascertain the quantity of business the court now has to do. The honorable gentleman seemed to think it might all be done in six weeks or two months. This appears to me to be too low an estimate. But, whatever the fact may be, it is very easy to give the court enough to do. By simply extending the right of appeal, there would soon be enough for the court to do.

There is another evil, of no small magnitude, growing out of this circuit court system; and which the plan proposed by the bill will, in my judgment, go very far to perpetuate. The law requires the judge of the seventh circuit to reside within that circuit. The practice is, in filling a vacancy upon the bench of the Supreme Court, to make the selection within the particular circuit in which the vacancy happened. Pass this bill, and the law and the practice will soon come to be, that each justice must reside within the circuit allotted to him; and when he dies or resigns, some one must be selected within the same circuit, and not elsewhere, to supply his place. Does any one doubt that none but the ablest and fittest men and best jurists should be put upon the bench of the Supreme Court? And ought not the whole field to be left open for the selection of such men? Will not this system often prescribe the fittest men for that high trust? Does it not make the chances of getting the fittest men as one to the whole number of circuits? Thus its practical effect will be to limit the discretion, and control the constitutional power of the Executive. It may do more. Sir, suppose, hereafter, great questions should arise, deeply affecting the property and industry of the country. Suppose one of these questions should respect the constitutional powers of the Federal Government to protect this property and industry. Opposite opinions will be entertained by the people among the different circuits. Some of the circuits will be for the power—others against it. If need be, the circuits may be multiplied. Parties will arise. If one judge can be secured here, and another there, a majority of the court may be procured, who will deny or affirm the power, according to the prevalence of their local feelings. To this end may not partisan influence and power be exerted? And will not the court be moulded of bad materials, and for sinister purposes? And may not it become a great political regency? What, then, are the real benefits which this system of a political court will produce, compared with its real evils? Are they not as the gentle breeze to the fierce tempest that uproots the forest, and prostrates men and temples in its progress? There is no safety in this troubled sea. Why then urge this young, and healthful, and vigorous republic to plunge into the angry flood, and vainly buffet the surge? Is it that she may founder and perish upon the breakers?

Sir, if the people want what is simple, cheap, and uniform, the amendment which I have offered gives a simple, and cheap, and uniform system for the administration of justice throughout the Union. I have before referred to the five large districts which are not embraced by the bill. These are told to be content with their district courts. And yet, sir, the northern district of New York contains nearly one million of inhabitants; and I suppose the other four districts as many more. Thus it will be found that the five districts which are left without the benefits, real



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or imaginary, of circuit courts, contain as great a population as that portion of the six new States to which the bill extends the circuit court system. My amendment does no such injustice. It puts all upon the same footing.

The members of the Supreme Court should not be too few for the requisite efficiency and weight of character, nor too many for convenience and promptness in the despatch of business. Perhaps the court is now too large. In my opinion it is not. Five would inspire less confidence, and more than seven probably still less. I have always looked, and still look, to this court as the guardian of the oppressed, as the bulwark of freedom. I can do nothing which, in my judgment, will impair its independence or stability, its virtue or intelligence. When and in what country was the law triumphant, or liberty or life safe, where there was not an intelligent, sound, independent judiciary? The Old World furnishes but few examples. England furnishes some, both for evil and for good. Her star chamber court was the offspring of oppression, and soon degenerated into a regency of tyrants. The days of Jeffries exhibit, in strong colors, the bloodshed and ruin which flow from a dependant, servile court. Not so the days of Coke. Then the sword and sceptre were forced to yield to an intelligent, sound, independent judiciary, and the innocent and oppressed were protected. But there is an example nearer home. The old supreme court of New York existed at a time when party spirit ran high, was most embittered and unrelenting, dividing neighborhoods and families. It was composed of men equal to the perils of the hour. It interposed its shield between martial and municipal law, and rescued and saved the citizen. The angry passions of the time have subsided. The value of such a court, in a time like this, is readily appreciated; and the memory of the distinguished men composing it will be revered as long as the science of law or the principles of civil liberty shall have an advocate.

My conviction is thorough, that the justices of the Supreme Court ought to be withdrawn from the circuits. I see no other way to maintain the integrity of the court, which I deem not more essential to its safety than to its usefulness. Think of it as we may, still this high tribunal occupies the neutral ground between the twenty-five governments and the people. No matter whether the oppression or the wrong proceed from the federal or from a State government. Uncontrolled power is the enemy of liberty, and the people's tyrant. It is, therefore, between the governments and the governed, between the powers and duties of the people's agents, and the rights and privileges of the people themselves, that this court is the constitutional judge, and the sole judge. And he assumes a fearful responsibility who impairs this last and strongest citadel, to which man can flee for the protection of liberty or life.

Mr. FOLK next rose. He said that, in considering the bill now before the committee, and the amendment offered as a substitute for it by the gentleman from New York, who had just resumed his seat, he perfectly agreed both with the chairman of the Committee on the Judiciary and with the gentleman from New York, that, whatever the judicial system of the United States be, it should be uniform; that the inferior judicial tribunals, however organized, and with whatever jurisdiction and powers it was deemed wise to invest them, as well as the mode of administering justice, should be the same in every portion of the Union. If [said Mr. F.] "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States," and if the States are entitled to be governed (as far as this Government can legitimately extend its authority) by equal and uniform laws, operating alike upon every portion of the country, it is difficult to perceive upon what principle it is that the judicial system extended to one portion of the Union should be withheld from another. All the States are equal in

point of dignity and of rights. The principles of this bill I prefer to the amendment, though I am not entirely satisfied with either. The bill proposes no new system, but an extension of the old one, long enjoyed by the Atlantic States, to the Western country. I could have wished that its provisions had not only extended the system, but have made it the same in all the States. The West asks this; and is her request unreasonable? In the Atlantic States there is no complaint. There should be none in the new Western States. Your judiciary ought to expand itself with the growth and population of the country. The system which has been tested by the experience of fifty years in the Atlantic States, and which was adapted to our condition in our infancy, has not been enlarged so as to suit us in our manhood. We have outgrown the garment that then fitted us, and it is now too small. Six of the Western States are wholly without the benefit of the present circuit court system, (having only district courts,) and it has been but imperfectly extended to the seventh circuit, composed of Ohio, Kentucky, and Tennessee, as I shall presently endeavor to show.

In order to show more distinctly the inequality of the present system as regards the Western States, compared with those east of the Alleghany mountains, it may be well to look, for a moment, to the judicial history of the United States, and to ask of gentlemen here representing the East, why this inequality should have been permitted so long to remain, and what sensible reason there can be now to refuse the remedy.

When the judiciary act of September, 1789, was passed, there were but ten States in the Union: North Carolina, Rhode Island, and Vermont came into the Union subsequently to the passing of that act; and the system which it provided was extended to the former in June, 1790, and to the latter in March, 1791. At the date of that act, with only ten States in the Union, and with a population not exceeding one-third of the present population of the twenty-four States, it was deemed necessary to appoint as judges of the Supreme Court. The States were divided into three circuits, the Eastern, Middle, and Southern. North Carolina was attached to the Southern, and Rhode Island and Vermont to the Eastern circuits, as they respectively came into the Union. Two judges of the Supreme Court were required to preside in each circuit with three respective district judges, and constituted the circuit court, until the act of March, 1793, when one judge of the Supreme Court and the district judge composed the circuit court, who were required to alternate or interchange circuits with each other. It is not my purpose to detain the committee by a minute account of the judicial history, further than to show the inequality of the system as it operates in the different States. The chairman of the Judiciary Committee, in his opening argument, has relieved me from the necessity of doing so. Thus the system continued until the famous act of the 13th February, 1801, familiarly known to the country as the midnight system. By that act, the Supreme Court judges were relieved from circuit court duties, and were to constitute an appellate court alone. Many additional circuit judges were created and commissioned, two of whom, with the district judge, constituted a court termed a circuit court. This system is not precisely the same with that proposed by the gentleman from New York, but differs from it only in this, that the gentleman's amendment does not propose the appointment of circuit judges, but to invest the district judges with circuit court powers. At the first session of Congress after Mr. Jefferson came into office, the system of 1801 was repealed, and the new judges legislated out of office; and, at the same session, the former system was re-organized, with slight and immaterial alterations from that of 1793, not important here to mention, and the system which we now have was established. At the re-organization of the system in 1802, Kentucky and Tennes-

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see had been admitted into the Union. Ohio came in shortly afterwards. They were left with only district courts—being at that time unimportant districts, with a sparse and comparatively small population, with but little judicial business to transact, falling within the jurisdiction conferred upon the federal courts. In 1807, they had grown in numbers, in business, and importance, to such an extent, that a law was passed constituting them into a circuit, and appointing a seventh judge of the Supreme Court, who was allotted to that circuit; and who, with the respective district judges in those three States, constitute circuit courts. Louisiana was admitted into the Union in 1813, Indiana in 1816, Mississippi in 1817, Illinois in 1818, Alabama in 1819, Maine in 1820, and Missouri in 1821. The circuit court system was extended to Maine at the same session of Congress that she was admitted into the Union as a free and independent State. The other six States, although admitted into the Union upon an equal footing with the original States, have, to this hour, only district courts. No judge from that quarter of the Union has a place upon the bench of the Supreme Court. No judge of the Supreme Court ever aids the district judge in the trial of causes in that quarter of the Union. The constitution, the treaties, and laws of the United States, the constitution and laws of the States, which may be drawn in question in this court, affecting these junior members of the confederacy, in common with the older States, are now expounded by a court of the last resort, composed of six judges east of the Alleghany, and but one west of it, and that one having no connexion with these six States. They have no participation, direct or indirect, in this high tribunal, in protecting or defending the lives, the liberties, or the property of their citizens. Sir, the population of these six Western States is already great, and is rapidly increasing. It is already near two millions of inhabitants. More than twenty-two years have elapsed since the system was extended, imperfectly as it is, to the seventh circuit. Within that period the thick forests of the valley of the Mississippi have been filled by your enterprising and adventurous citizens; and the vast region, then an uninhabited waste; but recently reclaimed from its savage possessors, now swarms with a dense, a free, and a happy population of civilized freemen. The judicial business has increased to such an extent, that they feel the inconvenience of their exclusion from the benefits of the circuit court system, and they clamor for its extension. So great has the judicial business become, that you have already found it necessary, in two of these States, (Louisiana and Alabama,) to establish two district courts in each of them. And let me say, sir, that the district courts at New Orleans and Mobile—whether regarded from the quantity of business which they do, or from the great importance of the legal questions which it often becomes their duty to decide—are second in importance to but few courts in the Union. Are these new States, let me ask, always to remain in their present condition—as judicial provinces? If they are not, has not the time come to extend to them the benefits of the system which you enjoy east of the Alleghany ridge?

I come now to speak more particularly of the seventh circuit; of the inadequacy of the system as at present extended there, and of the utter inability, the physical as well as mental inability, of any one man to perform, as he should, the various duties that devolve upon him in that extensive circuit. In addition to the large territorial extent of that circuit, and the great distance of travel which the judge has annually to perform, in attending the courts at Columbus, at Frankfort, at Nashville, at Knoxville, and the Supreme Court in this city, and in addition to the cases within the jurisdiction of that court, common to all the States, there is a very large mass of litigation there, in regard to land titles, which is scarcely known in the Eastern States. The land litigation in that circuit, over which this court has concurrent jurisdiction with the State

courts, is more extensive, and the cases more numerous than in all the Eastern States together. Many of the lands in Tennessee were patented by the State of North Carolina more than forty years ago, when the territory belonged to that State, and when the lands were subject to the Indian possession; and many of the lands have been patented by Tennessee since she has been a member of the Union. It is a fact that cannot be controverted, and need not be concealed, that such is the intricacy and complexity of the land laws of North Carolina and Tennessee, constituting almost a volume of themselves, and certainly forming a distinct code different from any other I have ever seen, that but few men of the profession of law in that State, with years of study and constant practice in the courts, have ever acquired the reputation of being sound land lawyers. Such was the peculiar system of acquiring titles to lands, and such the looseness and uncertainty which prevailed in practice, both in North Carolina, and afterwards practised upon in Tennessee, that one of the greatest scourges that has ever visited the people of that State is the uncertainty of their land titles, and the vast amount of litigation that has grown out of this state of things. Much the greater portion of this description of litigation, I hope, indeed I know, has been disposed of; but, at the same time, much, I fear, yet remains to be settled. This description of litigation, added to the other business, over which the court has jurisdiction, is one great cause of the great delay of justice in the federal court at Nashville.

The chairman of the committee has already stated the fact, as represented by the bar of that place, to this House, several years ago, that such was the delay of justice in that court, that some of the causes on the docket were older than the professional career of almost every member of that bar, some of whom had been in practice a dozen and more years. In Kentucky and Ohio, but more especially in the former, much litigation of the same character has existed. Kentucky, when a part of Virginia, was, in great part, patented by that State; and many of the lands in some portions of Ohio were patented by Virginia and other States. The Representatives from both these States inform us, that the courts there have not the time nor the ability to dispose of the causes upon their respective dockets. If this be the fact, and it cannot be controverted, of what consequence is it, that, upon your statute books, you extend the circuit court system to those three States; but so overburden the judge that is allotted to that circuit, that he has neither the merits nor the physical ability to do the business? When those three States were constituted into a circuit in 1807, their population did not exceed half a million of souls. It amounts now to more than two millions. Then the litigation was comparatively small; now it is great.

I have thus attempted to present to the committee the true present condition of the nine Western and Southwestern States, in reference to the operation of the federal judiciary within their limits. That condition presents many evils and inconveniences that require a remedy. What that remedy should be, it will be proper that I should next consider.

And first, will this bill afford the remedy which the existing evils require? It will unquestionably in part, and but in part, remedy some of the existing inconveniences of the present organization of the courts; but I regard it as a misfortune that the Judiciary Committee who reported it had not gone further, and afforded a complete remedy. Three additional judges, instead of two, would have enabled us so to arrange the circuits as to extend equal justice to the West, and to afford a system that will require no alteration or extension in all time. This bill makes no provision for the western district of Louisiana, or the northern district of Alabama. The courts at Opelousas and at Huntsville are still to be left with only district courts. The four States of Ohio, Indiana, Illinois, and

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Missouri, are crowded into one circuit; Kentucky and Tennessee are united in one circuit; and the southern district of Alabama, Mississippi, and the eastern district of Louisiana are thrown in one circuit. Sir, the chairman of the Judiciary Committee has stated that Tennessee and Kentucky must be united in one circuit, however reluctant the Union may be. That, he says, is the only arrangement by which nine judges can be made to answer for the present. That gentleman, when this subject was last before Congress, in 1826, voted with a large majority of this House to separate Kentucky and Tennessee, and throw them into different circuits, because of the undue proportion of judicial business in those two States; that gentleman, at that time, voted for ten judges instead of nine. He then thought less than ten judges would not do. If it was then proper to separate Tennessee and Kentucky, what has since occurred to render it so peculiarly necessary to unite them now? If the state of the Western country was in such a condition then, that, in the opinion of the gentleman, ten judges were required to do the business, what has since occurred to change that opinion? Has not the Western country been advancing rather than receding in population, since that time? Has the judicial business decreased, or, rather, has not the gentleman himself labored to prove to us that it has increased since that time? At that time, I believe, it was admitted by all who advocated the extension of that system, that less than ten judges would not afford a remedy for the evils of which the West complained. The then chairman of the Judiciary Committee in this House, (now a Senator from Massachusetts,) in reporting the bill with ten judges, I well remember, stated that he rather assented to ten judges, than recommended their appointment at that time. He rather inclined to prefer nine to ten judges, but ultimately voted for ten. I see gentlemen around me, noting this. They will be pleased to note, too, the ground upon which that opinion was expressed by the then chairman of the Judiciary Committee. It was that, in his opinion, the three Northwestern States (Indiana, Illinois, and Missouri) "might well enough go on for some time longer, and form a circuit of themselves, perhaps, hereafter, as the population shall increase, and the state of affairs require it."

This was the only plan by which the then chairman of the committee thought it practicable to make two additional justices of the Supreme Court answer the demands—the just demands of the West. It was to leave Missouri, Indiana, and Illinois, with only district courts for the time being, and constitute them into a circuit at some future period. The bill in 1826, after a protracted discussion of many weeks, passed this House, adding three additional judges to the Supreme Court, making the whole number ten. The same bill passed the Senate with the same number of judges, but was amended in that body so as to change the two northwestern circuits in their arrangement. The bill, as it passed this House, placed Ohio and Kentucky in the seventh circuit, in which there was already a judge residing, and constituted Indiana, Illinois, and Missouri into a separate circuit. The Senate passed the bill without alteration in its material parts; but proposed to change those two circuits, so as to make Kentucky and Missouri the seventh circuit, and to constitute Ohio, Indiana, and Illinois into a circuit. The bill, as it passed both in the Senate and in the House, placed Tennessee and Alabama in one circuit, and Mississippi and Louisiana in another. In consequence of this immaterial difference of opinion between the two Houses in the arrangement of the two northwestern circuits, the bill unfortunately failed between the two Houses. Although the two Houses then agreed in opinion that it was proper to extend the system, and to add three additional judges to the bench of the Supreme Court, yet, in consequence of this unimportant difference of opinion about these two districts, the Western country remains to this hour without the enjoyment

of the system which that bill proposed to extend to her. Let, then, additional judges be appointed in the West, and let the circuits be properly arranged, and the system will last for all time. When Florida, Arkansas, and Michigan come into the Union, (and the period is not very distant when we may expect their accession to the Union,) they can be very naturally attached to the adjacent circuits, without much increasing the duties of the judges. To make the system entirely uniform, I would attach the northern district of New York, the western district of Pennsylvania, and the western district of Virginia, if the gentlemen from those quarters of the Union desire it, to the respective circuits already established east of the Alleghany, which they adjoin. Your system would then possess no anomalies, it would have symmetry in all its parts. If the amendment of the gentleman from New York should be rejected, and no other gentleman does, I will, myself, propose an amendment to make the system such as I have indicated. If the House shall decide to appoint only two additional judges, then justice will require that the eastern circuits should be enlarged, so as to give the services of one, at least, of the judges now east of the mountains to the West.

Gentlemen representing the East can best determine whether they can without inconvenience enlarge their circuits, so as to transfer to the West one of their judges. If this enlargement can be made, and the business of the East can be done with one judge less than they now have, then the location of the judges of the third circuit—his residence at Pittsburg, in western Pennsylvania, is favorable to this transfer to a western circuit. The third circuit is now composed of Pennsylvania and New Jersey; and the fourth circuit of Maryland and Delaware. If gentlemen are unwilling to give us their established judges, and retain their circuits in the East, as at present arranged, then I submit to them, whether the third and fourth circuits may not be consolidated into one, by attaching a part of the one or the other either to the New York or the Virginia circuits, so as not too much to increase the duties of the judges of these circuits. If this can be done, as to give four judges to the West, then the wants of the West will be supplied, and the Supreme Court will consist of nine judges. This is the only plan by which, I conceive, a less number than ten can be made to answer.

I come next to consider the amendment offered by the gentleman from New York, as a substitute for this bill. I have already said that the system, whatever it be, should be uniform. But that is not all that it should be. It should be equal and just in its operations upon all the States, and it should be efficient; and, for myself, I am free to declare that I would infinitely prefer an extension of the system long established, and sanctioned by experience in the older States, to the untried experiments proposed by this amendment. The plan proposed by the amendment, it is true, would possess uniformity; but, in my opinion, would wholly fail to remedy the evils complained of, and would create others much more dangerous in their tendency than those that already exist. But, before I call the attention of the committee to this amendment, permit me to say a word in reply to a portion of the argument of the gentleman from New York. That gentleman has pathetically informed us that he will not open the tomb of the system of 1801, and disturb its ashes that have been so long interred. The gentleman at the same time told us that that system was not put down because it was wrong, because it was not wise, or because it was not the best system, for [said he] the single year that it lived did not give time to test its advantages by a fair experiment; but it was repealed because of the unnecessary multiplication of the judges; and he intimated that the party fury of the times had much agency in effecting its destruction. Sir, I am as much averse as the gentleman can be, to revive, unnecessarily, unpleasant recollections of events that are past,

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but I cannot, after the avowal of the gentleman in reference to that system, and in support of his amendment, and especially when I consider that the amendment itself is the same in principle with it, refrain from saying a word or two in regard to it. I should not have felt myself at liberty to do so, but for the laudatory and unexpected strain in which he has been pleased to speak of it. What, sir, was the system of 1801? It was the midnight system of the elder Adams—ushered forth to the world in the last desperate paroxysm of a sinking party, who were premonished by the public voice that they were soon to retire from power; of a party who had lost the public confidence, but who, by means of the majority which they still retained in Congress, seized upon the judiciary as the last remaining fortress in which they hoped to save themselves and perpetuate their principles. The act of 1801 was passed, and, it is well remembered, lasted but a single year. It met with a decided reprobation of a majority of the people of the United States; and as it was the last desperate expedient of our administration, to entrench itself in the judiciary, and to secure in that co-ordinate branch of the Government a continuance and (as they hoped) a perpetuity of the principles of that administration, so its repeal was amongst the first acts of the succeeding administrations; and I think I am warranted in saying, that such is the well grounded and settled hostility of the people of this country, and such their prejudices (if gentlemen please to call their opinions by that name) against the system, that they cannot, they will not, and ought not, with composure, to remain silent, and see it resuscitated and revived. It was doubtless believed, when the act of 1801 was passed, that the judges, whose appointment it authorized, could not be constitutionally removed in any other mode than by impeachment; and that, holding their offices for life, they would be beyond the reach of the political party who were shortly to succeed those who enacted it. In this they were mistaken. After Mr. Jefferson came into power, the repeal of the system was resisted, upon constitutional grounds. It was, however, repealed, and, as I have already stated, in noticing the judicial history of the country, the judges were legislated out of office.

What, sir, let me inquire, is the amendment of the gentleman from New York, so far as the Supreme Court, as a mere Supreme Court, is concerned, but a re-enactment of the system of 1801? It proposes to withdraw the judges of the Supreme Court from their circuit duties, and to constitute them a permanent appellate court. So did the act of 1801. It provides that the circuit courts shall be abolished, and that the district courts shall possess the jurisdiction and powers of the present circuit courts. If the amendment offered had gone on to provide for the appointment of two additional judges in each circuit, to hold the courts with the respective district judges, it would have been precisely the system of 1801. This is the only difference. The amendment has only this to recommend it, which that system had not, that it does not increase the number of the inferior judges, and does not enlarge the patronage of the Executive.

When we contemplate the system proposed by the gentleman's amendment, in the most dispassionate manner, there are many and irresistible objections to it. Some of these have already been stated by the gentleman from Pennsylvania, in his general remarks in the opening of this debate. If the judges of the Supreme Court are confined exclusively to their appellate duties in bank, there is danger—indeed, it is almost certain, that they will cease to employ themselves, in the recess of the Supreme Court, in the dry, laborious, and uninteresting employment of reading the statutory codes of twenty-four States, and the judicial decisions of the State courts founded upon these codes, scattered through a hundred volumes, and all of which it is necessary they should understand. No man, with the most unremitted application and study, can be

so good a lawyer, no man can be so good a judge of the *lex loci*, or statute law of a State, who is confined to the trial of appeals and writs of error at Washington, as one who presides on the trial of the cause in the inferior court, where the law, and the decisions of the State in which it prevails, are familiar to the profession of that State, who elucidate and apply it in argument in the court below. The great advantage derived from the present circuit system is, that, by requiring each judge of the Supreme Court to preside with the district judge in the trial of causes in the inferior courts, you make him familiar with the statute or local law within his circuit. And when the Supreme Court assembles in bank to try appeals and writs of error, some one of the judges is always familiar with the law upon which the decision of the case may depend, and by this knowledge is enabled to abridge the labor of his associates, and afford them facilities in examining the case, and in arriving at a just conclusion. What judge permanently located at Washington, however vigorous his intellect, and however profound his knowledge of the fundamental principles of the law may be, but who never presided over the trial of an ejectment in Kentucky or Tennessee, if left to grope his way unaided by the argument of counsel from that quarter of the Union, can ever understand or properly expound the intricate local laws of these States? What judge can understand the *lex loci* of Louisiana, where the principles of the civil law obtain? In a word, what one man, wholly relieved from the trial of causes in the court below, can or will ever understand the separate and distinct codes of these twenty-four States? Even by the present circuit court system, in those States to which it has been extended, no single judge has an accurate knowledge of the statutory codes of all these States; but when assembled in the Supreme Court, they bring together an aggregate of legal information, which no one singly possesses, and which could not be possessed by any, if they were withdrawn from their circuits. If the judges of the Supreme Court are required to preside only in the Supreme Court, they will have nine or ten months of leisure in the year, which they can, and probably will, employ in more pleasing pursuits than in poring over musty volumes of statutes. It has been often justly remarked that constant employment on the bench, and being constantly thrown in collision with the profession, makes the best judge; or, as it has been aptly expressed, "the judge who tries the most causes is the best judge." The gentleman from New York thinks that there is not much in the argument, that the judges upon the circuit can acquire legal information that will be useful to the Supreme Court assembled in bank; and he puts a case. Suppose, says he, the court to consist of nine judges, and each to perform circuit duties. One of these judges presides on the trial of a cause at New Orleans, and there is a writ of error to the Supreme Court; one judge will understand the municipal law of Louisiana upon which the case depends; the remaining eight do not, but must investigate it for themselves. The case put by the gentleman illustrates and enforces the argument which I have stated. Suppose the ninth judge had not presided on the trial at New Orleans—then the whole court would have been without the necessary legal information. Did it not occur to the gentleman in the case stated by him, that it was better for one to possess the information, than that none should? Did it not occur to him that the judge who had the information might afford facilities to his associates, by pointing them to the authorities which would throw light upon the questions to be decided?

The gentleman from New York has urged that the judges of the Supreme Court should not be sent upon the circuits, because, he says, the circuit court duties are merely incidental, and not such as the judges of this high court should be required to perform. Whether the duties upon the circuits be incidental or principal, I shall not under-

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take to decide; but whether they be the one or the other, they are just such as the judges of this court have been required to perform ever since the organization of the judiciary in 1789, until this time, with the single exception of the year during which the act of 1801 was in force. By withdrawing the judges of this court from the view of the people, and constituting them a corporation of dignitaries at the seat of Government, clothed in the robes of office, with immense power, holding their offices for life, with no direct responsibility to the people, and only liable to punishment for gross crimes and misdemeanors, there is danger that public confidence in their integrity may be weakened—that they may become odious, and their decisions cease to be regarded with that respect and submission which it is desirable they should be. Of the increased danger of corruption, if they were permanently located here, constantly subject to be operated on by the federal influence concentrated here, and constantly inhaling the vapors of this district, I can add nothing to what has been said by the gentleman from Pennsylvania. But I will say, that the tendency of this court to enlarge, by construction, the powers of the Federal Government at the expense of the State sovereignties, is already sufficiently strong, and I fear, if they were permanently located here, that tendency would be increased. It is the nature of man to have power, and he seldom fails to exercise it when he can. I have as much respect for this court as I ought to have, and no more. They are but men. I will not repeat the language used by the gentleman from Pennsylvania, which seemed to be so offensive to the ear of the gentleman from New York, that there is danger, if you withdraw these judges from the circuits, that the time may come, when, feeling power and forgetting right, “they may fulminate their decrees from the dark and vaulted chamber which they occupy in this capitol,” wholly concealed from the public view; but I will say, that the system which has the sanction of long experience, ought not to be exchanged for one, the tendency of which may be to render this court obnoxious, and, if corrupted, possibly dangerous to the constitution. There is another objection to the system proposed by this amendment, which I will briefly state before I take leave of it. It proposes to invest the present district judges, and all who may hereafter be appointed district judges, with the powers and jurisdiction at present possessed by the circuit courts. Causes of great magnitude are to be tried by these single judges, and their decision in civil cases, under a given amount, is final and conclusive. They will have jurisdiction over criminal offenses against the United States affecting the life and liberty of the citizen. The salary of the district judges is small; and I mean no disparagement to those now in office, when I say, that, as a general rule, gentlemen of the first legal attainments have not been willing to accept of the office for the compensation afforded; and yet this proposition is to give to them, in many cases, final and conclusive jurisdiction. Will this satisfy the country so well as if a judge of the Supreme Court, eminent for his talents and distinguished for his legal acquirements, were required to preside in the circuit courts with them? I think it will not and should not. Whatever, therefore, may be the fate of the bill, I trust that this amendment may be rejected.

The great objection urged against the extension of the present system to all the States, has heretofore been, the increase of the number of the judges of the Supreme Court. It has been repeatedly said, that nine or ten judges will make the court too numerous for the convenient despatch of business, that it will become a political body, and that there is danger that factions and party politics may make their way into this court. All these have been again repeated by the gentleman from New York; but it seems to me, when they are properly examined, they will be found to be rather ideal than not. The gentleman from New York, to whose remarks I have had occasion so often to

refer, has told me that seven are enough—that nine or ten are too many; that, if we advance beyond the present number, we are travelling upon untrodden ground; that there is no limit; and he asks, where are we to stop, and may we not appoint twenty or a hundred, and would not this be too many? Sir, the answer is, appoint the number required by the exigencies of the country, and no more. Ten will be sufficient to do the business in his day or mine. The extreme cases put by him can never occur, and require no answer. I have never discovered what magic there was in the number seven, or what peculiar adaptation there was in that number for this court over any other convenient number. I agree with the gentleman, that this court should not be a political court. A judge should not be a politician, I mean a partisan. I would not deprive him of the rights of a citizen. But has the gentleman shown that the increase of the number from seven to ten would produce that consequence? He has not. Then the argument has nothing in it. If the gentleman will take a short retrospect of the present court, which he wishes so much to preserve with its present number, that it may not be distracted by political factions on the bench, he will find that some of the judges of this favorite number of his were found, at no very remote period, mingling in politics, and in party politics. They did not take them on the bench with them. I only mention this to show that, in any view, this argument of the gentleman proves nothing. Some gentlemen seem to have great apprehensions, if this court is increased by the appointment of additional judges from the West, that it will be inoculated with western opinions and western doctrines. And are gentlemen prepared to say that the opinions, the legal opinions, if gentlemen please, and the constitutional doctrines of the West are less authentic, or more unsound, than the opinions of other portions of the Union? No one has said so in terms. No one will say so. Then what is there in this argument but a chimera of the imagination, calculated rather to alarm our fears than to inform our judgments? The gentleman from New York must have exhausted his resources in seeking for objections to this measure of justice, of equal justice, which the West asks. He imagines that he has found a difficulty in procuring proper judges residing in the new circuits, if the number should be increased. He has stated that usage, if not law, requires that the judge should be taken from the circuit to which he is to be allotted; and, when appointed, he must reside there. Sir, this is a matter, if the bill should pass, within the discretion of the Executive. He may select the judge from whatever quarter of the Union he chooses, but, when appointed, he must reside within his circuit. Sir, the gentleman need not be alarmed. His apprehension of difficulty upon this point pays but a poor compliment to the intelligence and legal learning of the new circuits proposed to be established. No one of these circuits is so poor in legal learning, but that some one man may be found residing within it possessing sufficient qualifications (if the President shall think proper to select one in the circuit) to entitle him to a place upon the bench of the Supreme Court. There is one other objection to the extension of the judicial system which we propose, that I will briefly notice before I conclude. It is said that the representative principle should not obtain in this court. I agree that there should not be a representation of factions, political or sectional; but there should be a representation of legal knowledge, of that description of legal knowledge of the local enactments or municipal regulations of the various parts of the Union, which can only be acquired by a judge, by presiding in the circuits where they obtain. To this extent, I maintain that the representative principle should obtain.

I feel, sir, upon this subject, and therefore speak, as a Western man; though sure I am, if it were viewed with the liberal eye of a statesman of enlarged views, it would

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not be regarded as a sectional measure, but as one deeply affecting the whole Union, and one addressing itself to the magnanimity and justice of the whole Confederacy. I trust, in the consideration we are giving it, it will be so regarded. We do not wish to take from the East any of the advantages which she now enjoys. We do not ask her to give up any thing that she now possesses; but we ask her, not as matter of favor, but of justice and of right, to put us on the same footing—to extend to us the same advantages. The West might appeal to Maine, and say, you are the only one of the younger members of the Union to which this system was promptly extended upon your admission into the Union. We will not deprive you of it, but we ask of you, after such long delay, to extend the same system to us. We say to the East generally, that whether you view the Western country in regard to its territorial extent, its salubrity of climate, its fertility of soil, its present population, or its ultimate destiny, you find the sure presages of a great and a powerful people, whose pride it will ever be to draw still closer the union that binds us to the elder members of the Union. Will you still keep us without the pale of your judicial system?

Sir, permit me to say, before I take my seat, that if we can get nothing more, I will vote for this bill. It is not all that we ask, but it is better than what we have. I trust, however, that it may yet be amended so as to do that full justice to the Western States which they have so long asked at your hands without success.

[Here the debate closed for this day.]

THURSDAY, JANUARY, 21, 1830.

#### WEST POINT ACADEMY.

The House proceeded to the consideration of the resolution moved by Mr. BLAIR, of South Carolina, on the 14th instant, and laid on the table; which he now modified so as to read as follows:

“Resolved, That the Secretary of War be requested to furnish this House with a Register, exhibiting, in each and every year, the names and number of all the cadets that have been received into the Military Academy of the United States from its first establishment until the present time. Also, the names and number of applicants rejected; the States from which they came respectively; distinguishing between those who have graduated and received commissions, and such as have withdrawn, or have been dismissed from the institution; how many have been in said academy, whose fathers and guardians were, or are now, members of Congress, or other officers of the General Government, or Governors of States, and how many such are now there; what the monthly pay of the cadets, and whether they are supplied with rations, fuel, quarters, &c. at the public expense, or are furnished by themselves; stating also, as far as practicable, what proportion of them (if any) were in circumstances too indigent to be educated on their own means, or those of their parents; the names and number of those graduates now in the army of the United States; also, the names and number of the professors, instructors, and all other officers employed in said academy, with their pay and emoluments—adding thereto the entire aggregate expense of the institution, annually, with such remarks as may explain and elucidate the whole.”

Mr. INGERSOLL said, a call for information is one of the last things which he ever permitted himself to oppose. Nor did he rise now so much to interpose an objection to the call, as to refer the honorable mover of the resolution to several reports from the War Department in the library of the House, which will be found to contain nearly all that is sought for by the proposed inquiry. If, after looking into these documents, the gentleman from South Carolina should still wish to urge the passage of his resolution, although he [Mr. I.] might deem it in the main unnecessary, yet he could not say that he should vote against it,

so reluctant was he, as a general rule, to put any obstacle in the way of an inquiry, directed to one of the executive departments, that any member should see fit to suggest. This military academy is one of those establishments that has been probably more closely watched than any other within the range of our legislation; and there have been, from time to time, so many searching resolutions sent to the War Department on its account, that there is hardly a spot left which we may wish to touch by a resolution that has not been covered by some previous call. These inquiries, so far as they had fallen within his observation, have been, in every instance, promptly and fully responded to by the department under different administrations; volume after volume of reports are sent to us, printed, bound, and placed upon the shelves of the library, not, sir, it would seem, to be opened by us, for whose benefit, and at whose beck, but not at whose expense, they were placed there, but to be followed by other fresh volumes, embracing the same facts, and sent to every new Congress, in reply to the requisition of some honorable member, to whom, as a matter of course, we extend the courtesy of our votes. This practice, he thought, was going too far. Why repeat these drafts upon the department, when, by looking at our own documents, we can find, ready printed, the very information for which we are looking elsewhere? But, to come to the resolution now before us: it asks for a list of cadets who have belonged to the academy since 1802, noting those who have been commissioned in the army, and those who have left without commissions. Now turn to the volume of documents for 1824, and we shall find a very full and lucid report from the then Secretary of War, (the present Vice President,) bringing the required information up to that period. It gives us the number admitted in each year; the number who have completed the regular course of studies; a list of those who have received commissions, and those who have been dismissed, or permitted to depart, without commissions, from the first establishment of the institution, under President Jefferson, to the then present time. But this is not all, nor a tenth part of what we have drawn from the department in relation to it. In 1822, the House, in answer to one of its resolutions, was furnished with a list of all the cadets who had left the academy without entering the army, and the amount of money paid to each during the five preceding years; also, a list of such officers as have been educated there, and who served during the last war. What more can you reach by this resolution (in regard to these particulars) than you already have, for the time, covered by the serapeos? Subsequent reports, and the blue book, which is put into the hands of every Congress, and which will be in a few days upon our tables, bring the information up to the present time. Besides, we had a report at the last session from the gentleman then at the head of the department, [General PONTRE] which gave us the number of cadets commissioned since 1820, designating those now in the army; and his predecessor, [Mr. BARRETT] in the session before, sent us, in answer to a call, a particular statement of the expenses of the institution, from year to year, ever since it was organized. What else do we now ask for? Why, that the Secretary of War would tell us how much the monthly pay of a cadet is. What, sir, after having made a law ourselves establishing the pay, shall we send elsewhere to be informed as to the wages we ourselves allow? Shall we, who are a part of the legislative branch of the Government, send to an executive department to learn the tenor of our own laws? This would be an anomaly in legislation. If you wish for such information, open your statute books, would be a very proper answer of the Secretary to such an inquiry. But, as if to render this part of the call doubly useless, we have been furnished, for nearly fourteen years past, with a minute statement, in the blue book, of the names and number of all connected with the academy, whether as teachers or

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cadets, the States from whence they come, and an accurate account, in dollars and cents, of the sums paid to each. Other calls and other reports, similar in kind, might be referred to; for there has hardly been a session during the last ten or dozen years, that a paper shot has not been aimed at West Point from this or the other branch of Congress.

But a few words as to another item; the resolution asks for a list of officers now in the army, who were educated at the academy. Precisely this list was furnished but one year ago by the late Secretary, and is with the rest carefully bound in one of the volumes of documents of the last Congress: surely it cannot be necessary to send again to the department to have the names written by one of the clerks, when we have them in print, at the command of every gentleman who wishes to see them.

We now come to those parts of the resolution which propose new topics of inquiry, and to those he had not the slightest objection, if any gentleman wished them—they are as follows: How many of the cadets were in indigent circumstances, extending the inquiry back to 1802? How many have been the sons of members of Congress? Who have been applicants for admission, and have been rejected? As to the first, who of the cadets have been indigent, or what has been the pecuniary condition of their parents? This question might be very difficult for the department to answer. There can be nothing in the department which can show the pecuniary condition of the parents of those who have been educated; nor can the Secretary gather that information for us without establishing an inquisitorial examination in the different States, hardly compatible with the free institutions to which our constituents have been accustomed. Any partial information would be invidious, and more calculated to mislead than to enlighten us. The next inquiry, how many have been sons of members of Congress, might be much easier answered, and he would go heart and hand with the mover of the resolution to ascertain how this had been. But he could not but think that even this was an inquiry that should be more properly answered among ourselves, (for it concerns us and those who have gone before us,) than by sending to the Secretary of War. Our own officers, the clerk of this House, by comparing the rolls of the cadets with the registers of our members, aided by such information as he could obtain here, could soon furnish us with the requisite list, without going after it beyond our own walls. If, however, others preferred having it from an executive department, be it so, he should not complain.

Again, as to the list of candidates who have been rejected, he had not the slightest objection to the call in this particular. But why not carry the principle out to its full extent? why not go at higher game, and, instead of limiting the inquiry to the boys who have tried to get in at West Point, ask also for the list of men who have been unsuccessful applicants for other offices in the civil departments of the Government? Such a document might make a pretty thick book, but it might be useful, and certainly would be more sought after than most of the documents that are spread before us. It was not, however, to these points that he had risen; for had the resolution contained nothing but these inquiries, he should not have uttered a word. But it was the loose practice which has been insensibly growing upon us, of calling for information that we have already in our hands, that he protested against. He could not consent to have document after document, containing no new facts, piled up before us till these bureaus are nearly buried under the wet paper that the messengers put upon them every morning, and the half of which no one thinks of reading. It is time that this practice of the House was reformed, for, with its growth, our contingent expenses have grown also. It is notorious that these expenses have increased, are increasing, and, he thought, ought to be diminished. They are increasing;

do you want proof of it? Look at the estimate made by our own officers, and laid upon our tables. They are put for this year at twenty thousand dollars more for this House than has been appropriated hitherto; and those of the Senate are put ten thousand dollars higher than they have heretofore required. This is not the fault of the officers of this House, or the other House, nor of any others out of Congress; the fault is here. It is a sober truth, that, while we are sending forth speeches on the subject of reform, we practice but little of it in these concerns; like the charity of some, it does not begin at home. We point out the rough path to others, but are not found in it ourselves. As one step towards the true path, he would discontinue the practice to which he had adverted, of sending for and printing books of reports on subjects about which our library is already filled with volumes.

Mr. TUCKER expressed his regret that there should be any objection to the resolution. He thought the inquiry should take place; and, if there were no grounds for complaint, it would be a credit to the institution; but if, on the contrary, partiality had been shown in its management, it was time it should be known.

Mr. BLAIR, of South Carolina, then addressed the House, and said, it had then become necessary that he should state his reasons for offering the resolution; and, in answer to the gentleman from Connecticut, it was sufficient to say, that any document or report we have ever had in relation to the Military Academy, was quite deficient in details, and altogether silent as regarded several important items of information called for by the resolution. He had examined those documents, (he said) the most ample of which was the report made in 1828, and it was, as he had stated, quite deficient. He thought full and entire information in relation to that very expensive, if not important institution of our country, would have been desirable, not only to the Military Committee, of which he was a member, but to Congress generally, and to the nation. He, therefore, had not been disposed to make a speech in support of a mere call for information. He thought he should be regarded as bestowing a poor compliment on the intelligence and honest intentions of that House, were he to offer reasons or arguments in support of such a proposition; and believing there could be no reasonable objection to the adoption of the resolution, he had been disposed to submit it to the decision of the House without a single comment. He certainly had not (he said) anticipated the opposition to the resolution which it now seemed destined to encounter. Some of the senior members of the House, (he said) to whose examination it had been submitted before it was presented, thought it ought to pass, and would pass, as "a matter of course." Surely [said Mr. B.] it cannot be the policy of this House to suppress information, full and entire information, as to the utility and operation of one of the most expensive establishments of the Government, particularly when it is well known that jealousy and prejudice exists against the institution to a very great extent. Suppressing or limiting the information now called for, would not (he said) lessen the jealousy, or obviate the prejudice of which he had spoken. Many well meaning and well informed men (said Mr. B.) regard this military academy as the hot-bed of a military aristocracy. They view it as a dangerous excrescence of the Government that ought to be cut off. In its original organization, under the administration of Mr. Jefferson, it was intended only to educate a few military engineers, to construct, when necessary, military fortifications, &c. But it has been perverted from its original and legitimate object, and changed, by "piecemeal," into what it is at present, and what, originally, would have been regarded as highly inexpedient on account of its expense, and quite unauthorized by the constitution on account of its objects. It is believed, too, that the public utility resulting from it, if any, is far outweighed by its cost; and although it is

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nominal a military school, open to all, yet it is, in fact, a school only for the great and the wealthy, where none but the sons or favorites of men possessing power or popularity can be entered—most of whom, after being educated at the public expense, retire to private life, while, at the same time, the expenditures of the establishment (as was well known to all) were drawn from the pockets of the poor as well as the rich. He knew it would be said the poor were received into the Military Academy, as well as the opulent. Well, [said Mr. B.] this is one thing among many others that I wish to ascertain by the resolution I have offered. The fact is doubted—or if a few instances can be adduced where poor friendless cadets have been nurtured by the institution, they only weigh as the “dust in the balance” against those of the opposite description; and if not dismissed for incompetency—as it rarely happens that a poor, friendless lad can obtain credit even for a little common sense—they are retained only in a few solitary instances soon merely to “save appearances.”

Mr. B. said further, if the inquiry was permitted to be made to the extent he proposed, he thought it would be found that the patronage, favors, and benefits of the institution were principally bestowed upon those least in need of them; he meant the sons and favorites of the wealthy—men possessing office and authority; who would be educated if the Military Academy had never existed—and who, not being absolutely dependent on arms, or any other profession or business, generally preferred their case to a continuance in the public service; and, indeed, if they continued in service, we would soon have more officers than men.

Sir, [said Mr. B.] all those objections, and all those doubts and suspicions are entertained by a respectable portion of the community. He, therefore, thought the friends of the institution (if indeed those doubts and suspicions were unfounded) ought to encourage a full and complete inquiry into all those matters. If the operation of the institution had been as beneficial and impartial as its friends seemed to imagine, they had nothing to fear from the inquiry. If [said Mr. B.] they have done well in fixing upon us this extensive establishment, I hope they will not refuse to exhibit its results. “They ought not to keep their candle under a bushel.” If [said he] the institution has operated impartially and for the public good, a development of its merits will make it more popular. If, on the contrary, it is partial and exclusive in its operations—carrying with it some latent danger—and is, at the same time, more expensive than useful, the sooner it can be known the better—and it ought to be known both in and out of the House—it ought to be generally and universally known. He hoped, therefore, the resolution would be adopted. The information it contemplated, was altogether desirable; as a member of the military committee he asked it; as a member of that House he requested it; and as one of the American people he demanded it.

Mr. B. concluded by offering a modification, by adding after the words “members of Congress,” all other officers of the General Government, or Governors of States.

Mr. DORSEY said he hoped the gentleman would accept a verbal amendment which he was about to offer. He professed himself a friend to the institution. He wished to see it flourish—he wished to allay all prejudice against it. It had been his uniform temper and disposition to encourage resolutions for inquiry, and he should not object to it on this occasion. But he could not consent to a resolution which would emblazon to the world the names of juvenile delinquents, who might now be useful members of society and ornaments of their country. He could not agree to barrow up the feelings of fathers and families, by publishing the names of such as may have been expelled or discharged for boyish indiscretions, which the individual guilty of them may now deeply deplore. He asked what earthly good could result from it?

After some further remarks, he proposed to amend the resolution by striking out, 1st, “names and” where they occur the first time; 2d, how many have been in said academy, whose fathers or guardians were, or are now, members of Congress or other officers of the General Government, or Governors of States; 3d, “also, as far as practicable, what proportion of them (if any) were in circumstances too indigent to be educated on their own means, or those of their parents.”

Mr. BLAIR replied, that he would have no objection to any amendment that would make the inquiry more broad, or render the desired information more ample and complete; but the amendment proposed would have the opposite tendency. It would, if adopted, render the resolution almost a nullity, make it quite useless. Indeed, [he said] he should regard the adoption of the proposed amendment as tantamount to a rejection of the resolution itself. The names [he said] were essential for the purpose of showing how the patronage of the institution had been bestowed, and to what class of society its benefits had been confined. For example, [said Mr. B.] suppose that ten cadets, from South Carolina, Maryland, or any other State, have been dismissed from the Military Academy, without their names; how are the people, or how are we, to ascertain to what rank of society they belong? Without their names it would be impossible to determine that point. He disclaimed every thing invidious, or calculated to reflect censure on the members of Congress; or to attach criminality to those who had recommended applicants for admission into the Military Academy. In that respect, [he said] he presumed all, or nearly all, were equally guilty. He himself had, on one occasion, made such a recommendation, and it had been successful. He again repeated, he meant nothing invidious, and was not disposed to wound the feelings of any one, or to hold them up as objects of scorn or derision; and he was sure the report called for by the resolution could not have that effect, in as much as the cause of dismissal was not required. But the names being necessary to show how the patronage of the institution had been bestowed, he hoped they would not be stricken out. It was true [he said] that some small part of the information called for might be found in reports made heretofore; and that the pay, &c. of the cadets was fixed by law. But all this was scattered—little as it was, it was scattered through various documents; and those who might have an opportunity to peruse the report, might not have it in their power to examine the law. But few of the people could ascertain the laws of Congress on any subject; and his object was to have the whole of the information, contemplated by the resolution, in one document, that members might not be under the necessity of hunting through half a dozen offices, and plodding through twice that number of documents, for a few items of information about the Military Academy.

Mr. JOHNSON, of Kentucky, followed with some remarks on the subject of the resolution; but, before he had concluded, he was reminded that the hour for the consideration of resolutions had nearly expired.

FRIDAY, JANUARY 22, 1830.

The House resumed the consideration of the resolution moved by Mr. BLAIR, of South Carolina, on the 14th instant, the question being on the amendments moved by Mr. DORSEY, yesterday. The first amendment was rejected; and the question being on the second,

Mr. CROCKETT, of Tennessee, hoped the amendments would not be agreed to. He labored under a considerable responsibility respecting this academy; he himself was opposed to the school; and as it was possibly for the want of knowledge, he wished to have all the information he could get respecting it. His responsibility arose



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Cultivation of the Sugar Cane, &amp;c.

[Jan. 25, 1830.]

from the views of his State on the subject. The Legislature had proposed to instruct the Senators and requested the Representatives from that State in Congress to oppose the West Point Academy in every shape; and although the instructions did not pass, his own immediate constituents would expect him to promote the fullest inquiry into the management of the institution. He hoped, therefore, the resolution would be adopted as it was originally proposed. If any thing is wrong, we ought to see it; and I [said Mr. C.] would vote against every appropriation for the academy, unless I can get full information of its concerns and management. I wish to know if it has been managed for the benefit of the noble and wealthy of the country, or of the poor and orphan. There was nothing unreasonable in the call proposed by the resolution, and he approved it in its full extent. He concluded by demanding the yeas and nays on its adoption.

Mr. HAYNES demanded the yeas and nays on the amendment, but the House refused them.

The second and third amendments were then successively rejected by large majorities.

Mr. CONDUCT then moved to strike out these words: "the names of those who have withdrawn or have been dismissed from the institution." It might be, and doubtless was the case, [he said] that many had been dismissed, or had withdrawn, in consequence of deficiency in mental ability, or from sickness; and was it right to hold up their names to the public, as suffering disgrace, without having committed any fault? This would be an act of wanton cruelty to the parents and friends of the young men, and of harshness towards themselves, which he hoped the House would not sanction.

Mr. HAYNES did not think any thing would be gained by the amendment, and that every thing ought to be known in relation to the academy and the cadets.

Mr. INGERSOLL supported the amendment, and Mr. BLAIR and Mr. TUCKER opposed it; and it was rejected without a count.

Mr. TEST then proposed, as an amendment, to add the words, "and how many leave the institution annually." This, also, was negative.

Mr. WICKLIFFE thought this institution had almost lost the original character given to it by its founder, Mr. Jefferson, in 1802, and he wished copies of the Register of the Academy to be furnished for every year from its commencement, that its operations might be traced through to the present time.

This addition was accepted by the mover of the resolution, and the question recurred on the resolution as amended.

Mr. EVERETT, of Massachusetts, was not opposed [he said] to obtaining any information which might be deemed necessary by any committee or member of the House. He therefore would not object to this resolution, if it were in a form which he could approve. This, however, was not the case; and he pointed out some of its features, which he deemed not only useless, because the information could not be furnished, but invidious and improper if it could be. The resolution requires, for instance, that the Secretary of War report to the House "how many have been in said academy, whose fathers or guardians were members of Congress, and how many such are now there." "This is a strange inquisition [said Mr. E.] for this House, even if it could be made with success, which it could not be with any materials in possession of the War Department. Another branch of the resolution requires the Secretary to report, "as far as practicable, what proportion of the cadets (if any) were in circumstances too indigent to be educated on their own means, or those of their parents." In the first place, it would be impossible for the Secretary, from any records in his office, to ascertain the circumstances of those who had sent their sons to the academy; and, secondly, [said Mr. E.] no man, however opu-

lent, could obtain for his son an education elsewhere, such as that institution afforded. He knew something, personally, of the character and extent of the instruction given there, and he did not hesitate to say that no man, whatever his fortune, could obtain for his son the same education at any other institution. The ability of a man, moreover, to give his son an education on his own means depended on many circumstances which Mr. E. particularized; and he argued at some length to show the impracticability of obtaining the information called for, as well as its useless and improper nature, if it could be obtained. He concluded by moving the commitment of the resolution to the Committee on Military Affairs.

The motion was agreed to—91 to 72.

Adjourned to Monday.

MONDAY, JANUARY 25, 1830.

#### CULTIVATION OF THE SUGAR CANE, &c.

The House proceeded to the consideration of the resolutions reported by Mr. SPENCER, of New York, from the Committee on Agriculture, on the 13th instant, and the said resolutions were read as follows:

"Resolved, That the President of the United States be requested to cause to be procured, through the commanders of the public armed vessels, and our ministers and consuls abroad, such varieties of the sugar cane, and other cultivated vegetables, grains, seeds, and shrubs, as may be best adapted to the soil and climate of the United States.

"Resolved, That the Secretary of the Treasury cause to be prepared a well digested manual, containing the best practical information on the cultivation of sugar cane, and the fabrication and refinement of sugar, including the most modern improvements; and to report the same to the next session of Congress."

Mr. SPENCER, of New York, briefly explained the views of the Committee on Agriculture in reporting this resolution: the increasing importance of this culture; and the advantage of having the best species of cane, &c.

Mr. CHILTON, of Kentucky, without doubting that the proposed measure would advance the interest of the cultivators of sugar, said that he could not for the life of him discover why this article should be thus singled out for the special favor of Congress. It was well known to every gentleman that a great part of the people of this country live, not by the cultivation of sugar, but of corn and various other products of the soil. Why then draw on the treasury to purchase a book in relation to sugar particularly, the expense of which could not be known to any gentleman on this floor? Is life practical agriculturist—the honest farmer of the country, [Mr. C. asked] thus favored? No, sir, he is not: his walk in life is humber, and he does not make so conspicuous a figure on this floor. Had the gentleman proposed to search out the best seed of corn, or any of those fruits of the earth which enter so largely into the comforts of life, there would have been more reason in this proposition: but when only a small portion of the agriculture of the country was proposed to be encouraged at the expense of the rest, he felt bound to protest against it, in behalf of the common farmer—the people who are the stay of the Government in peace, and a strong pillar of defence in war. Why select a single staple to spend the public money upon? If gentlemen engaged in the cultivation of sugar wished this information, Mr. C. suggested that they had better be left to purchase it for themselves, and pay for it out of the rich revenues of their large estates, and not drain the treasury to advance one interest at the expense of the rest.

Mr. WHITE, of Florida, rose, and said: As I had the honor to introduce the resolution upon which the Committee on Agriculture were instructed to inquire into the expediency of the measure proposed, and now under consideration, it may be considered incumbent on me to say

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Proposed Reduction of the Tariff.

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a word or two in its support. The article to which this resolution refers, is one of daily use, and almost universal consumption among all classes of the civilized world. From having been employed formerly as a medicine, it has now become one of the principal objects of consumption and commerce, combining value in use with value in exchange. It is no longer considered a luxury even to the poor, but of indispensable necessity, and general use. The measure proposed, to increase the product either for home consumption, or for foreign exportation, must be viewed as one of no small importance.

The depressed state of the cotton market, and its greatly diminished value, has given an increased interest to all suggestions for the promotion of other articles which promise advantage to the agriculturist, and an accumulation of the national wealth. The subject itself is not interesting alone to that geographical section of the country, in which the sugar cane has been or may be cultivated; it connects itself with the wants and comforts of every consumer in the United States. The collection of different varieties of the cane found in more northern latitudes, the discovery of new processes in fabrication and manufacture, and the demonstration of the facts by experiment, attested by competent persons, will double the value of twenty millions of acres of land belonging to the United States, within the latitude in which there can be no question the cane will flourish. The expenses attending the cultivation of the cane so far exceed that of any other plant or vegetable, that those who embark in it properly must understand the grounds on which they proceed. Those who wish to extend it farther north cannot confine themselves to the very little information possessed in Louisiana and the West Indies. It is known that most valuable acquisitions to the stock of knowledge possessed by them have been made by the recent experiments in France and Spain on the beet root, and lately on the cane, in Guadeloupe. This subject has not only occupied the attention of the most profound chemists of the present day, but of the most practical political economists of Europe. The various works through which the scattered materials of a good system, or well digested manual, might be formed, are not accessible to any one planter, and, even if obtained by any one, he has not the means of arranging, translating, and disseminating it for the general benefit.

The labors of De Caseaux and De Trone on the cane, and of Achard and Chaptal on the beet, have not been seen by perhaps a half dozen planters in this country, perhaps not a single one. The plan proposed for collecting in one convenient and accessible form this valuable information is simple and inexpensive, and within the acknowledged powers of the Government. It has been the practice heretofore by a resolution similar to this, for the collection of facts as to the cultivation of silk, and the still more important instance in which Congress granted a township of land to French emigrants for the cultivation of the olive and vine.

It is not the planter and consumer alone that is interested in extending the cultivation of cane, and manufacture of sugar. The Western States have a new market opened for their provisions, and the Northern and Eastern for engines, kettles, mills, and machinery, from their iron foundries. There is no portion of our Union, and no class of our population, who are not deeply concerned in the promotion of this great and growing article of domestic industry. The French Government have deemed it an object of sufficient magnitude to devote to it a great deal of time and money.

This resolution proposes the collection and dissemination of the improvements made in the fabrication and refinement of sugar; and another, reported by the same, provides for the collection of all the varieties of the cane, from more northern latitudes. This is also proposed to be effected in an easy and inexpensive manner, through our

consuls and commanders of foreign armed vessels from abroad.

There are now three kinds in the United States. The Creole, brought from Madeira; the Otaheite, from the islands of the Pacific Ocean; and the ribbon, from Batavia. If it be true that vegetables like animals become acclimated, and put on a thicker covering as they are gradually cultivated farther north, the same species, planted for centuries in a more rigorous climate, may have changed its properties most materially, and might now be transplanted in the same latitude on this continent, when it would require otherwise the same time here to climatize itself. We are said to be indebted to India for the cane, from whence it was carried to Persia and China, and from thence obtained by the Greeks and Romans, who, from want of knowledge of granulation, only used the juice as medicine. The Saracens carried it to Cyprus, Sicily, Spain, Madeira, and the Cape de Verd Islands. There can be no doubt but that a most valuable acquisition may be made to our natural agriculture by the adoption of these resolutions. I saw, only a few days since, in the work of a recent traveller in Peru, the return of an Intendant to the Government, in which it was stated that the sugar cane in one of the provinces grew eleven months in the year, and ripened five feet high; and from their ignorance of the processes of sugar making, it was difficult to produce anything. In our country the cane only grows eight months, and only ripens two feet; and, destitute as we are of a full knowledge of the subject, our production is annually increasing. It was considered an experiment for fifteen years in the commencement of sugar making in Louisiana. What was experiment then, is experience now. What is now doubt and uncertainty, will be practice and demonstration in a few years to come.

I cannot, for a moment, believe that a measure so simple and beneficial will not receive the concurrent vote of this House.

The question was then taken on agreeing to the resolutions, and decided in the affirmative without a division.

[From the 26th of January to the 4th of February, inclusive, there was no debate of sufficient interest to be inserted in the Register. The bill for taking the fifth census was the principal subject acted upon.]

FRIDAY, FEBRUARY 5, 1830.

## PROPOSED REDUCTION OF THE TARIFF.

Mr. McDUFFIE, from the Committee of Ways and Means, reported the following bill:

"Be it enacted, *Use*. That, from and after the 30th day of June, 1830, the following duties shall be levied, in lieu of those now imposed by law, on the following articles, viz.

On iron, in bars and bolts, whether manufactured by hammering or rolling, ninety cents per hundred and twelve pounds; provided, that all iron in slabs, blooms, and loops, and other form less finished than iron in bars and bolts, except pig or cast iron, shall be rated as iron in bars and bolts, and pay duty accordingly.

On iron in pigs, fifty cents per hundred and twelve pounds.

On hemp, unmanufactured, thirty-five dollars per ton.

On flax, unmanufactured, thirty-five dollars per ton.

On cotton bagging, three cents and three-fourths per square yard.

On unmanufactured wool, twenty-five per cent. ad valorem, until the 30th of June, 1831, and five per cent. less every year, until the duty shall be reduced to fifteen per cent. ad valorem; provided, that all wool, the actual value of which at the place whence imported shall not exceed ten cents per pound, shall pay a duty of fifteen per cent. ad valorem, and no more, from and after the 30th of June next.

On all manufactures of wool, and of which wool shall be

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a component part, except worsted stuff goods and blankets, which shall pay twenty-five per cent. ad valorem, a duty of thirty-three and a third per cent. ad valorem.

On all manufactures of cotton, or of which cotton shall be a component part, twenty-five per cent. ad valorem; provided, that all such manufactures, except nankeens, imported directly from China, the original cost of which at the place whence imported, with the addition of twenty per cent. if imported from the Cape of Good Hope or beyond it, and of ten per cent. if imported from any other place, shall be less than thirty cents per square yard, shall, with such addition, be taken and deemed to have cost thirty cents per square yard, and charged with duty accordingly.

On salt, ten cents per bushel of fifty-six pounds.

On brown sugar, — cents per pound.

On white clayed sugar, — cents per pound.

On molasses, four cents per gallon.

On linseed, hempseed, and rapeseed oil, fifteen per cent. ad valorem.

"Sec. 2. And be it further enacted, That the same drawback shall be allowed on the exportation of spirits distilled in the United States from foreign molasses, as was allowed previous to the passage of the act entitled 'An act in alteration of the several acts imposing duties on imports,' approved 19th May, 1828."

The bill having received its first reading, Mr. RAMSAY, of Pennsylvania, from a decided objection to the introduction of the discussion of such a bill at this session, objected to its being read a second time.

According to the rules of the House, in case of such objection, the question was stated, "Shall the bill be rejected?" And, on this question, the yeas and nays were ordered to be taken.

Mr. CAMBRELENG, of New York, rose to suggest to the gentleman from Pennsylvania the total futility of thus attempting to destroy this bill. If he were to succeed in his object, the discussion of the subject would not thereby be prevented; for the propositions contained in the bill could be revived in various forms. It seemed to him (Mr. C. said) that this proceeding was very small game. He did hope that the gentleman from Pennsylvania would withdraw his motion, and let the subject take its usual course. It was a very harsh procedure towards any committee of this House to stop a bill of this importance and interest on its first reading. There were kindred questions already before committees of this House; and when they came up, the principles of this bill could readily be introduced, by way of amendment, &c. if the gentleman were to succeed in procuring its rejection now.

Mr. RAMSAY said he could not concur with the gentleman who considered this proceeding small game. He considered it large game, and such as the House ought now to pursue. Wasting the time of the House, he considered to be small game; and any course which should prevent the mispending of the time of the House, he should consider that a large game. He believed (he said) that there was not a member of the House whose mind was not made up beforehand on the question presented by the bill. For his part, he wanted the tariff law, which the House had so much trouble in passing, and which the gentleman from New York had so strenuously opposed, to have a fair trial. He did not wish it brought up here until it had been tested by fair experiment. He meant no disrespect to the gentleman from New York, but he could not consent to withdraw his objection.

Mr. P. P. BARBOUR rose, not to engage in debate on this subject, but to remind the gentleman from Pennsylvania that his formal objection to the second reading of the bill would only have the effect to consume the time of the House. Whenever the House should be in Committee of the Whole on the state of the Union, it would be perfectly competent for the gentleman from New York, or

any other gentleman, to offer, in the shape of a resolution or resolutions, identically the same propositions as are contained in this bill; and in Committee of the Whole there was no means by which he could arrest the progress of the discussion. So that, if the gentleman succeeded in preventing the second reading of the bill, it would not in the smallest degree serve his object. Mr. B. said, in reference to this subject generally, that he wished to have it discussed; not from any particular desire to make a speech about it, but he wished it brought into view in reference to the present condition and circumstances of the country. He wished the question to be fairly presented, whether we shall continue a rate of duty on imports beyond what the wants of the country and the demands of the treasury require; whether, for any cause, the country is to have a settled, immovable tariff of the present extent; whether, under the power to raise a revenue for defraying the expenses of the Government, it was intended to bring into the treasury an overflowing stream of revenue not wanted for the ordinary purposes of the Government, for the distribution of which, after it shall have been forcibly extracted from the pockets of the people, there is to be a never-ending struggle on the floor of the House. Some time during the session he was desirous that this subject should be examined with that attention which its importance deserved.

Mr. STRONG, of New York, desirous to defer, for the present, a discussion which might occupy the whole of this day and to-morrow, to the exclusion of private bills which are the order of the day, moved to lay the bill on the table.

On this question the yeas and nays were ordered, at the instance of Mr. CAMBRELENG.

Mr. THOMPSON, of Georgia, wishing to have a full house on this question, moved a call of the House; which was agreed to.

The roll was therefore called, and upwards of a hundred and ninety members were found to be present.

By the time the call of the roll was completed, the hour allotted to the consideration of morning business had expired, and the subject was laid over to another day.

Adjourned to Monday.

MONDAY, FEBRUARY 8, 1830.

The House resumed the consideration of the bill to reduce and modify the duties upon certain imported articles, and to allow a drawback on spirits distilled from foreign molasses.

The question on the motion made by Mr. STRONG, on the 5th instant, that the said bill do lie on the table, *yeas*, 101; *nays*, 79.

So the subject was ordered to lie on the table.

TUESDAY, FEBRUARY 9, 1830.

[After disposing of a number of motions for inquiry, the remainder of this day's sitting was spent in considering the General Appropriation bill.]

WEDNESDAY, FEBRUARY 10, 1830.

DIPLMATIC EXPENSES.

The bill making appropriations for the civil list for the current year being under consideration,

Mr. INGERSOLL said, he rose to correct an error to which the debate of yesterday had led, in regard to one head of appropriation. He alluded to the salaries and outfits of foreign ministers, and the contingent expenses of the missions. It had been yesterday stated by an honorable member of the Committee of Ways and Means, [Mr. VERPLANCK] that, although the appropriation now asked for was large, in consequence of the new missions

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instituted during the recess of Congress, or rather by sending out new men to old missions, yet, that even the sum now required for these purposes did not swell the amount beyond our former appropriations for foreign missions. Indeed, it was said that the money required for our ministers and diplomatic agents, under the last administration, had been more in some years than is now required. In these statements, he believed the honorable member who made them was wrong, entirely wrong; and he [Mr. L.] would now endeavor to set the matter right. There had not been a year during the preceding four years, that the diplomatic expenses had equalled the sum now asked for. No, sir, not excepting the year of the Panama mission, which had been the means of characterizing the late as a diplomatic administration, by those opposed to it, was there as much required as we are now about to appropriate. The bill proposes to give one hundred and eighty thousand dollars for the salaries and outfits of our diplomatic agents, and for the contingent expenses of the several missions. Let us compare this sum with what we gave in 1826, the first year of the late administration. By a careful examination of the act of that year, he found that, for these purposes, there was appropriated but one hundred and forty-seven thousand five hundred dollars. In 1827, we appropriated for the same objects one hundred and fifty-one thousand dollars. Well, sir, these were large sums, but still falling considerably short of what is now required. But these sums, though appropriated, were not all expended; and when we came to the year 1828, the gentleman then at the head of the State Department informed us that there was on hand an unexpended balance of former appropriations, amounting to one hundred thousand dollars, and he only asked for an additional sum of forty-nine thousand dollars to carry that branch of the service through the year. The next year, 1829, we appropriated by two acts, the one for the first quarter, and the next for the three quarters of the year, in all one hundred and thirty-seven thousand five hundred dollars. The average amount for the four years of the late administration was one hundred and twenty-one thousand two hundred and fifty dollars for each year, and we are now starting anew, by appropriating one hundred and eighty thousand dollars, to cover the expenses of diplomacy for the current year.

Mr. L. said, he did not make these statements with a view of finding fault with the items which we are now considering, but he felt it due to others, as well as himself, to state, in as few words as he could, on which administration the difference of expenditure was chargeable.

Before he resumed his seat, he would say a few words as to the sources from which the outfits of the new ministers, during the last summer, had been taken; because, as had been before stated yesterday, these outfits were said to be derived from the diplomatic fund; and we all know that the last Congress declined making any specific appropriations for outfits, nor is there any such thing as a diplomatic fund; he meant a fund by that name. The money, in the absence of a specific appropriation for outfits, was undoubtedly taken by the Executive from the item of contingent expenses. We had heard something about these contingent expenses, and also about the practice of paying outfits from such sources, a year or two ago. The Retrenchment Committee, he believed, had put the seal of condemnation on that practice; at any rate, another committee of the same Congress, the Committee on the Expenditures of the State Department, over which an honorable member over the way, from Tennessee, ably presided, had, in 1828, denied the rights of the Executive to pay diplomatic outfits, unless authorized by a specific appropriation. This, we are told, was the true doctrine then. The able report then drawn up by the committee took the ground that the contingent fund was not subject to the payment of salaries and outfits of ministers

and chargés, their compensation being specific subjects of appropriation. The committee called that practice a usurpation of power, if he rightly remembered the term. He would not stop to ask whether that was defensible now, which was usurpation in 1828. His principal object was to correct the errors which had been, as he presumed, inadvertently made, in comparing the sums now asked with what had been given under a former administration; and, having accomplished his object in that particular, he should drop the subject.

Mr. VERPLANCK said he did not intend, yesterday, to make a comparison of the economy of this and the last administration, but had then found himself called upon to defend the committee which reported the bill. He had then unintentionally committed an error in the statement he made yesterday, by not adding to the one hundred and eighty thousand dollars the sum of thirty thousand dollars, when comparing the present appropriation with that of former years. Still, on the showing of the gentleman from Connecticut himself, the present appropriation is defensible, for, compared with that made the year of the Panama mission, it is very much less, and, with that of the preceding year, it is still three or four thousand dollars less. Mr. V. said he did not wish to turn this debate into a party question. The part of the bill containing provisions explains itself—and the cause of the increase is, that at the first year of a new administration outfits are required which will not be necessary again. But [he said] since it was invited, he would make a relative comparison of the expenditures in this respect, from an estimate he had himself made. Mr. Adams was Secretary of State in 1825, when he was elected President, and he himself prepared the appropriation bills for the first year of his own administration. After a long series of appropriations for foreign intercourse, balances of appropriation for foreign intercourse had been left, and this advantage he had, besides, with his own political friends abroad; few recalls were necessary. Yet Mr. Adams obtained two hundred and thirteen thousand dollars for the first year of his administration. The year after, and corresponding with this year of the present administration, Congress had granted him for this object the sum of one hundred and eighty-seven thousand five hundred dollars, to which is to be added the appropriation of forty thousand dollars for the Panama mission. How stood the account of what was deemed necessary for the two first years of Mr. Adams's administration? The sum of four hundred and forty-two thousand dollars was deemed proper, and so estimated by the department, for the two first years of that administration. Let us take the two first years of the present administration, and examine what the amount of the corresponding appropriations will be. There was, when the last administration went out, a surplus of contingent funds in hands to a considerable amount. The Secretary of State, with a laudable accuracy, asked for no increase, but said the surplus fund (thirty thousand dollars) was sufficient. Under these circumstances, the sum of one hundred and thirty-seven thousand five hundred dollars was appropriated last year, without any surplus fund. Public reasons—reasons which seemed good to the Executive, and which this was not the place to discuss, induced some recalls to be made, and other ministers to be appointed in their place. Mr. Brown, besides, voluntarily returned from France, and it was necessary to appoint a successor to him. A full minister, in consequence of the boundary question, was required in Holland, where a chargé only formerly was required. Under these circumstances, Government now asks for two hundred and ten thousand dollars, which will make an aggregate amount of three hundred and forty-seven thousand dollars for the two first years of General Jackson's administration, while that of the former administration, for the corresponding period, was four hundred and forty-two thousand dollars—the difference in favor of this adminis-

tration being about one hundred thousand dollars. Whether even all this sum is to be expended, he could not say, although there was good reason to expect that even the whole of it would not be needed. The only information he had on this subject, was derived from the documents which have been transmitted to the House from the Executive within a few days—(the message in relation to our foreign intercourse,) by which it appeared we were to go back to the good old act of 1810, which is to be in future strictly applied—a law, than which there is none in the statute book more precisely worded, nor one which had been more loosely construed. Thus, we shall not have any more constructive journeys—constructed messengers. We shall have no more outfits for accidental charges for a six week's mission—no more appropriations of forty thousand dollars for roving ministers to look for a Congress which was not to be found, unless, perhaps, in the moon, where, according to the old poetical fancy which had recently received the diplomatic sanction of Mr. Adams, "all things lost on earth are to be found."

Mr. INGERSOLL said, he had not the most distant idea, when he rose on this subject, to give to the debate what the gentleman from New York (Mr. VERNAMER) had called a party turn. It was in answer to an inquiry made by the chairman of the Retrenchment Committee, [said Mr. I.] that, yesterday, I stated the causes of the increase, for the present year, of the diplomatic expenses of the country. I did this in as unexceptionable a manner as I was capable of doing it. The gentleman from New York followed on the other side, and saw fit to indulge in an unnecessary, and, as I thought, unmerited attack on the expenditures of the late administration. Whatever, therefore, of party has mingled in this discussion, the gentleman may thank himself for. I am acting, and have acted, on the defensive throughout. He now acknowledges that he was in part mistaken, yesterday, in his estimate of the expenses of the late administration, but still insists that the first year of Mr. Adams's was more expensive in this particular, than the first year of the present administration. If the gentleman will turn to the book, and examine for himself, he will find that he is as far out of the way here, as he was in his other statements yesterday. He is altogether mistaken in this matter, or there is no truth in figures. The year 1826 required but about one hundred and forty-seven thousand dollars for the missions, and all of that sum was not expended, but went to help out the expenditures of one of the succeeding years. Again, we are told that during Mr. Monroe's administration, and while the late President was in the Department of State, very large appropriations were made, the unexpended balances of which went to eke out the minister's salaries and perquisites, under the late administration. Surely he could not have been aware where this assertion was to lead him, or he would have paused much before he made it. Large diplomatic appropriations under Mr. Monroe, and through the influence of his Secretary of State! Why, sir, the largest appropriation made during that period was in 1825, when the new Governments on our own continent had been acknowledged independent; in consequence of which, the diplomatic corps was about doubled, and even then the amount appropriated for foreign missions was not over one hundred and seventy-two thousand dollars; still less, it will be observed, than you are now asking for by the bill on your table. Let us see how the other years preceding ranged, in these expenses, which we have been told were so enormous. In 1824, there was appropriated one hundred and forty-nine thousand dollars—not yet up to the mark of the present year. In 1823, only seventy-four thousand dollars were appropriated, not half of what is now required; and in 1822, there was appropriated eighty-three thousand dollars; that is, nearly one hundred thousand less than is now necessary to pay the diplomatic corps. Will it be said, in the face of these

sums, that there was an extravagance in Mr. Monroe, chargeable to his Secretary of State, when not a year can be found in which these expenses have run up to their present amount? The gentleman from New York has indeed said, that it became necessary to reform some of the ministers during the recess of Congress, and hence our present heavy expense. We once were taught to believe that reform and retrenchment were to go hand in hand; but they are now, it would seem, to be separated, and the first year of the reign of reform shows us, instead of a retrenchment, an increase which would of itself have broken down the administration which went before it. And not only an increase of this patronage, but even the doctrine of specific appropriations is getting to be rather obsolete, and outfits not provided for by the appropriation acts are now taken from the diplomatic fund. Let it not be said that I complain of this—the Executive has an undoubted right to do as has been done, but I do complain that gentlemen, when they get in, should so soon forget what was their favorite doctrine when they were out.

Mr. BUCHANAN said, he had not expected that the House would have entered into a party debate upon this question, and he trusted it would not now seriously engage in such a discussion. The two gentlemen who had addressed the House upon different sides of the question, appeared to him to have taken but a narrow view of the subject. It was decidedly his opinion that, in our intercourse with foreign nations, we should pursue a liberal and wise, rather than a narrow and short-sighted policy. It was the interest and the duty of this country to cherish the good opinion of foreign nations; and in our intercourse with them, if we acted upon narrow principles, we might find that, in realizing a small gain, the country might sustain a heavy loss. We should view this subject as statesmen, and never hesitate to provide the means necessary to enable the Executive to sustain both the character and the cause of this country, in intercourse with other nations. Mr. B. said he was, therefore, astonished to hear gentlemen comparing the relative cost of our foreign intercourse in different years, and under different administrations, as if there were no other question to be considered, but which administration had spent the least money.

Sir, [said Mr. B.] I was one of those who condemned the last administration, not so much on account of the amount of its expenditures in our foreign intercourse, as because, in practice, it repealed the law of 1810. A practice had grown up within the last twenty years, which at least violated both the letter and the spirit of that act. One precedent in violation of law was established, which gave birth to many others. At last this act was so wholly disregarded by the last administration, that they suffered a minister, upon leaving a foreign country, to convert his secretary of legation into a chargé des affaires, and as such paid a full salary and outfit, although he returned home a very short time after the minister. This was not only without law, but expressly against law. He had not the least right to such an allowance. It was not a question whether the contingent fund ought to have been resorted to for his payment; but it was a case in which the President had no right, under the law, to allow him one cent, out of any fund, beyond his salary as secretary of legation. Mr. B. was willing that those matters should now rest in oblivion, and he would never voluntarily call them forth to the light. He had opposed the practice of the last administration, not because they had paid just demands out of the contingent fund, but because they had made donations to individuals in express violation of the existing laws.

Mr. B. said, the true reason why the appropriation necessary for our foreign intercourse was greater the present than it had been the past year, was, that several of our ministers had been recalled, and others had been appointed in their stead, whom it was necessary to provide

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*Diplomatic Expenses.*

[H. of R.]

with outfits. Would any gentleman question the right of the Executive to pursue this course? For this conduct he was answerable to no tribunal but that of the American people. The appointment of foreign ministers was peculiarly within the province of the Executive. The constitution and laws of the United States had reposed in him this discretion; and it must be an extreme case indeed in which the House of Representatives ought to withhold the necessary appropriation. He presumed no gentleman in the House would say that such a case now existed. He had risen to say thus much; and he hoped to see the appropriation made without further discussion.

Mr. EVERETT, of Massachusetts, said that he agreed with the gentleman from Pennsylvania, who had just taken his seat, as to the cause of the increase in the appropriation. That gentleman had stated it to be the recall of several of the foreign ministers, and the outfits of their successors; and it was evident, from the comparison of the bill of this year with the appropriation law of the last, that such was the fact. He also agreed with the gentleman from Pennsylvania, that the recall and appointment of ministers was a matter of Executive discretion; and that it was only in an extreme case that the House would be justifiable in interposing to withhold an appropriation for the outfit of a minister thus appointed. But Mr. E. begged to recall to the recollection of the House the manner in which this debate arose. The gentleman from Kentucky [Mr. WICKLIFFE] had put the question to the chairman of the Committee of Ways and Means, why the appropriation for the diplomatic service of the year amounted to one hundred and eighty thousand dollars, while, the last year, it was but one hundred and thirty-seven thousand dollars? To this inquiry the chairman of the Committee of Ways and Means had replied, that there had been, previous to the last year, an accumulation of unexpended balances of former appropriations, which had rendered it necessary to appropriate less for 1829; but that these surpluses being now all expended, a larger sum was required for this year. With great deference to the source from which this statement proceeded, Mr. E. could not agree to its correctness. He did not find, in looking at the estimate from the Department of State for 1829, that there was any such surplus under this head of appropriation.

[Here Mr. E. gave way to an explanation from Mr. McDUFFIE.]

Mr. McDUFFIE rose in explanation. He said that it was far from his intention to make any party allusions, or any observations which could possibly be construed into such, in relation to that appropriation. He referred, on this point, to the explanation made by him on the preceding day, in answer to the member from Connecticut, [Mr. LEXINGTON] and concluded by stating that he trusted he should not be considered an authority for the debate which had taken place.

Mr. EVERETT resumed. He said that the gentleman's explanation was in accordance with his own view of the case; and he was about himself immediately to state that the surplus alluded to was in a different fund, for which no appropriation at all was made in 1829; and that, consequently, the increase of forty thousand dollars in the diplomatic service of the present year, over the last, was not owing to any such surplus being added to the appropriation of 1829. It was an increase of expenditure, owing, as the gentlemen from Pennsylvania stated, to the recall of the foreign ministers, and the outfits of their successors. Supposing this matter to be now understood all around the House, he should say no more about it. He must, however, dwell a moment on another point, connected with this appropriation, in which, after what had been said, he need not disclaim being a volunteer. These outfits, to the amount of over forty thousand dollars, have been paid without any specific appropriation. On the

contrary, a gentleman from Georgia, [Mr. WILDE] last winter, proposed, in Committee of the Whole, to make an appropriation for the outfits of ministers who might be appointed; and the committee declined making such an appropriation. They passed the bill as they found it, with specific appropriations for certain designated salaries and outfits, with an estimated addition for contingencies, he believed, of twenty thousand dollars. This looked rather, when considered in connexion with the refusal of the committee just alluded to, like excluding all outfits not provided for by the bill. And yet, notwithstanding this, forty thousand dollars in outfits, for which no appropriation had been made, have been paid during the last summer. Mr. E. did not mention this as criminating the present administration, but as vindicating the past. It had been asserted and reiterated, here and elsewhere, that the late administration had improperly paid outfits out of the contingent fund, and transferred to one object what was specifically appropriated to another. Now here we have forty thousand dollars expended in outfits, without any specific appropriation; although two outfits, if he recollected, were specified in the act of the last year. From what fund the money had been taken, he could hardly tell. That part of the estimate was not very clear. There is no such thing as a diplomatic fund known to the appropriation law. The sum now asked for appears to be asked as a repayment of so much taken from other items. Of this, Mr. E. was not disposed to complain; but he hoped gentlemen would now feel how unjustly the late administration had been condemned for a course so soon adopted by the present, and which must, of necessity, be adopted by any administration.

Mr. McDUFFIE said he had never denied that outfits, under such circumstances, were to be paid out of the contingent fund.

Mr. EVERETT replied, that he did not maintain that the gentleman from South Carolina individually had held this doctrine; but it had been distinctly laid down in the reports of two committees of the House, at the last Congress—the Committee on the Expenditures of the Department of State, and the Retrenchment Committee. The latter committee had recommended the abolition of the fund for the contingent expenses of the foreign missions, on the ground that it enabled the Executive, at his own discretion, to augment the allowances to the foreign ministers.

Mr. CAMBRELENG asked if the gentleman from Massachusetts was not mistaken. It was the secret service money, and not the contingent fund, which the Committee on Retrenchment proposed to suppress. Was not the gentleman confounding one subject with the other?

Mr. EVERETT. I am not mistaken. The Committee on Retrenchment proposed to abolish the fund appropriated for the contingent expenses of all the missions abroad, as the gentleman will find by turning to their report.

Mr. NORTON said, that, in the whole course of his legislative life, he had never thought it necessary to build up a political reputation, by advocating a false system of economy. He should vote for the bill reported by the distinguished statesman at the head of the Committee of Ways and Means. He [Mr. N.] had not come here to condemn the late administration, nor to applaud the present one, whether right or wrong. But he must say, that the illustrious individual who had been elected to the chair of State, was, he was convinced, actuated in the administration of the affairs of Government by the best and purest motives. He believed the President to be a bold and honest man; and he was firmly convinced that, whilst he was surrounded by his present wise and patriotic advisers, the liberties of the country would be secure.

The bill was then ordered to be engrossed for a third reading.

H. of R.]

The Judiciary Bill.

[Feb. 11 to 16, 1830.]

[On Thursday, Friday, and Saturday, there was no debate of sufficient consequence to be published in the Register of Debates.]

MONDAY, FEBRUARY 15, 1830.

### THE JUDICIARY BILL.

The House, on motion of Mr. BUCHANAN, went into Committee of the Whole, and resumed the consideration of the Judiciary bill.

Mr. HUNTINGTON addressed the committee at considerable length against the bill, after which the committee rose.

TUESDAY, FEBRUARY 16, 1830.

The House again resolved itself into a Committee of the Whole, Mr. CAMBRELENG in the chair, and took up the Judiciary bill.

Mr. HUNTINGTON concluded his remarks against the bill. They were as follows:

I rise to address the committee, under a deep sense of the responsibility I assume, in attempting to reply to the very able argument of the honorable member from Pennsylvania, [Mr. BUCHANAN] who opened this debate, and that of the honorable member from Tennessee, [Mr. POLK] who followed him; and with a deep feeling of my entire inability to sustain the views, which, in my judgment, belong to this interesting and important subject. Believing, however, that the extension of the judicial system, as proposed by this bill, is fraught with evils of no inconsiderable magnitude; that its tendency is to impair the individual responsibility of the judges of the highest judicial tribunal of the nation, and the public confidence in them; that the system which this bill proposes to extend cannot be permanent, nor be continued, with a due regard to the rights of parties litigant in the Supreme Court; and, thinking, as I do, that the evils which are supposed to exist from its confined operation may be remedied, by the adoption of a system not obnoxious to the objections which exist to this bill, I have been induced to assume the responsibility to which I have alluded, and to ask of the committee their kind indulgence, while, as succinctly as is practicable, and to the extent of my limited capacity, I submit to them the reasons on which the opinions I have thus generally expressed are founded: and I shall need all the kindness and courtesy which the committee are willing to extend to one, whose habits have been professional, whose discussions have been confined to the bar, and whose remarks are to be applied to a subject which, not many years ago, was exhausted by the learning and talents of some of the most distinguished men of this country, which were bestowed upon it. Feebly, however, as I shall discuss it, I feel no inconsiderable consolation in the reflection that the intrinsic importance of the subject will demand for it the undivided attention of the committee.

This bill operates upon a department of the Government, in comparison with which every other department is powerless. It affects a tribunal which hears and adjudicates not only upon the conflicting claims of private citizens, but one which, while it opens the book of the constitution, and points sovereignty itself to the clause "Thus far mayest thou come, but no farther"—holds in its hand the chain which confines it within the prescribed limits. Well, then, did the honorable member from Pennsylvania say, the subject was important. The remark was worthy of the subject, and the source from which it proceeded.

I listened with much attention, and, I will add, with much pleasure, too, (as I always do when the honorable member from Pennsylvania favors us with his remarks on any subject,) to the very able and lucid statement which he made of the reasons which induced the committee, of which he is the organ, to present this bill for our consider-

ation. I noticed how, with the hand of a master, he drew the great outlines, the leading features of our judicial system, as it has existed from the first organization of the Government to the present time: I heard him point out the duties, the responsibilities, and the powers of the Supreme Court; the benefits which had followed the adoption of the present system; the evils which would result from its abandonment; and the necessity of its extension to the new States. He will do me the justice to believe me sincere, when I say I heard him with a desire to be convinced that my objections to this bill were groundless; he but will pardon me for saying, that although I was instructed by his learning, and gratified with the manner in which it was communicated, I still retain the same opinion as when this discussion commenced; and that is, that this bill ought not to become a law. The reasons for entertaining this opinion I am now to submit to the committee.

To arrive at a correct result as to the leading feature of the bill, that which proposes to add two to the present number of the justices of the Supreme Court, an answer to two inquiries into which the subject very naturally and obviously divides itself, seems necessary.

Are there evils attending the practical operations of our judicial system, as limited and confined by existing regulations, which require any remedy?

If there are, does this bill furnish both an adequate one, and the best, which, under all the circumstances, can be adopted?

The evils complained of, and for which this bill is intended to provide, exist in one form, and are of one character, in the States of Indiana, Illinois, Mississippi, Missouri, Alabama, and Louisiana; and in another form, and are of another character, in the States of Kentucky, Tennessee, and Ohio.

To the former, the circuit court system is not extended at all; and the complaint is, not that their judicial business is not finished, but that it is not as well done as it would be were a justice of the Supreme Court assigned to them. To the latter, the system is nominally extended; but, from a variety and combination of causes, the benefits of it are not realized: their complaint is, not that their judicial business is not well done, but that the unavoidable delay in completing it is tantamount to a denial of justice.

The source from whence these complaints proceed, and the manner in which they have been presented to us, claim the most respectful consideration; and, if well founded, however we may differ as to the mode of redressing them, I trust we shall not differ as to the extent of their rights, or of our duties. I do not intend to trespass long upon the patience of the committee by the remarks which I shall make upon this branch of the subject; for, with the views which I entertain regarding the remedy proposed, it might safely be admitted that the evils complained of are as extensive as has been supposed. But as this bill is professedly framed to supply the wants, the absolute necessities, and to sustain the just rights of the States, to which I have referred; as no disposition has been manifested by any member to increase the number of the justices of the Supreme Court, except for these reasons, it may be well briefly to examine and ascertain, if practicable, how far the complaints which have been made are well founded; what real necessity does exist for the increase. And if I do not very much mistake, it will be found that the state of judicial business in the courts of the United States, in these States, will not justify, nor does it require, any such addition—at least, from the information now before the committee, the necessity adverted to is not shown to exist.

I begin with the six younger States. The honorable chairman of the Judiciary Committee [Mr. BUCHANAN] has informed the committee that the parental care of the Government, so far as it regards the equal and due administration of justice in the federal courts, is withdrawn from them.

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*The Judiciary Bill.*

[H. of R.]

Of this they complain, because it denies to them an equality of rights and privileges with the other States, and thus mortifies what is sometimes called State pride, and excites State jealousy.

I have no disposition to deny the proposition, that, by the terms of admission, the new States are placed on an entire equality with the old States as to rights and duties; and if I had the disposition, I have not the power to do it, consistently either with the letter or spirit of the acts of Congress authorizing their admission. Nor, in what I am now about to say, shall I be justly obnoxious to the imputation of entertaining unkind feelings towards the new States. Coming, as I do, from one of the old States of the Union, and from a State from which the tide of emigration has heretofore rolled with a rapidity and constancy which has not entirely ceased, I have many reasons to feel and cherish all that kindness and respect towards the younger sisters of the confederacy, (as they were very appropriately called by the honorable member from Pennsylvania, [Mr. BUCHANAN] which such an endeared relation should excite. Many of the sons of Connecticut are now respectable citizens of those States; some of them are distinguished members from those States of the National Legislature. I say, therefore, with frankness and with pleasure, that I would withhold from them no one right—I would deprive them of no one privilege, which, under similar circumstances, is granted to the older States. I may, however, still be permitted to say, that this principle of equality, so far as it relates to the administration of justice in the federal courts, has never been the standard by which the judicial system of the nation has been regulated, not even in the old States of the Union. Upon the principle of entire equality, each State should have a judge of the Supreme Court; and more than one, if necessary, to enable its judicial business in the courts of the United States to be finished with the same facility and economy as in the other States.

But our judicial system does not now proceed on any such assumed basis. Why are parts of the wealthy and powerful States of New York, Pennsylvania, and Virginia, cut off from the benefits of the present system? Why are they deprived of the talents and learning of a judge of the Supreme Court? Is not this humiliating to their pride—and, yet to obviate it, the number of the judges must still further be increased. Even the bill under discussion deprives a part of the State of Louisiana, and a part of the State of Alabama, of the same benefits. If we look at the progress of our legislation on this subject, it will be obvious that no such principle as that of State pride, feeling, jealousy, ever entered into the merits of the system. Kentucky was admitted into the Union fifteen years before the present system was extended to her. Tennessee eleven years, and Ohio four years. I need not, however, press these considerations, for the honorable member from Pennsylvania, [Mr. BUCHANAN] with his usual frankness and candor, admitted that the admission of a State into the Union, though thereby placed "on an equal footing with the original States, in all respects whatever," did not confer upon her the right to claim that the circuit court system should be extended to her immediately, and that no obligation was imposed upon Congress so to extend it, until the wants of the State required it, and the circumstances of the country permitted it to be done. I am satisfied with this standard of our duty, and I ask the committee to apply it to the present situation of the six new States. Its wants, so far as they apply to this subject, are to be ascertained by referring to the extent and amount of its business in the federal courts. I was surprised that the committee were furnished with no statement regarding it. I do not know, nor have I heard, that it is such as to require that the judicial system should be extended to them; and, being ignorant of their wants, can I vote for a bill which has been framed to supply them?

If I were allowed to hazard a conjecture, it would be that the judicial business of these States, in the courts of the United States, was very limited in amount. Their local situation, and the habits and pursuits of their inhabitants, (with the exception of the commercial cities of New Orleans and Mobile,) would seem to be such as not to produce much litigation in these courts. No memorial has been presented from any one of these States, at least none, within my recollection, stating their wants and soliciting relief.

I have obtained from the clerk of the Supreme Court a statement of the number of causes now on the docket of that court, and from what courts they have been brought up; and I was surprised to find that there were more causes from the district court of west Virginia, to which the circuit court system is not now extended, than from any one of the six new States. The whole number on the docket is stated to be one hundred and thirty-three. Of these, six are from Louisiana; seven from west Virginia; five from Missouri; two from Mississippi; three from Alabama; and from western Pennsylvania, which is excluded from the operation of the circuit court system, two. None from Illinois, none from Indiana. So that, out of one hundred and thirty-three cases, sixteen only are from the six new States, and nine from States which have no participation in the benefits proposed to be conferred on the former. I am aware that this is not a certain criterion of the actual amount of judicial business which is done in these States; for many causes are disposed of in the district courts, which cannot or do not come to the Supreme Court; but I am inclined to believe it is a safe basis upon which to calculate the extent of their litigation in the federal courts. What, then, is the result? Is it not that their wants are not so pressing as to justify the passage of this bill?

But it is alleged, as another cause of complaint, that they are deprived of the substantial benefits which result, and which the other States enjoy, from the establishment of a circuit court; admitted upon terms of full equality, they are denied an equal participation in the benefits of a judicial system, which should reach and equally protect the interests and promote the prosperity of all; that, according to the existing system, they are deprived of all the advantages resulting from the supposed superior legal acquirements of a justice of the Supreme Court; they are subjected to the delay and expense of a trial at Washington, when they might be entirely satisfied with the decision of a circuit court; that they are not allowed an appeal to the Supreme Court, unless the amount in controversy, in all cases, exceeds two thousand dollars, and in criminal cases no appeal at all.

I have already adverted to what I cannot but deem a satisfactory reply to this cause of complaint. So far as it relates to the final jurisdiction of their district courts, in cases where the demand does not exceed two thousand dollars, and in prosecutions for offences, it may easily be obviated by a modification of the present law, in these particulars. But a remark or two further may not be out of place. It seems to me, there is but little ground for this complaint. It is perhaps true, that, from the increased responsibility, the increased salary, and thus increased inducements to men of learning and talents to accept the office of a judge of the Supreme Court, the judges of that court are generally presumed to possess the requisite qualifications for such an elevated station, in a greater degree than the district judges; but, if the latter were all as well qualified (and I do not know but they are) as one with whom I have the honor of a personal acquaintance, and others whose character and reputation are well known by every lawyer, there would be no necessity to institute comparisons, nor any room for the application of the pre-emption to which I have alluded. But it is probable that if the circuit court system were extended to those States, it would have the effect to diminish the number of cases which would be



brought to the Supreme Court? Would suitors, in cases of interest, be any better satisfied with trials at the circuit court, than at a district court? Would they not, in either case, remove them, if by law they could be removed, to the court of dernier resort? Is not such the ordinary, usual course?

I will now consider the subject with reference to the States of Kentucky, Tennessee, and Ohio, to whom the circuit court system is extended. As to them, it is urged that there has been for many years, and now is, a great accumulation of business on the dockets of the circuit courts, which cannot be finished without the formation of new circuits, and that the delays consequent thereon are equivalent to a denial of justice. I shall not stop to recapitulate the statement which was made of the extent of this business, as it existed in 1826, when a bill similar to the present passed this House, and which was probably the principal inducement to its passage. It occurred to me, while the honorable member from Pennsylvania [Mr. BUCHANAN] was favoring the committee with this statement, that the experience of every lawyer evinces that it is not always the number of causes on the docket which furnishes a sure index of the actual amount of litigation; that a judgment in one would settle principles which would apply to many. I did suppose, as was suggested by the honorable member, that, in Kentucky, one source of litigation, which had tended much to increase the business in that circuit, was dried up; that an adjudication of the Supreme Court of the United States had put an end to the commencement of many causes in the circuit court, which would otherwise have been there. I had understood, also, that this adjudication was acquiesced in, promptly and with a good grace, by that patriotic State. She is not the only State whose laws have been subjected to the searching operation of the court of last resort. Almost every State in the Union has, at some period, had her legislative enactments tested by the constitution, through the medium of that court. I wish I could add that they had all submitted as promptly and as cheerfully to the judgments which declared their laws void, as did the patriotic, high-minded, and honorable State of Kentucky. It occurred to me, also, that many intricate questions connected with the land titles of the States of Kentucky and Tennessee had been finally settled, and thus a considerable portion of judicial business arising from that source been removed from the docket. And I had hoped we should have been furnished with a statement of the amount of judicial business, of litigated cases, at present pending in the circuit courts of these States. If the honorable members who have preceded me in this debate, had made such a statement, I should have inquired no further. I should have received it, as I do every thing which they communicate, as facts, as entitled to full and entire credit. Neither of them, however, informed the committee, or, if he did, it has escaped my memory, of the actual state of the dockets, the number of litigated cases to be heard and determined. I deemed it proper, therefore, to obtain information on this point, as I was to be called to vote upon this bill, professedly and principally framed to obtain a speedy disposition of this judicial business; and I sought it from a source in my judgment entitled to the most implicit confidence in its accuracy. I have obtained it, and I will now communicate it to the committee.

In the State of Ohio, there are two circuit courts held each year at Columbus. In the State of Kentucky, two terms at Frankfort. In the State of Tennessee, one term at Nashville, and one at Knoxville. The information as to the state of the dockets in the circuit court in these States, is, that two weeks will probably be sufficient to finish the present docket at Frankfort at the next term, about the same period at Nashville, and that at Knoxville less than a week will be required, and that two weeks in Ohio will be sufficient for the same purpose; that, under any cir-

cumstances, probably not more than two weeks and a half will be necessary at Columbus, Frankfort, or Nashville. Taking the longest period here stated, the present dockets, at the next term in those States, can be finished in thirteen and a half weeks. I think no member of this committee will believe this period will be so long as to occasion such delay as will amount to a denial of justice. No complaint has been heard from the distinguished judge who presides in that circuit, though his labors are arduous, and the distance which he is compelled to travel, long, and the fatigue great. How will the time required to dispose of the business in this circuit compare with that devoted to the same purposes by the learned judge of the Eastern circuit, which includes the States of Maine, New Hampshire, Massachusetts, and Rhode Island? I make no invidious comparison of the respective labors performed by the judges of these circuits. I do it merely to evince that no new judge is wanted for the three States of Kentucky, Tennessee, and Ohio; that those States have no just cause of complaint, when the extent of their judicial business is compared with that of the States composing the Eastern circuit.

From a source entitled to full credit, I learn that in the Eastern circuit a week each term (of which there are two yearly in each State composing the circuit) is the usual time the court is in session, in Maine, New Hampshire, and Rhode Island. In Massachusetts, the terms are from three to six weeks, fluctuating much with the business. Taking an average, the terms in the four States will consume fifteen weeks. But it is to be observed that the business in term gives a faint idea of the real labors of that judge. Almost all the equity causes, and many others of difficulty, which would interrupt the trials in term, are argued in vacation, sometimes orally, often, and perhaps usually, in writing, so that a very considerable part of every vacation is occupied in hearing or deciding causes. I entertain no doubt that the labors of that judge consume nearly, if not quite, three-fourths of the year. Already has the profession the benefit of six volumes of his decisions in law and equity cases only, since he was elevated to the bench, (which I believe was in November, 1811,) and a seventh volume is nearly through the press. With a knowledge of all these facts, can it be said, with any propriety, that the wants, the necessities of the three States composing the seventh circuit require an additional judge? Is the period of thirteen and a half weeks, with the necessary travel, so long as to make the terms of the court too burdensome, and the labors of the judge too great to be endured? Does it require the physical powers of a Hercules, as supposed by the honorable member from Pennsylvania, [Mr. BUCHANAN] to discharge the duties of a judge of that circuit? I cannot think it does. I cannot believe that we should be justified in making the appointment of another judge to lessen the duties of him who now performs them so well without complaint.

But should the committee suppose that the view which I have thus far taken of this subject is incorrect, that there are evils which require to be remedied, the most important part of the subject remains to be considered, and that consists in an answer to the second general inquiry stated at the commencement of my remarks:

Does this bill furnish both an adequate remedy for existing evils, and the best which under all circumstances can be adopted?

In my judgment, no worse remedy can be adopted than that which increases the number of the justices of the Supreme Court. I will briefly state the reasons for this opinion.

It tends to divide the responsibility of the judges, and thus diminishes the weight of it, which each individual judge should feel. It is a very common observation, but not the less correct, indeed it has almost the force of a truism, that in proportion as the number of agents employed

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ed to perform any service is increased beyond that necessary for its accomplishment, is the responsibility of each lessened. This springs from a principle of human nature too obvious to need illustration. I am aware that it is difficult to fix the precise limit where individual responsibility will be materially impaired by the increased number of agents, but I think it not difficult to perceive that it must be impaired, when, in the court of dernier resort, being purely a judicial tribunal, that number is nine, though there is no magic, as was said by the honorable member from Tennessee, [Mr. POLK] in the number nine. We must resort to the practice of other nations, and to the different States in the Union, to guide us to a correct result on this point. In England, with the exception of the House of Lords, and, in this country, of the supreme court of errors of the State of New York, the court of dernier resort is composed of a less number than that proposed in this bill. With regard to the court in England, and that in New York, which are exceptions, they are not merely judicial tribunals, but possess and exercise legislative powers, and there is no analogy between them and the supreme appellate judicial tribunal of this country. The House of Lords, sitting as a court, review very few of the numerous cases, either in law or equity, which are yearly adjudicated by the court of chancery and the courts of King's bench and common pleas. I would appeal to many gentlemen in this House, whose observations have enabled them to form correct opinions on this subject, whether a smaller number than that proposed by this bill has not conducted to a more perfect responsibility of each member of the court, than would probably have existed had it been increased. I appeal particularly to one gentleman, whom I see in his place, [Mr. SPRAGUE, of New York] and whom I hope the committee will have the pleasure to hear, whose judicial character to know, is to respect and admire. I ask him to say, whether, from the observations which a long and distinguished judicial life has enabled him to make, the responsibility of each judge is not to an extent, by no means inconsiderable, greater or less, in proportion to the number of judges who compose the court. The honorable member from Pennsylvania [Mr. BOGGS] was pleased to say, that those who think the number proposed in this bill too large, confine their views too much to the several States; whereas, the true statesman looks beyond the confines of his own State, and embraces within his vision this extended republic, consisting of twenty-four States, producing a great mass of business requiring judicial investigation. I make no professions to the character of a statesman. My pursuits in life have been professional merely; but I am yet to learn that because our country is great and extended, because much judicial business is to be done in its courts, that this affects the argument which I am now urging, that an increase of numbers impairs individual responsibility. It may, on that account, require the adoption of a different system from the existing one, but in no degree does it weaken the force of the suggestions which I have made in relation to the responsibility of the judges.

An increase of the number of judges tends to produce less concentration of action, (if I may be allowed the expression,) less union of action in the court, than would otherwise exist, and as would be desirable. It is certainly important that each judge should, for himself, examine with care and attention every case, every matter of law and fact connected with it, in which he is called to pronounce an opinion. This is oftentimes a work of time and of great labor. Increase the number, and may it not be feared that it will tend to the allotment of different cases to different judges, not merely to draw up the opinion, (which is not only proper, but necessary,) but to examine the cases; and thus, instead of bringing to the aid of the litigant parties the individual learning and industry of each, the decision will in fact rest, as it will be pronounced, on

the investigation of a single judge? May it not be feared that either this result will follow, or that the business of the court cannot be seasonably finished with a due regard to the rights of the parties, or that much of the time of the court will be consumed in endless discussions, especially in cases where there is any considerable complication of facts, in perhaps oftentimes fruitless endeavors to reconcile jarring opinions and different views which may be taken of the same subject? The honorable member from Pennsylvania [Mr. BOGGS] admitted, that if the judges had no circuit duties to perform, there would be danger that the consequences to which I have alluded would follow; that there would be danger that some of them would be, as he expressed it, aye or no judges. I am at a loss to perceive how the discharge of these circuit duties would destroy this characteristic. A judge, who would be an aye or no judge on the bench of an appellate tribunal, is in great danger of being less than that at the circuit.

An increase of the number of judges will tend to impair public confidence in the court. Next in importance to an upright administration of justice, is the belief that it is so administered. Indeed, it is almost as essential to the real utility of a court, that its decisions should be deemed to emanate (to use a common expression) from a pure heart and a sound head, as that such should, in fact, be their characteristics. Let the community once believe, whether from causes well or ill founded, that the decisions of this judicial tribunal are not entitled to their confidence, and the salutary effects which would otherwise follow from the exercise of their powers would be neither seen nor felt. Am I asked how this confidence of the public may be impaired by increasing the number of the court? I answer, in one or both of two ways.

By creating a belief that the court partakes more of the character of a popular assembly than of a mere judicial tribunal; that appointments are to be made to it with reference to some supposed ratio of representation in the several States; that each portion of the Union is to be regarded, whenever a vacancy occurs, or new judges are to be added, as entitled, from its wealth, population, or political importance, to furnish the incumbent; indeed, that this of itself constitutes a reason for the increase of the court; that sectional views are to be consulted, sectional importance to be considered; that an increase of the number is necessary to advance the particular interests of particular parts of the country. I need not detain the committee to point out the deleterious consequences resulting from such an impression upon the public mind. It is very obvious the court, under such circumstances, would cease to possess much of the confidence of the people.

Another way in which an addition to the number of judges might tend to weaken public confidence, would be, by presenting to public view, in many cases, a minority of the court, perhaps, a large one, in the decision of questions of great national importance. And should the minority be supposed to be superior to the majority in legal acquirements and judicial learning, the decisions in such cases would, perhaps, not be considered as possessing the force and binding authority of precedents, but would be doubted, sustained, or overruled, according to the varying opinions of the additional members of the court, as they should successively take their seats on the bench.

The system proposed to be extended by this bill cannot, in my judgment, be permanent. Sooner or later it must be abandoned. Whenever, from the increased number of States which may hereafter become a part of the Union, the increased population, and the consequent accumulation of business, it becomes necessary to add still further to the number of judges, you must then either give up the present judicial system or the Supreme Court: instead of possessing hardly the characteristic of a court, and certainly not deserving the name of one, it will, in fact, be but a popular assembly. I do not believe that

member would be willing to add one to the number of the judges, as often as the organization of a new circuit becomes necessary. And when will this period arrive? I know it cannot be ascertained with mathematical precision. The honorable member from Pennsylvania [Mr. BUCHANAN] says, not within half a century, nor until every gentleman now within the sound of my voice shall be sleeping the sleep of death. I cannot but consider this assertion somewhat gratuitous, as made without the reflection which he usually bestows upon every subject to which his attention is called. I think it will arrive within the period of fifteen or twenty years, and that it would not be difficult to sustain this position. But be it sooner or later, it is obvious that the time will arrive when additional judges will be required, if the present system be continued. And what will then be our situation? Under what embarrassments will the country then be placed? Why, sir, we shall have on the bench of the Supreme Court more judges than, as the honorable member from Pennsylvania [Mr. BUCHANAN] admits, are either necessary or useful to the due administration of justice in that court. What is to be done with them? They hold their office by the tenure of good behavior. They cannot be legislated out of office, unless the same course is resorted to, which was adopted in 1802. The court then becomes burdened with useless incumbents. Is it safe or prudent—is it expedient to continue a system which accumulates judges so far as that hereafter it will be serious cause of regret that they are in office? Is not the argument deserving consideration, that we should not go on adding to the court, when eventually the system which creates the necessity for it must be abandoned? But this is not all. Is it the dictate of wisdom, in legislating with reference to the judicial system of this extended country, to make it, at least so far as it regards the number of judges, the creature of temporary or local policy? Should not the great outlines, the leading features of it in this particular, be permanent? Ought we to adopt one system to-day to meet present exigencies, and another to-morrow, because other exigencies have arisen? Will this principle be a safe one, when applied to a tribunal created for the administration of justice, the exposition and construction of laws? Let us not shut our eyes to the light which history and observation furnish on this subject. Are the rights of individuals and of the public, when drawn into controversy in courts of justice, as uniformly sustained by an independent and enlightened administration of justice, where the organization and structure of their courts are subjected to the operation of frequent and radical changes? With a few exceptions, history, and the declarations of those competent to judge, will answer this question in the negative.

If the number of judges be increased, in conformity with the principle of the present bill, as the wants of the country may hereafter require, may it not be feared that it will be impossible that the business of the Supreme Court should be done with that despatch which a due regard to the right of suitors requires. Do our friends at the West tell us that delay is a denial of justice to them? How will it be with parties attending the Supreme Court in this capital? Will there be no delay as to them? I have been informed that now, with the increased term of the court, two years elapse, on an average, before a case, after it is entered on the docket, is determined. The clerk has furnished me with a memorandum, from which it appears that on the 8th of January, 1827, there were one hundred and sixty cases on the docket. At the January term of the same year, seventy-seven cases were decided. On the 14th of January, 1828, there were one hundred and thirty-one cases on the docket. At the term of that year eighty-eight cases were decided. On the 12th January, 1829, there were one hundred and nineteen cases on the docket. At the term of that year fifty-three cases were decided. On the 15th of February, 1830, there

were one hundred and thirty-three cases on the docket. In 1827, the court were in session sixty-eight days. In 1828, sixty-three days. In 1829, sixty-seven days. And how will the period of delay be extended, as the business of the court increases with the increase of the business of this growing country? This delay will not be attributable to the court. The judges are in no fault. It is to be attributed to the system under which they are placed. They accomplish all which the most devoted and untiring industry, and incessant application to the discharge of their duties, can accomplish. But they are obliged to adjourn before all the causes are heard and determined, to enable them to hold the circuit courts. Must not, then, the present system hereafter be abandoned, or the docket of the Supreme Court be filled with a number of litigated cases immeasurably almost exceeding that of any of the Western States which now complain of it as amounting to a denial of justice to them? Why, sir, it may be feared that the proverbial delays of the English court of chancery will not exceed the necessary delays which hereafter will attend parties litigating in the Supreme Court, if the present system be then persevered in. The hand of death will remove them before their controversies can be decided. The delay and consequent expense will consume the whole of what may eventually be awarded to them. This would be not merely a delay, it would be a mockery of justice.

I have thus, as briefly as I could, adverted to the evils which in my judgment would follow, or which might follow, from the adoption of the principle, that new judges are to be created as often as the wants of the new States require them. Were it in order, as I am aware it strictly is not, to advert to an amendment which has been printed and laid on our tables, and which an honorable member from Kentucky [Mr. DANIEL] proposes to offer hereafter to this bill, which provides that a majority of all the justices of the Supreme Court, authorized by law to be appointed and commissioned, shall concur in deciding against the validity of a statute of, or an authority exercised under, any State, in every case in the Supreme Court, where is drawn in question the validity of such statute of, or authority exercised under, any State, on the ground of a repugnance thereof to the constitution, treaties, or laws of the United States, and, unless such majority concur, the decisions of the Court shall be entered as in favor of their validity, and which further provides that no district or circuit court shall have jurisdiction, or take cognizance of any suit, matter, or cause of action, (other than causes of admiralty and maritime jurisdiction,) either at common law or in equity, where the cause of action, matter, or suit arises out of, and depends solely upon, the laws of any State, and in which no statute of, or authority exercised under, any State, is drawn in question, on the ground of a repugnance thereof to the constitution, treaties, or laws of the United States; and if I could think it possible that this amendment would meet with the favor of the committee, I should think the bill so amended much worse than it now is; for then the tendency of the system would perhaps more obviously be to unsettle and put at hazard judicial decisions on great questions which take hold of the vital interests of this nation, to set afloat precedents regarding constitutional law, made after the fullest discussion and the most mature deliberation, and acquiesced in by every department of the Government, and by the great body of our citizens. But this is not the time to discuss the principles involved in this amendment. I abstain at present from any further remarks upon it.

I have now submitted to the committee, I am sensible in a very imperfect manner, all which I wish to say regarding the supposed necessities which have given rise to this bill, and the objections which in my judgment exist to its provisions even if those necessities did exist. My object has been to show that there are no evils attendant upon the

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practical operation of the present judicial system, confined, as it is, by existing regulations, which, according to the uniform course of legislation on this subject, requires a remedy, and, if there were, that the remedy proposed is worse than the disease. Should these objections be considered as deserving attention as possessing any weight, while at the same time the committee believe that a necessity does exist for the application of some remedy for existing evils, it may be expected that I should point out a better remedy for them than that which this bill proposes. This is all which remains for me to do.

The amendment of the honorable member from New York, [Mr. STANLEY] now more immediately under consideration, proposes a division of the States into nine judicial circuits, as follows:

The first circuit to include the States of Maine, New Hampshire, and Vermont:

The second circuit the States of Massachusetts, Rhode Island, and Connecticut:

The third circuit the States of New York and New Jersey:

The fourth circuit the States of Pennsylvania and Delaware:

The fifth circuit the States of Maryland and Virginia:

The sixth circuit the States of North Carolina, South Carolina, and Georgia:

The seventh circuit the States of Alabama, Mississippi, and Louisiana:

The eighth circuit the States of Tennessee, Kentucky, and Missouri:

The ninth circuit the States of Ohio, Indiana, and Illinois.

Each circuit to have a court consisting of the judges of the district courts within the circuit, who are to be invested with all the powers, and to perform all the duties now discharged by the present circuit courts; the district courts in each State to remain as they now are.

An amendment, ordered to be printed, and hereafter to be submitted by an honorable member from Vermont, [Mr. EVANS] divides the States into five circuits:

The first to consist of the States of Maine, Massachusetts, New Hampshire, Vermont, Connecticut, and Rhode Island:

The second of the States of New York, New Jersey, Pennsylvania, and Delaware:

The third of the States of Virginia, North Carolina, South Carolina, and Georgia:

The fourth of the States of Ohio, Indiana, Illinois, Kentucky, and Missouri:

The fifth of the States of Tennessee, Mississippi, Louisiana, and Alabama:

And provides for the appointment of five circuit court judges, and that the circuit court in each district of each circuit shall consist of the circuit judge of such circuit, and the district judge of such district.

Both these amendments separate the justices of the Supreme Court from their circuits.

Another amendment, which has been printed, and is to be submitted by an honorable member from New York, [Mr. STANLEY] proposes to re-organize the present circuits, as follows:

The first and second circuits to remain as now constituted:

The districts of New Jersey, Eastern Pennsylvania, and Delaware, to constitute the third circuit:

The districts of Maryland, East Virginia, and North Carolina, to constitute the fourth circuit:

The districts of South Carolina and Georgia to constitute the fifth circuit:

The districts of Ohio, Indiana, Illinois, and Missouri, to constitute the sixth circuit:

The districts of Kentucky and Tennessee to constitute the seventh circuit.

The associate justice of the Supreme Court, now residing within the present fourth circuit, to be assigned to the third circuit: The present chief justice to the fourth circuit: The associate justice now residing within the present sixth circuit, to the fifth circuit: The junior associate justice to the sixth circuit: The associate justice now residing in the present seventh circuit, to the sixth circuit.

This amendment gives all the States, excepting Mississippi, Louisiana, and Alabama, the benefits of the present circuit court system, and provides for the appointment of a circuit judge for the district of Mississippi, the eastern district of Louisiana, and the southern district of Alabama, with a salary adequate to ensure the acceptance of the office, by an individual possessing all the requisite qualifications to an able, enlightened, and faithful discharge of its duties. As it is not in order to discuss the two latter amendments, my observations will be confined to the one offered by the honorable member from New York, [Mr. STANLEY]. And I think the system which this amendment proposes to establish, far preferable to the one which the bill as reported contemplates, which increases the number of the justices of the Supreme Court.

The objections to it all grew out of the necessity which it creates for a separation of the justices of the Supreme Court from the circuits, and which confines them to the discharge of judicial duties in bank merely. They have been presented in a form the most imposing, and urged with a power which makes it indispensable that they should receive an answer. I will give it, as far as I am capable of doing it.

I shall not stop to inquire whether, by a fair construction of the constitution, the justices of the Supreme Court can be required to perform circuit court duties; for the legislation and the practice of the Government have so long assumed it, that it is perhaps too late now to recur to original principles. I shall, therefore, suppose the power to require it given to Congress. The expediency of continuing to exercise it is the only point to be considered.

The honorable member from Pennsylvania [Mr. BUCHANAN] urged as an objection to any system which should make the Supreme Court an appellate court merely, that it had been tested by experience, and failed—that such a system was adopted at the close of the administration of the elder Adams; that it was then stamped with the mark of reprobation by the people, and that a period of nearly thirty years had proved the correctness of their judgment.

I do not propose to enter upon a defence of one of the last of the acts of what has been called the stormy and turbulent administration of the elder Adams. I am not required to vindicate this “deed of darkness,” as it has been termed, the “midnight judiciary” act of 1801. I would have said of it, “requiescat in pace.” But since it has been drawn into this debate; since it has been used as a legitimate argument to prove how completely the experiment of detaching the justices of the Supreme Court from circuit duties has failed, it requires a passing notice, and it shall be a brief one.

I had hoped the honorable member, when he opened the tomb which contained the ashes of one of a political family, now as a family extinct, but which he knows once had a name and a praise in this nation, that he would have uttered one kind expression of sympathy over this relic of other days and other times. I had hoped, as he recounted the circumstances of its birth, the time and manner of its death, and the execrations with which it was followed to the grave, that, though required to expose its deformities while alive, he would have remembered, that if too young to attend the interment as a mourner, he was of the household in which it was born, and that filial affection demanded of him at least that he should have spared the suggestion that those deformities were inherited from its parents. But I do not complain of this. *Tempora mutantur*. I shall not do the honorable member the injus-

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tice to apply to him the rest of the quotation. But I inquire, was this system abolished because it was found by experience inconvenient—unfit for the country? Was the repeal of the judiciary act of 1801 caused by a knowledge derived from experience, that it was not suited to the circumstances of the country? What experience did it have? It was strangled in the cradle. It had hardly begun to breathe, when it came to a violent death. It lived but about one year. The act was passed in February, 1801, and repealed in March, 1802. No opportunity was afforded to test its efficiency, its competency, to meet the exigencies for which it professed to provide. And why was it repealed? It is painful to allude to it. I would not do it, had it not become necessary from the use which has been made of it in this debate; for I hope no consideration connected with former or present parties will be urged, either by the friends or the enemies of this bill. It involves no party questions. It affects no party interests. Was the act of 1801 repealed because the people had found, by a trial of it, that it was injurious to the country? Far from it. We all know no such reason could have existed. We know, also, that the repeal took place soon after the commencement of a new administration—at a period of high party excitement; and because it was believed to have been enacted to provide permanent offices for the political friends of the administration which had just ceased to exist, and who were the political enemies of the one which succeeded it. Whether this belief was well founded, and whether it justified the repeal, I do not inquire. I advert to the time and the causes of the repeal, merely to repel the assertion that any thing in the nature of an experiment was made of the utility of the system. And, if any further light be necessary to view the scene which was exhibited when that system was repealed, a distinguished member from Pennsylvania, near me, [MR. HARRIS], who was then a member of this House, and whose able speech in opposition to the repeal many of us have read, can furnish it.

The honorable member urged as another objection to a system which should separate the justices of the Supreme Court from the circuits, that it would produce a deleterious effect on public opinion; that such a system removes the judges from immediate contact with the people, and thus renders them objects of distrust and jealousy, rather than of confidence and respect. And, as an illustration of the principle, the honorable member referred us to the illustrious individual who is now the chief justice of the United States, and has asked whether he would have sustained the deserved reputation which he now enjoys, had he never been known except by the judgments which he has pronounced from a gloomy and vaulted apartment in this capitol? It does not, perhaps, become the humble individual who now addresses the committee even to mention the name of Chief Justice Marshall; sure I am that no words of mine can add to the reputation, as pure as it is brilliant, of this great and good man; but I may be permitted to unite with the honorable member from Pennsylvania, [MR. BUCHANAN] from whom it with great propriety proceeded, in that just tribute of praise which he paid to one who unites in his person all the eminent judicial qualities of a Hale, a Holt, and a Mansfield; whose learning and talents have shed a brilliant lustre on the pages of American jurisprudence, and whose high and elevated character will be remembered, respected, and loved, centuries after he shall have slept with his fathers. And I am yet to learn that he is indebted for this reputation to his intercourse with the people, in the discharge of his duties at the circuit. I concur in the opinion that public confidence in the supreme judicial tribunal is essential, perhaps indispensable; but I cannot admit that it is either acquired or retained by the performance of circuit duties. What kind of intercourse is it which a judge has with the people while holding a circuit court? Is it of that nature

which produces confidence in his judicial decisions? Is it not confined principally to professional men, and to those who would have the same confidence were the circuit courts abolished? Have the citizens of the South or West, who never saw the present chief justice, or the distinguished judges of the first or second circuits, any feelings of jealousy or any want of confidence in them? Have not the people of the Eastern States the same respect for, the same confidence in, the learned judge of the Carolina and Georgia circuits, which are felt for him by those who witness the able manner in which his judicial duties are discharged at the circuit? It is not the intercourse of a judge with the people which creates either respect or confidence. It is his character for integrity, independence, judicial learning, which produces it; and a knowledge of that character is acquired, not through the medium of personal intercourse, but from the judicial opinions which he pronounces.

The honorable member suggested, as another reason why the judges of the Supreme Court should not be detached from circuit duties, that it would bring them and their families from their present places of residence to this city, to reside permanently. And he asked whether there is not danger that, in the lapse of time, they would be converted into minions of the Executive? that they would become contaminated, by breathing the corrupting air of Washington? I do not know whether the political atmosphere of this city is or is not corrupt. I cannot speak from experience, nor from much observation. Perhaps there is a corrupt state of the body politic here; I know nothing of it. If there is, it probably does not arise from stagnant waters. If the political pool be in commotion, I am inclined to believe it is disturbed more by visitants from abroad, who come here to wash in it for themselves, or as proxies for others, than from the peaceable, inoffensive inhabitants and residents of this District. If the air here be so impure, so corrupting, how long will it be inhaled by the judges? Not more than four months in the year; no longer than they remain here to discharge their judicial duties. And if the honorable member from Pennsylvania be correct in the supposition that very shortly the whole docket of the Supreme Court can be finished in two months, or two and a half months, that will be the period in which the noxious qualities of the air of this metropolis will be inhaled; for I cannot think that, when official duties will require so small a portion of the year to be spent in this place, it will ever become a permanent residence for any of them. I have never heard that any of the judges have, as yet, suffered from this cause, though "within the very vortex of Executive influence;" to them the air which they breathe is as pure as that of the country. But, can it be supposed that Executive patronage or influence can be brought to bear upon one occupying the high and elevated station of a judge of the Supreme Court? What motive, what good thing, can be presented to induce a judge of that court to depart from the high road of official duty? Can he be tempted by the offer of any office in the gift of the Executive? He already holds one more honorable (if a comparison may be admitted between offices all honorable) than any which is within the gift even of the people, with the exception of that of the President of the United States. Can the power of the Executive be brought to exert its influence upon him? The tenure of his office is that of good behavior. He is elevated above the frowns and the flatteries of Executive authority and influence. What danger, then, exists that he will be corrupted? If, however, any such danger should be apprehended, it is easily avoided. Provide by law that the terms of the court shall be held in Maryland or Virginia, forty miles east or west from this capitol, and then the judges will breathe the pure air of the country only. The winds will not carry the noxious vapors which float in the atmosphere here such a distance.

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The honorable member from Pennsylvania added one more objection to any system which should detach the judges from the circuits. He feared it would seriously impair the ability of the judges to perform their duties; that they would gradually become less and less fit to decide upon the ever varying codes of the different States; be less acquainted with, and at length nearly lose all recollection of, the peculiar local laws of the States; that, by being withdrawn from the active duties of the circuits, motives to exertion would cease; the judges would become less industrious, the judgment lose its vigor; for, as he remarked, exercise is required to preserve it, and the judge who decides the most causes is likely to decide them best.

To that part of this objection which has reference to that thorough knowledge of the local laws of each State which the judges should possess, and which supposes that it can be obtained and preserved only by the performance of circuit duties, several answers may be given.

If it be well founded, it proves too much, for then there would be no necessity of allowing an appeal to the Supreme Court, in any case depending upon the construction of local laws. The judge at the circuit would, if the principle involved in the objection be extended, decide it, not only there, but in the appellate court. If his knowledge of these laws is necessary to aid him in the discharge of his appellate duties, his brethren on the bench will need the same knowledge. And if it is to be obtained only at the circuit, it is then to be communicated to the other judges, which will supersede an examination in such cases by them, and thus the decisions will be made to rest on the opinion of a single judge. In my opinion there is no necessity for a judge to hold a circuit court, to enable him to become acquainted with the local laws and the different codes of the different States. How is a knowledge of them obtained? From the statute books, the books of reports, the treatises of learned men, the discussions at the bar. Are not all these within the reach of the judges of the Supreme Court here? Have they not the benefit of all these sources of information while sitting in this city? Are not members of the profession called to discuss questions of local law before the Supreme Court? Have we not seen distinguished members of Congress discharging their professional duties since we have been here? And is there any danger that they will not have such respect to their own characters, and the importance of the trust reposed in them, as will induce them to furnish the court with all the means necessary to enable it to pronounce a correct judgment? Must the judges attend at the circuits to obtain the benefits of the arguments of counsel, to know the contents of a statute book, a book of reports, or the treatise of a jurist? Will not a judge, whose learning and talents entitle him to a seat on the bench of that court, be able to apply his knowledge of principles to the construction of local laws? Will he cease to feel a due respect for the station he fills, for the rights of parties submitted to his decision, to the oath which he has taken to discharge his duties faithfully and to the best of his ability, the regard due to his own reputation? Will he forget all these when he is withdrawn from the circuit? Examine the reports of adjudicated cases in the Supreme Court. Is there to be found in them any want of knowledge of local laws by any one of the judges, though he may never have held a circuit court in the State where such laws are the basis of the decision which he pronounces?

There remains to be considered that part of the last objection urged by the honorable member from Pennsylvania, which is founded on the supposed necessity of performing circuit duties to obtain and preserve that vigor of judgment which is indispensable to a faithful discharge of the duties of a judge in the appellate tribunal. And I am not disposed to affirm that this objection is altogether

groundless. Candor requires the admission that it is not without force; but I think its importance has been overrated, and that it is, perhaps, counterbalanced by the evils which may follow from the union of circuit and appellate duties.

What are the characteristics of a really useful judge? Integrity, legal learning, and what is sometimes called plain, practical, common sense; that knowledge of human nature, of men and things, which is obtained by an intercourse with the world. Technical learning is not all which is necessary. It may be too refined, too metaphysical, (if the expression may be allowed with reference to this subject,) sound common sense must be added to it; both united make a learned and a practical judge. How is the requisite legal knowledge obtained? By study, reflection, arguments of counsel. From what source is the knowledge of men and things obtained? By reading, observation, and intercourse with the world. Does it require the aid of a circuit court system to obtain this knowledge? Is not the present chief justice as competent to discharge his judicial duties, as though the docket of the circuit court which he holds required much active employment to dispose of it? Does not his closet witness his devotion to the study of legal science? And has he not daily intercourse with his friends and neighbors? And does he not furnish a living example of a learned as well as useful judge, without the aid derived from much active duty at the circuit? The duties of a *nisi prius* judge do not admit of much elaborate examination. Questions of law are of necessity decided oftentimes without time for deliberate reflection. The judge of such a court should be quick of apprehension, but he obtains there no great expansion of mind. It is not a school to furnish even the elements which constitute the essential characteristics of a judge of the highest judicial tribunal of this nation.

I might add that those who are appointed to this high office, are, and will be, ordinarily, if not always, taken from extensive practice at the bar; and who, therefore, come upon the bench with all the advantages of a long and uninterrupted exercise of the powers of the mind, employed on subjects connected with their new duties, and that there is little danger to apprehend that these advantages will be impaired or lost if they are separated from the circuits.

But is there no evil which attends the system which requires the performance of the circuit duties? Has the profession never seen nor heard of what is sometimes called pride of opinion? Are judges exempt from its operation? Do they not possess any portion of that nature which is common to the species? Are they not men? And is there no danger that this pride of opinion will be carried from the circuit to the appellate tribunal?

I need not reply to the suggestion that a separation from the circuits will cause the judges to be less industrious. The honorable member from Pennsylvania furnished it when he pointed out with so much ability the various and important duties which they were called to perform—the high and transcendent powers with which they were invested—the extended jurisdiction which they possessed—in cases involving principles of constitutional, statute, civil, common, admiralty and maritime, and equity law. With such duties imposed, and such jurisdiction and powers conferred on them, indolence can have no place. Constant application and untiring industry would continue to characterize, as it hitherto has done, the judges of the Supreme Court.

I have endeavored, as briefly as I could, to present the views which I entertain of the bill which has been offered to the consideration of the committee. I shall not trespass upon their patience by a recapitulation of them. My thanks are due for the indulgence which has been so liberally extended to me, for the kind attention and the patience with which the committee have listened to my crude and desultory remarks. I cannot, however, resume my

seat, without once more invoking their attention to the paramount importance of this bill, connected, as it is, with the highest judicial tribunal of the nation. The tide of party prejudice and feeling, and of popular excitement, may roll in upon us like a flood. In its desolating course it may lay waste and destroy many of our valuable institutions. The baleful and corrupting influence of party spirit may enter other departments of the Government; but preserve inviolate the integrity, the independence, the sense of individual responsibility, the learning, of the Supreme Court, this ark of the political covenant, and the public confidence in it, and all will be well. The Government will be safe. These feelings of prejudice and party will subside. This popular excitement will cease. Impair or destroy these essential characteristics of this august tribunal, and all will be lost, irretrievably and for ever lost.

Mr. ELLSWORTH said: After the minute and protracted debate upon this bill, I cannot flatter myself that I shall be able to enlighten or interest the committee, by presenting my own views. Nor can it be necessary, after the able remarks of my colleague. I will solicit your attention only to some general remarks in opposition to this bill, and to some reasons which induce me to prefer another. I have the honor of serving on the honorable committee with whom this bill originated; but after the most mature consideration I have been able to bestow upon the subject, I have come to a different conclusion from the majority of the committee. I listened with pleasure to the able and lucid arguments of the honorable chairman (Mr. BURMAN) who opened this debate. He said, and in the best manner, all that can be said, and fully exhausted the subject, according to his view of it. Nevertheless, I am constrained to differ.

Permit me to remark, sir, that we ought always to approach the judicial power of our constitution with the utmost circumspection and jealous vigilance. Here, truly, lie our best hopes and expectations.

I prefer altogether the system of judicial organization presented to the Senate in the year 1819, and which, as I understand, received the almost unanimous concurrence of that body, viz. making the Supreme Court of the United States an appellate court, and creating circuit courts to be filled with other judges. This is the true system for this country, after all that has or can be said; and one which will ere long be established; and much sooner, too, I am apt to think, than some gentlemen imagine.

Sir, the bill upon your table is one of the deepest and highest interest to this country. Few can be more so. It will give character to the country. It will make our law. It is an act for life. There will be no escape from it. This day we are about to establish the judicial character of the Government for years to come, if not for ever. Many who now hear me will live long enough to see the fatal effects of this bill, should Congress be so unwise as to pass it into a law. I hardly dare to speak openly my apprehensions from the adoption of this bill—the accumulation of judges in the Supreme Court, to provide judges for the circuits. I hope the committee will pause, and pause a long while, before they take a step so ominous to the ultimate destiny of the country.

Permit me to say, sir, that in establishing or extending a judicial system for this country, we ought to aim at two things, uniformity and permanence. The system should be adapted to the wants of the country; it should, if possible, carry to every part of the Union an equal participation in the judicial power of the constitution, and be capable of extension, according to the growth and exigencies of this enterprising, active, and extending republic. It is a fatal objection to any system, that it is partial, or that it must be exchanged for another. A change of system is a change of law. It is a change of judges. It introduces endless and ruinous confusion; and that, too, where certainty and harmony should prevail. If we would have

uniformity in the exposition of the law, we must have a uniform and permanent system in its administration. Let us now look after such a system. It may be found without difficulty. But let us avoid as a calamity this augmentation of judges in the Supreme Court, until it is broken down by its weight, and stripped of every thing which commends it to the people.

There are, essentially, but two plans brought before the committee by the bill or the amendments proposed: one is, to leave the Supreme Court as an appellate court, and create circuit judges for circuit court duties; and the other is, to enlarge the Supreme Court as far as it is necessary to have judges to ride the circuits; and, I suppose, to add occasionally a judge or two to the Supreme Bench, just as they may be wanted on new circuits. I ask the serious attention of gentlemen to the principle of these plans or systems. Any plan can be filled up in detail, if we can but settle upon it.

I shall not deny but that, as far as practicable, we are bound to give to every part of the country an equal participation in the judicial power of the constitution. The friends of this bill set out with this position; and I shall not deny its truth, though I shall show that even they do not act up to it; nor can they upon the system proposed in the bill: and herein is one of its defects. There is a system, however, which will carry into effect this principle; but it is not the system of this bill.

Every wise man will concede to me, that nothing should be done which is calculated to subvert the Supreme Court. Nothing should be attempted which will seriously jeopardize its existence. Whatever feelings may have existed, or may now exist, in any parts of the Union, in consequence of the views entertained by our judges of the powers of the constitution, or of determinations made by them, none will deny that the judicial power is one of the noblest and firmest pillars of our national fabric; and that when its supreme organ comes (if it ever shall) to want efficiency, we shall then have great cause to be solicitous for our dearest interests. I do not hesitate to declare that the judicial power of the constitution is the great regulator, the sheet anchor, the final hope of this Government. Who is not admonished of the inestimable importance of preserving to the court all its wisdom and efficiency, by the deep and diverse interests represented upon this floor of our national council, where conflicting sectional interests and claims are putting to the severest, if not fatal test, the very elements of our constitution?

I shall not stop here to pronounce a eulogium upon the distinguished men who now fill the court. My business is rather to preserve the court than to praise it, and to preserve it in that character and condition which itself constitutes the highest eulogy upon the judges who preside in it.

The first objection I have to urge against the system proposed in this bill is, that it is not even now adapted to the country, and must and will be finally abandoned. It is not uniform throughout the country now, and is becoming less so every year; while, at no very remote period, the whole will be given up for the circuit system. It is wanting in the two particulars which ought to be kept in view in establishing a judicial system. Most of the friends of this bill admit that the Supreme Court, with its seven judges, has come to its perfect and full maturity as a Supreme Court, and that they would not accumulate judges in it, but that they are wanted for the duties of the circuits. Sir, I conjure gentlemen to stop and consider what they are about doing—crowding judges into the court that holds the destinies of the country in its hands, that we may have the necessary circuit judges. And where will gentlemen stop? They add three now. It will be easier to add two, and then one hereafter, just according to the extension and growth of the country. We shall have a town meeting rather than a court. No, sir, we

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must stop where we are. If the Supreme Court is perfect, as it now is, let us leave it to fulfil its high destinies, and not tamper with it, until we rob it of public confidence, and are compelled to abandon it as tumultuous and inefficient. I will never consent to a measure of temporary relief which jeopardizes the structure of the judiciary. We are now called upon to choose the true system; nor need we delay one moment.

Let it be remembered that the judges of the Supreme Court hold an annual session at Washington of about twelve weeks. They need at least four weeks more, to come to and return from Washington. Will these men be able, by increasing their number, as is now proposed, to discharge their duties in the Supreme Court, and on the numerous circuits? Let us for a moment cast our eye over the people and extent of territory, for which it is said we ought, and must, and which we profess to attempt to provide with circuit courts. There is at present but one judge of this court in the Western States; and, as his circuit is to be altered, I will speak of the whole territory together. These are Ohio, Indiana, Illinois, Missouri, Kentucky, Tennessee, Alabama, Mississippi, and Louisiana. We leave by this bill unprovided for the western districts of New York, Pennsylvania, Louisiana, and the eastern district of Alabama. The system, as it is, cannot be stretched so as to do these parts of the country justice. They must therefore wait until the eleventh and twelfth judges shall be added to the court. And let us not forget, that so great is the population in the three western districts of New York, Pennsylvania, and Virginia, that they have nearly as great a representation in this House as all the Western States; and that there are, at this time, more cases on the docket of the Supreme Court brought up from the western district of Virginia, than have been brought from the State which I have the honor, in part, to represent, from the origin of the Government to the present time. There are likewise Florida, Arkansas, and Michigan, pressing on for admission into this Union; and what is to be done for them? The business in Florida is very considerable at present, and will soon be much greater. This whole territory, which I have thus enumerated, constitutes more than two-thirds of the United States. Are we from time to time to give them circuit judges who shall sit in the Supreme Court? The extent of travel and business forbids it. But let us look at the amount and character of the business of the Supreme Court at Washington, even as it now is; and should it increase, as it certainly will, there must be two terms of the Supreme Court established. There are on the docket of that court one hundred and thirty cases. It does not ordinarily dispose of more than sixty each year, with a protracted and laborious session of ten or twelve weeks. The labors of the judges while on the bench of the Supreme Court are incessant and exhausting. They cannot possibly endure more. And are they to be denied all time and leisure for reading and study? Is there really any danger that they will become the victims of "indolence and sloth," as has been said repeatedly during this debate? What men on earth have more need of time to become qualified to discharge the responsible duties of the highest judiciary of this country? How vast, how overwhelming, is the jurisdiction of that court? The world has never seen the like. History does not inform us of any such. Consider what deep and intricate questions are weekly and daily discussed there, growing out of our national compact; out of State legislation; national law, commercial law; the numerous titles to real estate under the laws of the States; the great code of equity which prevails there. What consummate wisdom; what profound talents; what historical and diversified reading; what professional knowledge; what study, research, and deliberation, must they bring to their consultations? And then, what amount of responsibility lies upon their minds, while they are thus settling principles involv-

ing the character of the nation abroad, and of every portion of it at home. I declare, they are the last men to whom we should deny time. That jurisdiction, which in other countries is divided, is all placed in our Supreme Court; and without more time to devote to the business of that court, than they are likely to have should this bill pass to a law, the judges will not sustain themselves, nor finish business as it should be done in an appellate court, which convenes only once a year. Besides, sir, I should think that the noble ambition of the judges to answer the just expectations of the country, and sustain the high character they must have acquired to obtain the enviable seats they fill, are a sufficient guaranty that time will not be squandered by them.

I have thus far contended that the system proposed in this bill must and will be abandoned, and perhaps much sooner than we are aware of, if we attempt to impose upon the same men the duties of the Circuit and Supreme Courts.

The second objection I have to urge against this bill is, the accumulation of judges in the court.

I have no belief that the court can be made better by increasing the number of judges. Seven is enough, if not too many. I will not, on this part of the subject, detain the committee by examining minutely the reasons of the consequences which must inevitably follow increasing the Supreme Court. I appeal to the observation and experience of all who hear me, for the truth of what I now say. The court will become unwieldy, dilatory, less uniform, less efficient; the judges will feel less personal responsibility, and they will often be divided in opinion. I beg gentlemen to weigh these considerations, and give them their due influence. Lord Mansfield, after he had been the chief justice of King's bench thirteen years, in giving his opinion in a case in which one of the judges differed from the other three, expressed his regret that the court were not united, and said that it was the first instance of a difference among the judges since he had been on the bench. What has been the effect of such unanimity in the English courts? The great commercial principles of that people have been settled once, for ever. Place nine or ten judges upon the King's bench, and what think you would be the unanimity or effect of its decisions. Is it not a subject of regret, that the appellate tribunals of the country so often present jarring opinions and discordant views, the result of a numerous bench? There cannot be ordinarily mature consultation where there is a multitude of judges. Where do the friends of this bill find any examples to sustain their views? I stop not to speak of the House of Lords, nor of the Senate of the State of New York. Neither of them, in point of judicial character, are worthy of imitation or praise. They are no more competent to decide questions of law, than is this House, in which there is as much judicial talent as in either of them. But I fear we should make a sorry figure with the abstruse and complicated principles which undergo an examination in the other part of this capital. The highest courts of law and equity in England consist of from one to four judges. There are four on the King's bench, four in the common pleas, four in exchequer, one in the court of equity, and one in the court of admiralty. Who has not heard of the wisdom and the fame of her lord chancellors, whose jurisdiction and power are immense? Of the enlightened administration of her admiralty and other courts? What would be thought of a proposition in Parliament to encumber those courts with ten judges? And, sir, what do we find in our own country to recommend this bill? Massachusetts has but four judges, New York three, Pennsylvania five; and these are among the largest and most commercial States in the Union. The idea has been gaining ground in this country for a few years past, that our supreme judicatories should consist of a few, but able men.



Some have said that the Supreme Court should be enlarged for its own sake, in order that every part of the country may be represented. If by representation is meant that the sectional feelings of the country should be in the court, I protest against such a notion. Nothing but downright corruption would be worse. But if gentlemen mean only that the court should be possessed of local statutes and usages, so as to be fully possessed of whatever is material to the merits of cases, I agree with them. And I say they always have this from the record, which brings up from the circuit court every thing which pertains to the case, whether it be local or general. If this were not so, how could the judges, who do not try the case below, ever understand it above? Do they depend upon the judge who sat at the circuit, for the facts or law upon which they are to decide? Not at all. The whole case is on the record. Let the question be put to the judges, if they do not gain their knowledge from the record and argument of counsel, and I will most cheerfully abide the answer. Besides, if I am wrong, then each State wants a representative in the court. It cannot be contended that a judge, by holding a circuit court twelve days in a year, and often less, in a sister State, can acquire any local knowledge or practice which is peculiar, upon which he would venture to rely himself, or communicate to others.

The third objection I shall urge against the adoption of this bill, is, that an appellate court should not be composed of judges whose decision is to be reviewed, and, if necessary, reversed. Judges are but men, and they are subject to like passions and infirmities with them. There are but few judges who, after forming and publicly pronouncing an opinion below, can review it with entire impartiality above. I appeal to the observation and experience of every gentleman who hears me, if this is not so. Such perfection is not to be expected from imperfect man. There is a pride of opinion, as well as an ambition to be right, which, in spite of the efforts of the most upright mind, will influence it in reviewing its conclusions. I would not abandon a tried system for this defect only; for perhaps we cannot hit upon any system not obnoxious to objections; but it is a defect, and one often of a serious magnitude. It sometimes happens that the judge below gives the casting vote above. I have known this to happen in the State which I have the honor to represent, and yet the judges of that court are among the most distinguished and virtuous men who ever adorned any court. If it be necessary to have different grades of courts, that important questions may be thoroughly examined and re-examined, so that error shall not lurk in any hidden place, is it not equally necessary to fill those courts with different judges?

These are some of the considerations which induce me to oppose the passage of this bill. The system proposed is not adapted to this country, and is becoming less so every year. It is not, and cannot be uniform, and will speedily give way to the introduction of the better and true system. The Supreme Court will be loaded with judges, until it is broken down; when, alas, we shall find it too late to retrieve our affairs. I will not, after the extensive remarks of my honorable colleague, who has just taken his seat, detain the committee, to urge other objections to the bill.

I do not concur in one position laid down by my colleague, viz. that there is no necessity for doing any thing. I think something must be done. There is nothing like an equal participation of our judicial power, by the Western States, and some portions of the Eastern. We are bound to do something; the best we can. If we will not hear the complaints now, they will become uneasy; and we may be found to adopt, at last, a system under unpropitious circumstances.

The honorable chairman of the committee has told us that if we separate the judges from circuit duties, they

will become the tools of corrupt influence in this capitol. He says, they will come to reside here, and will breathe the tainted atmosphere of Washington. This is altogether imaginary. The judges will not come to reside in Washington. Will it be believed that the judges now on the bench would, did they not ride on the circuit, leave those parts of the country where they have been born and educated; where live their friends and connexions; where they have established themselves in the affections of the public; have contracted family alliances, and perhaps made pecuniary investments—and come and live in this vortex of fashion, extravagance, and dissipation? Let the question be put to the judges severally, I will abide the answer of any one, or all of them. But what if they should establish themselves here? How are they to be tainted? The Executive, for the time being, is not ordinarily the person who has raised to the bench more than one or two of the judges. And how, if he be corrupt himself, (which I will never suppose of any man whom the people of this country select as their Chief Magistrate,) can he address the judges? What has he to present to seduce them? They hold, by an independent tenure for life, the best offices in the Government; with a salary equal to their utmost wishes. No, sir, if danger there be, it is on the other side; that these men will feel their independence too much, if it were possible. Nothing will give independence and integrity to men, so much as a commission in the Supreme Court. There is not the most remote danger of surveillance there. I repeat it, the danger is rather on the other side.

It has further been said, that, if we do not send the judges out upon the circuits, the people will withdraw from them their confidence; they will know nothing of them but the "decrees issuing from their dark and vaulted chambers." I was, indeed, sorry that the honorable gentleman who opened this debate, should have lent his name in any way to such an objection, and to those weak or wicked persons who talk of the "decrees," and "dark and vaulted chambers from whence they issue." Such things should not be said, or imagined. Like a division of the Union, we should reprobate the very mention of them. Sir, what is intended by this objection? That the judges of the court sit in secret, and formulate their edicts, regardless of the vows which are upon them? Do they not sit in open day in this capitol? before us, the representatives of all this nation? and the innumerable distinguished advocates and strangers who crowd their room to listen to their wisdom, and the thrilling eloquence there to be heard from week to week? Are there any secretaries there? any appalling "decrees?" "any dark and vaulted chambers?" The Supreme Court is the noblest and most august tribunal in the land; most worthy of the confidence and affection of the people. I am sorry to see such sly and hurtful insinuations. I acquit the honorable chairman of all opposition to the court himself. No man, I trust, more highly appreciates it, and few can do more to defend and sustain it. But the friends of the country must not forget that the judicial power is the palladium of the constitution; without which, it would not live a twelve-month.

It is further said, that, if the judges are not sent on the circuit, they will lose their knowledge, their acuteness, and their habits of attention and business. There may be something in this objection, but much less than is supposed. Will the judges lose their professional knowledge while they are listening, for three months, to the most profound and erudite counsellors, on the most intricate and important subject? What learning, thought, research, and wisdom, do they need to bring to their deliberations? What will they forget? What do they not need to acquire? And is it really true, that, after having spent their lives in the practice and detail of the law, they must travel, and try cases on the circuit, to keep their faculties alive

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and efficient? Can it be necessary that these learned men should mix with all sorts of people to retain their knowledge, their tact, or their integrity? "To ride in coaches, wagons, solas, gigs, carryalls, or in stambots, and ferry-boats, to receive the full benefit, in eating houses, taverns, boarding houses, and bar rooms, of the conversations of learned tapsters, stewards, and stage coach drivers?"

I have thus briefly, but I hope satisfactorily, considered the objections urged to a system which separates the duties of the circuit courts from the judges of the Supreme Court; they are more imaginary than real.

The amendment more immediately under the consideration of the committee proposes to abolish the present circuit courts, and divide the States into new circuits, and create a new circuit court to consist of the three contiguous district judges. I do not know that I should object to this system; although I fear that all the present district judges would not give satisfaction in this higher tribunal. They were not selected for it, nor are their salaries such as would command the first talents hereafter. This may not, however, be the fact. In the State which I have the honor in part to represent, I know it is not the fact. The district judge of that State is distinguished for his talents and professional attainments, and would do honor to the Supreme Court itself.

Sir, the subject before us involves the substantial interests and glory of this country. Let us pause, and consider well what we are doing. Let us approach the organ of judicial power with jealous vigilance and circumspection; lest unawares we strike from under us the pillar of our constitution, and the foundation of national existence.

Mr. BOULDIN, of Virginia, next took the floor, but yielded it for a motion to rise.

WEDNESDAY, FEBRUARY 17, 1830.

## THE HORNET, SLOOP OF WAR.

The House then proceeded to the consideration of the following bill, which was the special order of the day for this day:

*Be it enacted, &c.* That the widows, if any such there be, and, in case there be no widow, the child or children; and, if there be no child, then the parent or parents; and, if there be no parent, then the brothers and sisters of the officers, seamen, and marines who were in the service of the United States, and lost in the United States' sloop-of-war *Hornet*, shall be entitled to, and receive, out of any money in the treasury not otherwise appropriated, a sum equal to six months' pay of their respective deceased relatives, aforesaid, in addition to the pay due to the said deceased on the first day of January, one thousand eight hundred and thirty, up to which day the arrears of pay due the deceased shall be allowed and paid by the accounting officers of the Navy Department."

On motion of Mr. DORSEY, the bill was amended so as to conform to the date of the supposed loss of the *Hornet*, (10th September.)

Mr. SPEIGHT, of North Carolina, was not opposed to the main object of the bill, as far as concerned the widows and children of the officers and crew of the *Hornet*; but he was opposed to going beyond that line, to their parents and brothers and sisters. This, he thought, was extending the principle further than was justifiable.

Mr. DORSEY spoke in support of the bill, showing it to be sustained by precedents in like cases, and especially in the case of the *Epervier*, from the act passed in which case, with the exception of the name of the vessel, this bill had been literally copied. Mr. D. expatiated on the favor which the navy had won for itself in the glorious results of the late war, in which it had fought itself into the affections of the American people, under which influence the sort of provision proposed in this bill had become

a part of the settled policy of the country. Of the well founded objections to the establishment of a pension system he was well aware. But they would not apply in any manner to this bill, which must be considered rather in the light of an expression of national sympathy, and of condolence with the bereaved, than in any other; for it could not enter into the mind of any man, that the provision contained in this bill was to be considered as any thing like a compensation for the afflicting bereavement sustained by the relatives of those who had thus unfortunately perished.

The motion of Mr. SPEIGHT was then decided in the negative; and the committee rose, and reported the bill; and it was ordered to be engrossed, and read a third time to-morrow.

## THE JUDICIARY.

The House then resolved itself into a Committee of the Whole, Mr. CAMERON in the chair, and resumed the consideration of the bill to extend the judiciary system.

Mr. BOULDIN, of Virginia, spoke at length in support of the bill.

Mr. CRAWFORD said, if my view of the question under discussion was the same with that of any gentleman who has addressed the committee, prudence would, perhaps, dictate that silence, and a careful consideration of the remarks of others, would best become my legislative inexperience. But some examination of the subject having produced a conviction on my own mind that it would be inexpedient to make any alteration in the judicial system of the United States, without the most urgent reasons, nay, without an absolute and imperious necessity, which would overrule all arguments resting in opinion merely, and that at present the contemplated change, or any change, is unnecessary, I feel constrained to say to the committee how and why I have reached these conclusions.

It will be conceded that the subject is one of extreme delicacy and difficulty. In all countries, it occupies the anxious thoughts of those who are charged with the public interests. When, therefore, a plan has been happily laid in our own land, which, in its execution, commands the public confidence, and so ensures obedience to its decrees, will prudence, will the careful watchfulness that belongs to our stations, allow us to leave the road we have found so smooth, and fragrant from the flowers that bloomed upon its sides, and to enter upon an unbeatn way that may lead us into miry and swampy grounds? This tribunal, like every constituted authority of these United States, finds its strongest, its enduring foundation in the belief that it is enlightened and of the purest integrity—it is armed with power to enforce its mandates, but its best authority is in the regard I have mentioned; and, if it shall ever happen that a different estimate will be made of its decisions from that which now prevails, it and our other institutions will soon sink together.

Let us not then put to hazard this rich fruit of our noble form of government—it has all the raciness of the soil on which it grew, and all the mellowness that the brightest and strongest intellectual rays, steadily beaming upon it, could produce. The Supreme Court is ripe in its fame and in its usefulness—it will never be greater than it is. I beseech the committee to take no step that may, by possibility, relax its present hold upon public esteem, founded on the best and strongest reasons. The Supreme Court is known as it is now constituted—as such, it is regarded to be wise, learned, and honest. It should not be lightly changed—it should be looked on as so far permanent, that while the individuals enjoying its honors come and go, the system remains the same, at least so long as it may be found to answer the end designated at its formation—make it not, by an augmentation of its members, less responsible, or less effective.

I do not like an increase of the judges for many other reasons; among the most important of which is the con-

sideration that it will have a tendency to destroy the confederate character of the court. This was deemed a most material quality by those who framed the constitution; for we find that, by the law of 1789, in enacting which many of those who were in the constitution-convention took a part, the judges of the Supreme Court were appointed indifferently from every quarter of the country, and were strictly circuit judges, that is, itinerant, and holding courts as might be arranged by themselves—indeed, I think the act contemplated alteration. The reasons for my preference of this plan I will submit hereafter; at present I wish to contrast it with the representative system—representative not, says my honorable colleague and friend, [Mr. BUCHANAN] of local partialities, sectional feelings, and interests, but of local intelligence. Sir, the purpose is fair; but if the end be obtained, it will not be obtained singly. The hook of human nature tells us on every page that man, how pure soever his integrity, however clear and strong his mental endowment, how elevated soever his station or responsible his duties, if we except some rare beings, whom surpassing excellence (if it may be said without irreverence) brings into some slight resemblance to Divinity, is imbued with the prejudices and passions and frailties of his abode. If from every part of this wide empire you bring a judge, or make it an indispensable official qualification that he shall reside within designated limits, he will carry with him into court all the peculiarities, not only of character and learning, which are desirable, but of jealousy and feeling, that naturally arise out of State pride and State doctrine. Need I go out of this hall for the truth of what I assert? Every gentleman on this floor is, I doubt not, as pure as any judge—on many points as learned—perhaps on all as wise—each no doubt acts upon his own convictions; and yet is it not easily perceived that we come from different quarters? We have, as we ought to have, representation in its best shape in this House—we have it in another aspect in the co-ordinate branch of the Legislature—but the court of the last resort should be the court of the nation; and, in making these remarks, I trust it will not be supposed that I am for consolidation—far from it; but I am in favor of a court which, perched, as the Supreme Court is, upon a lofty eminence, shall be surrounded by the country's honor and confidence, and leave far below the passions and feelings which would push it from this elevated point.

The honorable chairman of the Judiciary Committee has referred to the consideration of economy. It is well worthy of attention. I mean that liberal economy which leads, in public and private affairs, to the best consequences—a principle that, while it freely appropriates or expends a money where a correspondent benefit may be reasonably calculated on, steadfastly refuses the application of its means to any purpose that does not promise an adequate return. He spoke of it as furnishing a good reason for preferring his bill to the circuit court system, which some honorable gentlemen advocate; but, as I do not intend to recommend either the one or the other to the adoption of the committee, regard to proper economy comes to me in aid of other considerations, for retaining the present judges without addition, under certain modifications of their duties.

But the reason which, in my judgment, is decisive, is, that the proposed change is not necessary. How? Has not a different idea prevailed for years past? Was not a bill very much, if not altogether, like the one under consideration, reported four sessions since, and debated at length, and yet this opinion not advocated—nor has it now been brought into view? True—and perhaps temerity may be thought to mark my conduct, while I attempt to show the committee that the ground I have taken is one upon which I can stand.

The business of England, multifarious as it is, and various as it must be, from the complexity of her extended

commercial pursuits—from her manufacturing and agricultural transactions, and the varied intercourse of a large and very dense population, is done, and well done, by fewer judges than we have now; if you embrace your Supreme Court and all the district judges, by fewer than one-half, exclusive of our State judicial magistrates—amounting to some hundreds, many of them possessing the deepest learning, and the most enviable reputations for talents and probity. The fact is they labor more; an English judge will go into court in the morning, and, instead of returning home to dine, will, perhaps, in a press of business, eat a few mouthfuls on the bench to sustain him. Our State judges devote a much larger share of time to judicial duty, than is done in the United States courts. In Pennsylvania not less than nine, perhaps ten, months are employed annually and assiduously in public business, by her Supreme Court judges. Great labor, greater responsibility, and an abstraction from social pleasures and domestic joys, are the price that every kind of distinction costs. Look at your Chief Magistracy; it is the highest office in the world—desired by many—attained by few—and rarely by those who desire it most; although the distinguished individuals who have filled it, the illustrious man who now graces it, and those who shall hereafter occupy it, are and will be identified with our country; will live in her history, and be regarded as the most fortunate of men; yet I do not hesitate to say, that however fortunate it may have been, or will be, for the country, that some of them have reached, or may hereafter reach, her highest honors, to themselves it brought no happiness—that it never will bring any in the discharge of its duties, the highest rewards may soothe their retirement; the good opinion and gratitude of their fellow-citizens, and the consciousness of having performed well the highest duties, will belong to such as deserve them, when they have ceased to be public functionaries—but while they direct or shape the destinies of the country, they must look for labor and anxiety without cessation or stint. Shall the most elevated judicial stations be exempt from the common rule? Shall citizens ascend the political ladder, and not be measured by the scale which regulates responsibility and toil, and which assigns an increased portion of both to increased dignity and honor? By no means. What is your plan? Simply to model the circuits so as to spread them over a greater surface, and to require of the judges the discharge of extended duty. Show us, I think these gentlemen say, that the required duties can be performed, on any reasonable modification of them, by the present judges, and we will yield. I do think that the present circuits, although greatly enlarged so as to be co-extensive with the provisions of the bill, may be so modified that seven judges can discharge the duties readily and with ease. I hold in my hand a statement from the Treasury Department, showing the exact number of days that each United States Circuit court has been in session in the years 1827, 1828. That gentlemen may give to this document its due weight, I beg leave to state that, by the fourth section of the act of Congress of 8th May, 1792, there shall be paid to the marshal of each district, the compensations to the jurors, to the clerks of the district and circuit courts for their attendance, &c., to the attorney for his attendance, &c., to the marshal for his attendance at court, &c., which, with many other charges, must be included in an account to be drawn out by the marshal, and the same having been examined and certified by the court, or one of the judges of it, in which the services shall have been rendered, shall be paid in the usual manner at, and the amount thereof paid out of, the Treasury of the United States, &c. From these accounts, so settled and paid, the information I rely upon is compiled.

This paper, I presume, shows incontrovertibly how long these several courts were employed in each of the years mentioned. The accounts for 1829, I suppose, are not

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The Judiciary.

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yet settled, or a statement for that year would have been furnished. Taking this, then, as the groundwork of my plan, I propose to allot

To the first circuit,

1. Maine. The court sat,		
	in 1827, 6 days—in 1828, 8 days.	
2. New Hampshire,	" 4	" 2
3. Vermont,	" 6	" 12
4. Massachusetts,	" 36	" 34
5. Rhode Island,	" 7	" 10
	59	66
		59
		125

One-half of which gives, as the average of each year, 62½ days, equal to, say

Add for Supreme Court,	11
For necessary travel,	4
	—
Total,	26 weeks.

To the second circuit,

1. Connecticut,	in 1827, 10 days—in 1828, 8 days.	
2. Southern district of New York,	" 46	" 26
3. New Jersey,	" 11	" 10
4. Eastern district of Pennsylvania,	" 57	" 70
	124	114
		124
		238

One-half of which gives 119 days as the average of each year, equal to, say

Add for Supreme Court,	11
For necessary travel,	4
	—
Total,	35 weeks.

To the third circuit,

1. Delaware,	in 1827, 8 days—in 1828, 7 days.	
2. Maryland,	" 52	" 55
3. Eastern district of Virginia,	" 65	" 44
4. North Carolina,	" 2	" 9
	127	115
		127
		242

One-half of which gives 121 days as the average of each year, equal to, say

Add for Supreme Court,	11
For necessary travel,	4
	—
Total,	35 weeks.

To the fourth circuit,

1. South Carolina,	in 1827, 18 days—in 1828, 13 days.	
2. Georgia,	" 20	" 5
3. Southern district of Alabama, it is uncertain, as no circuit court ever sat there, but allow 20 days for each year, which is much more than sufficient,	" 20	" 20
	58	38
		38
		96

One-half of which gives 48 days as the average of each year, equal to

Add for Supreme Court,	11
For necessary travel,	8
	—
Total,	27 weeks.

To the fifth circuit,

No circuit court has been held in either of these States; but as the circuit is smaller by South Alabama than one of those created by the bill, no objection can be raised to it by the friends of that measure.

To the sixth circuit,

It is unnecessary to specify the number of days that would be required for this, or for the seventh and last circuit, as they are precisely the same with two proposed in the bill.

To the seventh circuit,

1. Ohio,
2. Indiana,
3. Illinois,
4. Missouri.

Will any gentleman hesitate to say that this modification is practicable? What do you require of any of the judges? To devote thirty-five weeks, at the most, out of fifty-two, to the discharge of his duties, leaving him seventeen weeks of leisure. Nor will the bill be aided by the allegation that the present judges cannot go through the duty; it would ill become me to say one syllable that could be tortured into the slightest disrespect to either of them; but this I will say, that reference to personal consideration of any kind is a bad ground of legislative action. It will not, I think, weaken my position, to allege, that, since the appointment of the seven judges was authorized, the last added, I believe, in 1807, the business has increased. I go upon the latest authentic evidence we have, and prove that the duty of the four first circuits may be gone through with ease—the fifth is smaller, and the sixth and seventh are the same with the circuits proposed to be established by the bill. Time sufficient is allowed for a session of the Supreme Court; for I have it from unquestionable authority, that the court expects to get through the docket this year, in a sitting of ordinary length—and that if they do not accomplish it now, they will, to a moral certainty, clear the list next term, of every cause that shall then be upon it. A term is of about two months' duration; for this service I have allotted eleven weeks, and, in so doing, have been unnecessarily liberal. All, therefore, that it was incumbent on me to prove, is, in my judgment, shown.

It may be objected that the system will not be uniform; that district courts will still exist. This objection, if it be one, is not removed by the bill proposed, or any of its amendments, which leave the district courts precisely as I propose to do. The complaints are chiefly from Tennessee and Kentucky; give them a judge—this, too, is the plan I submit, as well as that of the bill. Seven judges may do the business, and, if they can do it now, they can transact it until the green grass shall wave over every ear that hears me; for the honorable chairman said nine judges could do the business for a long time; and I presume the remark is equally true of seven, if they can now go through it with ease.

How would you assign the judges to the several circuits? I would repeal so much of the law as requires a judge to reside in a particular circuit, and authorize the bench to arrange, according to convenience, as to the individual who shall go into this or that circuit. This would interfere with what some gentlemen seem to think an advantage, the residence of the judge in his circuit. In support of

such residence there are great names, among them the former chairman of the Judiciary Committee of this House, now a distinguished member of the other branch of the Legislature, [Mr. WADSWORTH.] The present committee, by the bill under discussion, show they are of the same opinion; but the law, for the first thirteen years of the Government, was against it; and to me the idea appears to be fallacious. The judges had better not sit upon the causes of their companions and friends, the festivities they participate, and the hospitalities extended to them—the every day intercourse of fixed residence is, to my mind, a disqualification, rather than a requirement I would insist on. I mean not, sir, that they should not mingle with their fellow-citizens; on the contrary, I think they should leave the judge on the bench, and associate freely with those whom habits, inclination, and circumstances have thrown into the same association; but, in my view, they should not reside where they decree judgment. In every community dissensions arise; conflicts grow out of all the incidents of life—not to speak of meaner causes, pride—political aspirations—honest emulation for fame, and the ennobling rivalry of talents, all bring their contributions to the creation of divisions among men and in society. From these, and the distinctions they create, and the motives from which they spring, separate, as far and as wide as you can, those who are to decide what belongs to you, and what is mine—who are bound to determine whether A B shall die, or B C shall suffer more by disgrace and imprisonment. To this end, I know of no means so effectual as to send a judge from his residence. An opportunity will be thus afforded to each judge to acquire a knowledge of the laws of every State by actual observation and practice, which is better than that each, by a fixed place of duty, should be familiar with the local laws of his own particular circuit only. Nor will such an arrangement obstruct, but facilitate, the operation so much desired, of personal intercourse between the highest judicial functionaries and the citizens of the country.

There will be, for this purpose, the double advantage of home association, and the commingling which must follow the discharge of their duties abroad—and this is a recommendation of the idea I have suggested, for I fully concur in the estimate which is made of the value of favorable public opinion; I mean opinion founded on the esteem which good principles and good actions always produce in public and private life. No man ever served his country with all the advantage of which he was capable, who did not enjoy the regard, or, what is the same thing, the well founded confidence of those for whom he acted; and to give the greatest efficacy to the best endeavors, the affections of those upon whom authority operates, will be found eminently useful. The distinguished head of the Supreme Court, for instance, might command your respect by his transcendent talents; would secure your admiration by the most upright and able discharge of the most exalted duties; but it would be only (if his reputation speaks correctly of him, for I have not the happiness of his personal acquaintance) because singleness of heart and the frankness of youth pervade all his actions, that you would feel for him a stronger and a warmer emotion. It is to these happy qualities that he is indebted for the high personal regard which attaches to him, wherever he is known, more than to the performance of his great duties at Richmond, for his richest fame has been furnished by his labors at Washington.

The confidence which the nation feels in this tribunal, and those who constitute it, is owing, in part, to their discharge of circuit court duties, the advantages of which I fully appreciate, and concur in many of the views in relation thereto, taken by my colleague, [Mr. BUCHANAN] but I should hope a higher and better principle than personal regard lay at the bottom of the almost reverence with which its decisions are received; that the great element of the

permanency of our Government, a determination on the part of the governed to submit to the constituted authorities, so long as they moved in their proper orbits, produced the acquiescence in opinions formed in uprightness, and delivered with ability. I conceive that this tribunal was never shaken by party tempests, nor moved by the storms which, while they agitated, served to purify our political atmosphere, because the constitution had ordained that its decisions should be final—because lengthened official existence had been given to its functionaries, and because it was, by the league, made unchangeable, unless crime or death interposed.

It will continue to be respected and confided in, when those who, now exercising the highest judicial powers the world knows in the most dignified stations, are nevertheless themselves more dignified, and giving back to the bench a lustre greater than that which it shed upon them, shall be remembered among those who have been our benefactors.

Mr. STRONG said, he did not mean to enter again at any great length into the debate, especially at this late hour in the afternoon. But, sir, as I have modified, so as to change the essential features of the amendment, which I originally offered to the bill, I feel it due to myself as well as to the committee, to submit a few remarks before the vote is taken.

The honorable chairman of the Judiciary Committee, [Mr. BUCHANAN] who has just taken his seat, asks whether you will deprive fifteen States of the advantages of the present circuit court system, in order to benefit the nine remaining States to which the circuit court system has not been extended? I answer yes, if thereby you can ensure an equality of rights and benefits to all the States in the Union.

On a former day, I endeavored to prove that there was no necessity for increasing the number of justices upon the bench of the Supreme Court—that the appropriate business of that court did not require it; and that, if the number was increased, the increase would be for the purpose, as the chairman of the committee acknowledged, of performing circuit court duties, which I attempted to show could be performed as well as others; and my opinion is still unchanged, though it may be wrong, that the danger of adding more judges to the Supreme Court is infinitely greater than the benefits which the old States derive from the present circuit court system over the system that I propose.

One reason, which has been strongly urged, why the circuit court system should be extended to the nine States is, that in these States a single federal judge decides upon the life and property of the citizen; and that from his decision, in criminal causes, there is no appeal; nor, in civil causes, except where the amount in controversy exceeds the sum of two thousand dollars; of this, however, these States have not complained.

Now the plan I propose removes this objection, if it be one, leaves the Supreme Court as it now is, and places all the States upon an entire equality. What is it? Let us look at it. We have twenty-seven district court judges. Now my amendment proposes to abolish the present circuit courts, and to divide the United States into nine circuits, as follows: The first to consist of Maine, New Hampshire, and Vermont; the second, of Massachusetts, Rhode Island, and Connecticut; the third, of New York and New Jersey; the fourth, of Pennsylvania and Delaware; the fifth, of Maryland and Virginia; the sixth, of North Carolina, South Carolina, and Georgia; the seventh, of Alabama, Mississippi, and Louisiana; the eighth, of Kentucky, Tennessee, and Missouri; and the ninth, of Ohio, Indiana, and Illinois; and, as each of these circuits has three district court judges, that these judges shall hold circuit courts therein, having the same powers and jurisdiction as the present circuit courts now have. These circuits may be made larger or smaller as occasion may re-

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*Courts Martial in the Army.—The Hornet.*

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quire, but never comprehending less than three districts, with a judge in each, so that there may be a circuit court in each circuit, consisting always of three judges. This at once obviates the objection, that important civil and criminal cases, under the present judicial system, are tried by a single judge, whose decision is final; because it will be at once seen, that, by the plan I propose, as the court must consist of three, so no decision can be pronounced without the concurrence of at least two of them. The additional security which this gives to the citizen is certainly worthy of serious consideration. By this arrangement, too, the integrity and efficiency of the Supreme Court will be preserved; and, by having one annual term of the court at the city of Washington, and another at Cincinnati, and a third at Philadelphia or New York, the public would be better accommodated than they now are, and the justices themselves have ample employment, and frequent and intimate intercourse with the people.

This subject, I am aware, has nearly exhausted the patience of the committee; but I cannot sit down without a few words in reply to a singular objection which has been started. The honorable member from Virginia, (Mr. BOURN) who has just now taken his seat, says, that it will not do to separate the justices of the Supreme Court from the performance of circuit court duties, and commit the performance of these high duties to the district court judges, because they have the local feelings and prejudices of the judges of the State courts. The argument is, that these district judges reside permanently within the circuit; that they necessarily partake of the common feelings and prejudices of the people around them; therefore, they are not to be trusted with the decision of federal causes. But most of the justices of the Supreme Court now reside within their respective circuits. One of them is fixed there by law; and it is partly the object of the bill before the committee to oblige each to reside in his own circuit. Does not the honorable member, therefore, perceive that this argument is against himself? Does he not perceive that it applies with greater truth and force to his plan, than to mine? to one judge, than to three? Besides, if there be any force in the objection, it rather goes to prove that the justices of the Supreme Court ought to be separated from their circuit court duties, and some other plan adopted for the distribution and administration of justice, than that the present system should be persisted in. And why should the security or usefulness of the Supreme Court be at all hazarded? The honorable chairman of the Judiciary Committee, himself, admits that seven justices are enough for the appropriate duties of that court. More, therefore, would obviously lessen rather than enlarge its responsibility and action, and enlarge rather than lessen its assumption and exercise of doubtful powers.

Sir, I have no particular partiality for my amendment. All things considered, I am inclined to think it better than any other which has been proposed. I doubt whether the time has come, when the system ought to be changed. And no adequate necessity has been shown for extending it. My only desire is that the bill may not pass. I will no longer trespass upon the patience of the committee, but submit the question for their decision, in the belief that if my amendment is rejected, it will be upon the conviction that no legislation at this time is necessary.

The question was then taken on agreeing to the amendment of Mr. STRONG, as modified by himself, and decided in the negative; and then, on the motion of Mr. WICKLIFFE, the committee rose.

THURSDAY, FEBRUARY 18, 1830.

## COURTS MARTIAL IN THE ARMY.

Mr. DRAYTON, from the Committee on Military Affairs, which was instructed on the 15th instant "to inquire into the expediency of so amending the rules and

articles of war, as to provide that when an officer commanding in chief of the army of the United States, or any separate corps thereof, shall be the accuser and prosecutor of any officer under his command, the detail of the court martial for the trial of such officer shall be made by the President of the United States, and the decision of the court referred directly to him," reported a bill to alter and amend the sixty-fifth article of the first section of an act entitled "An act for establishing rules and articles for the government of the armies of the United States," passed 10th April, 1806.

Mr. DRAYTON said that the object of this bill was to remedy an evil which now existed under the military system of the United States. By the sixty-fifth of the rules and articles of war, any general officer commanding an army, or colonel of a department, may appoint general courts martial whenever necessary. The proceedings of these courts are to be laid before the general or colonel, ordering them, for his confirmation or rejection, excepting that when the sentence extends to the loss of life, or the dismission of a commissioned officer, it shall not be carried into execution without the sanction of the President of the United States. It may occur that the general or colonel ordering the court is himself the accuser and prosecutor, when it would be obviously inconsistent with the common principles of justice, that the members of a court who are to sit in judgment upon the accused should be detailed by an individual interested in the event of the trial, and who, under the influence of that feeling, might select officers hostile to the party accused, or peculiarly attached to himself. To guard against the possibility of such results, this bill has been reported. As it fully expresses the purposes for which it was framed, it is unnecessary for me to trouble the House with any further remarks to enforce its expediency.

The bill was read twice, and ordered to be engrossed, and read a third time to-morrow.

## THE HORNET.

An engrossed bill, entitled "An act for the relief of the widows and orphans of the officers, seamen, and marines of the sloop of war *Hornet*," was read the third time; and the question was stated, Shall the bill pass? when

Mr. CLAIBORNE, of Virginia, said he could not vote for this bill if the words *brothers and sisters* were retained. When a man fell in the service of his country, he had no objection to make a reasonable provision for his wife and children, if he had such; but to extend it further, was a dangerous precedent. He felt no hesitation in saying he could not and would not sustain it. If we could make donations—to the relations of officers who have perished in the service of their country, to brothers and sisters, where, and at what point, shall we stop? Have we entered into an agreement to provide for all the relations of our officers now in service, in case of their deaths? If such engagement has been entered into, I hope it will be produced. The system of pensions, sinecures, and donations, name it as you please, is a dangerous system; it has been sustained in most countries where it is now permanently enthroned, by passionate appeals to the liberality—the generosity of the people. Those appeals have also been too successful—they have produced bitter fruits.

In the Old World palaces have been built, estates purchased for distinguished individuals—with money drawn by a rigorous and cruel and oppressive taxation, from the poorest classes of the community; I say the poorest classes of the community, for while many fatten upon taxation, there are in all countries those who feel its burdens only. I do not like the term generosity. We have no right to be generous and charitable with the money of other people. We may give pensions to the widows and children of those who perish in the service of the country; for we have every reason to believe that they have thereby been deprived

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of the means of support; go beyond this in your pensioning system, and you are in great danger. The isthmus which separates acts that are generous from those that are venal, is very narrow, and we must be cautious, or we may pass it, and be involved in all the consequences that an overgrown system of pensioning has brought about in some of the more ancient nations of the earth. Our system has gone nearly as far as that of Great Britain, except that as yet we have no civil pensions. Let in civil pensions, and then you have the British plan—a system that has entailed an enormous debt on that nation, subjected their people to the horrors of heavy taxation, and reduced a large portion of their population (if their own writers are to be believed) to penury. Such have been the effects of pensions, sinecures, and donations indulged in by another country. When you have equalled them in the extent of your pensioning system, you may witness here what is witnessed there, for nature is not the partisan of a cis or a trans-atlantic world. My alarm is the greater, because no one pretends to know any thing of the condition of the brothers and sisters of the deceased officers. Those who support this bill assume (I suppose) they are poor. I may assume that the officers of the army and navy are most generally related to the wealthiest men in the community. Let no one suppose he venerates the glory of the navy more than I do. I esteem the navy most highly. My willingness to provide, for a reasonable time, for the wives and children of the officers and seamen who have perished in the service of the country, is proof of this disposition to the cause of the navy. The amount that is depending on this question is not of very great consequence. But it is a question of principle, and that makes it all-important. It is a great and memorable principle, that will fix hereafter, if settled as in the bill contained, the expenditure of millions. That is what constitutes its importance. I enter against the passage of this bill my protest. I will detain you no longer.

Mr. TUCKER, of South Carolina, asked for the yeas and nays upon the question of the passage of the bill; and the call being sustained by a sufficient number, they were accordingly ordered.

Mr. TEST moved the recommitment of the bill to the Committee on Naval Affairs, with instructions to strike out that part of it granting the gratuity proposed by the bill to the brothers and sisters of the sufferers.

Mr. DORSEY said, the duty of reporting the bill now under discussion having been assigned me by the Committee on Naval Affairs, it will be expected, however reluctant I am to mingle in the discussions of this House, that I shall state the principles involved in it, and reply to the objections which have been presented to this committee in opposition to its adoption.

The committee, before they reported the bill, deemed it their duty to search into the practice of the Government, in making provision for the crews of national vessels lost at sea. It has pleased Divine Providence that the number of those should be but few. The first that occurred was that of the frigate *Insurgent*, captured from the republic of France by the gallant *Truxton*; the second, that of the brigantine *Pickering*—they both foundered at sea, in the same destroying gale. In April, 1802, Congress voted four months' additional pay to be paid to the widows of the officers, seamen, and marines who perished on board of those vessels, and if no widow, then the gratuity to be distributed among the children. The next like visitation of Providence fell on the sloop of war *Wasp*, commanded by the lamented *Blakely*. Congress were called to legislate on the subject, and a more expanded principle of distribution was then adopted. By the act of April, 1816, twelve months' pay was ordered to be distributed, one-third to the widow, and two-thirds to the children; if no child, then all to the widow; if no widow nor child, then to the parent; if no parent, then to the brothers and sisters

of the officers, seamen, and marines. The *Epervier* and her crew, commanded by the gallant *Shubrick*, soon thereafter met the same untimely fate; and Congress, at the next session, provided for the distribution of six months' extra pay—first to the widow; if no widow, to the child; if no child, to the parents; if no parent, then to the brothers and sisters.

Thus Congress adhered to the diffusive principle contained in the bill now before this committee, while the mother was preferred to the child, and had all the graces of the Government given to her, the restricted principle, adopted in the case of the *Insurgent* and *Pickering*, confining the donative to the widow and the children, was rejected. The Committee on Naval Affairs deemed it inexpedient to disturb the question, and felt disposed to adopt the matured and settled policy of the national legislation, in connexion with this subject: they therefore have reported this bill—a copy of that adopted in the case of the *Epervier*. A motion is now made to strike out the contingent provision for the brothers and sisters, on the ground that it is extending the bounty of the Government to collateral relations, and that it ought not to be the policy of this Government to extend the principle of the pension system, alleged to be dangerous and corrupting.

Although, if it were a new question, for the first time suggested for our action, much might be said on both sides, I now deem it unnecessary to enter into the minute considerations which may have influenced our predecessors to depart from the precedents of 1804, and recognize the enlarged policy on which the acts of 1816 and '17 are predicated. This difference of legislation may be traced, in part, to the more enlarged views of the nation connected with our navy.

In the infancy of our Government, this arm of our national defence was looked on with a most distrustful and jealous eye by a large portion of the politicians of this country; great exertions were made to cripple its progress, and appropriations for its increase were resisted with great pertinacity. It was deemed by some to be only advocated as a means of enlarging the Executive patronage, by others as improvident, because, in the infancy of our Government, and in the weakness of our resources, we were incompetent to contend with the naval Powers of Europe, and that every ship that we sent to sea was inevitably doomed to swell the number of our enemies' ships. During the triumph of these doctrines, an appropriation was asked for the relatives of those who perished in the *Insurgent* and *Pickering*. Its restricted appropriation, as to amount and objects, displays the then apathetic indifference to the cause of the navy. But another state of national feeling controlled the legislation of 1816 and '17. The navy then had not only conquered its foreign foes, but had achieved a victory over its domestic enemies. Every citizen participated in the glory of our naval battles; every manifestation of national respect evinced the national gratitude to those who gained for themselves such imperishable glory, and added to the renown of our youthful nation, by splendid exhibitions of consummate naval skill, daring intrepidity, and distinguished humanity.

This evidence of a high national feeling and enthusiasm was not confined to the living only, or those who perished in the blaze and glory of battle. A provident policy, and grateful respect for the memory of our naval benefactors, gave rise to a more expanded system of national remembrance of those who found a watery grave, far from home, while offering the protection of our national flag to our wide spread commerce.

Shall we now abandon this policy, and thus admit that the course of our predecessors was unwise and dangerous, as tending to the expansion of our pension system? For surely there is nothing in the history of this gallant ship, and of her noble crew, that can justify the nation in withholding the like expression of national regret for their

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loss, and the same sympathy with the relatives of those who perished with this ship, as were expressed in the cases of other ill-fated vessels. Are we willing to add to their orphanage and bereavements another pang, by the invidious comparison of relative merits which will result from the adoption of this amendment? Are we willing so to legislate as to induce a belief that the *Hornet* and her crew have not the same claims on our country as the *Wasp* and *Egervier*, and their crew had?

The name of the *Hornet* will be as imperishable as the history of the last war. In her engagement (when under the command of the lamented Lawrence, who died too soon for the cause of his country, but not too soon for his own fame) with the *Peacock*, there was exhibited the most brilliant specimen of naval gunnery ever exhibited. In fifteen minutes the *Peacock* was so riddled that she sunk before her whole crew could be removed, and carried down with her three of the *Hornet's* men, engaged in the humane attempt to save the lives of the drowning enemy. An engagement which has coerced from the veriest foreign reviewers of our naval skill the highest praise, and compelled them, on the floor of the British Parliament, to admit that the naval gunnery on board of the *Hornet* could not have been surpassed by the most cool and deliberate target firing.

However brilliant this achievement may have been, the distinguished humanity of the victors also added great lustre to our national character: for they so conducted themselves, that the grateful captives proclaimed to the world "that the courtesies and attention received from their hands caused them to forget that they were prisoners of war." The war on the ocean was terminated by a brilliant victory achieved by the *Hornet*, too, when commanded by the gallant Biddle, over the *Penguin*. Surely there is nothing, then, in the character of this ship that should make us unwilling to notice her loss in the same manner that the loss of national ships has been noticed. Is there any thing in the history of her gallant officer, Otho H. Norris, and his crew, that justifies a departure from the practice of the Government? No, sir; his life was devoted to his country, and marked by an untiring zeal, great nautical science, consummate personal bravery, and elevated patriotism. He was a native of Maryland, a son of a distinguished revolutionary patriot. At an early age he displayed a great fondness for a seafaring life. His parent yielded his assent, and gave him an education to fit him for such pursuits. He entered him in the merchant service, to instruct him in practical navigation. In 1809, he solicited and procured a midshipman's appointment, and was ordered to repair on board the *Syren*. At this time he was but fifteen years of age, yet, soon thereafter, so distinguished was he for his superior seamanship and exemplary conduct, that he was placed in the command of a gunboat at New Orleans. From that time, he was constantly in service, and sailed from Charleston in the *Carolina*, as her second officer, under Captain Hendley, to co-operate in the defence of New Orleans against the then anticipated invasion by the enemy. In all the labor, fatigue, and dangers of that interesting crisis, he was engaged. In the battle of the 23d December, when the execution of the guns of the *Carolina* contributed so essentially to discomfit the foe, he was among the most ardent and brave. When she was burnt by the hot balls of the enemy, he tendered his services to the commanding general to serve on shore, and, in the ever memorable battle of the 8th of January, he commanded battery No. 2, a twenty-four pounder, and contributed, by his skill and gallantry, to that glorious victory which on that day crowned the American arms, and the anniversary of which is celebrated by a grateful and admiring people of its authors, with every demonstration of national joy and gratitude. For his exertions on that day, he received the thanks of his general (now the President of the United States) in the following warm and

cheering words: "Lieutenant Norris, who commanded a twenty-four pounder, displayed, during the several engagements, the utmost skill and courage, and merits the thanks of the country."

He [Captain Norris] was never inactive; he was almost continually in service. He was among those who encountered in vessels, (affording none but very slight comforts,) under the command of Commodore Porter, the diseases of the West Indies, while attempting to free the sea from the plundering and massacres of savage pirates. It was rumored last August in Pensacola, that Mr. Poinsett, our minister to Mexico, had been assassinated. Captain Ridgely ordered Captain Norris to repair to the coast of Mexico, and give such security and protection to our citizens as such a lawless and unexpected event might require. He arrived at Tampico the latter part of August, at a period when the American interest required the countenance and protection of a national ship. It was at a moment when Barradas, a Spanish general, had made a descent upon Tampico, with a view to subjugate the Mexican province to the crown of Spain. Feeling power, and forgetting what was due to the American character, this general demanded from an American citizen money, and extorted it by force and personal violence. The American consul interposed, and asked restitution and indemnity. It was not listened to. At this period Captain Norris arrived at Tampico. The complaints of the American citizen reached his ear. Faithful to himself, and indignant at the insult offered to his countryman, he demanded restitution of the property forcibly taken, and an ample atonement for the personal insult. His demand was gratified. While thus remaining at Tampico, to afford further protection, it pleased high Heaven to visit that coast with the awful and terrific storm of the 10th September, and to involve in one common grave this gallant ship and her noble crew. Is there any thing in such a life, in such a service, and in such a death, as will justify this House in withholding the ordinary and customary reward, the indication of national respect and of national sympathy?

The principle of the bill has none of the objections offered to a pension system. As a precedent, it is not dangerous. The causes which give rise to legislation on this subject, have been but rare; they have sprung from the elements, from storms and tempests, from the visitation of God. Since the existence of the Government, we have had to mourn only few such losses. Let us, therefore, banish all fears that the precedent again to be sanctioned by this bill will or can act oppressively upon our national resources. It is not a pension; there is no annual drain on the treasury; it creates no privileged class in society, drawing their support from the revenue of the country, and thus producing a wretched spirit of dependance, disgraceful to the character of freemen, and enlarging the patronage of the Government. No, it is no more than an expression of sorrow and regret for those who have deserved well of their country, and perished in our service, whilst affording, by our flag, security to our citizens and our commerce. It is an expression of sympathy with the relatives of those who have thus perished; it is a slight offering, a slight one, indeed, to the relatives of faithful servants, to prevent the immediate and sudden distress incidental to those who have depended on them for the necessities of life, until some new pursuits can be entered into.

These, and these only, are the principles involved in this bill; and I trust that no departure from it shall manifest that the nation has not now the same remembrance of the navy, and does not cherish for it the same provident regard, as distinguished the Congress of 1816 and 1817.

Mr. STORRS said, that as the opposition to the bill appeared to be chiefly directed against that part of it which provided in some cases for the payment allowed to the brothers and sisters of the officers and seamen, he hoped it would not be recommitted for the purpose of striking



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out that provision. The bill follows, in that respect, others of a like character, framed on other similar occasions, and the principle seemed to him to be as fair and just as any part of it. I think [said Mr. S.] that the gentleman from Virginia [Mr. CLAYSON] is greatly mistaken in supposing that the officers of the navy, or their relations, are among the wealthiest part of the community. I believe that it would be found, in most cases, quite the reverse, if it could be accurately ascertained. Certainly it may be very safely said, that the officers themselves are generally very far from rich, if they are even independent. I am acquainted personally with very many of them, whose parents and sisters have been in a great degree dependant on them for the comforts of life. Now, the bill provides that, in distributing the small gratuity proposed by it to be offered to them as a public testimonial of our sense of their merit and public services, if it should so happen that the deceased has left no parent, widow, or child, it shall be paid to his surviving brothers and sisters. There were many of the ship's company of the Hornet who contributed to the support of their sisters as well as their parents; and if it should happen that, in any case, the mother had deceased, it would be an unkind, not to say a harsh restriction in the bill which should deprive her daughter of the trifling contribution to her comfort. The sister stands in about the same near relation to the party as the mother; and admitting her or her brothers to share in the distribution, the bill proceeds on the same principle which allows the mother to participate in it. In both cases, we assume what we know frequently exists, that the officer or sailor contributes from his pay to the support of his sisters or younger brothers, as well as his parents, and there is no reason for making any discrimination between them. It may, indeed, happen, that, in some few instances, the relations may be in circumstances calling for nothing like relief, or even honorary gratuity from the Government. This may be the case as to some of the officers. But as to the seamen, it is not probable that there is any such case; and if we were to deny the gratuity altogether, because there may possibly be some case not calling for it from us, we may do a very unkind act to many who are justly entitled to our favorable notice. The allowance is at most, in all cases, very small; and will hardly be an equivalent for the individual property which many of the officers and seamen may have had on board the ship. The brothers and sisters would have shared in that, if their relative had died on the cruise, in the same case in which they will share under the present bill. He hoped, therefore, that the bill would not be recommitted, or changed in its provisions in any respect.

Mr. A. H. SHEPHERD advocated the bill as it was reported by the Committee on Naval Affairs. He thought that the provision which it contained, granting the benefit of the donation to the mothers and sisters of those who had perished in the performance of the duty which they owed and had paid to their country, ought to meet with the sanction of the House, as it would most assuredly receive the approbation of the country. By that section of the Union to which he belonged, he felt himself authorized to say that it would be cordially approved. In illustration of this, he instanced the case of one of the unfortunate gentlemen who met with an untimely fate in the disastrous event which deprived the nation of the services of so many gallant and meritorious citizens. The person he alluded to was the son of the late Col. Forsyth, of North Carolina, who fell upon the field of glory in the defence of his country. The son went to reside in the State of Tennessee; but the Legislature of North Carolina, with a generosity which redounded to its credit, and which he, as a citizen of that State, felt pride in reverting to, provided for him. The youth was eager to sustain his father's well earned fame, by devoting himself to the service of his country; and he sought glory, not in the field, where

that father's renown was acquired, but upon the ocean, in the depth of which himself and his associates were now buried. For himself, [said Mr. S.] he entirely concurred in the opinion expressed by the gentleman from New York [Mr. STONAS] as to the propriety and justice of retaining that feature of the bill; and also as to the fact of many of our most deserving officers being the children of poor and indigent parents—a circumstance honorable to themselves, and gratifying to their families, and to all who can feel pleasure in witnessing the exaltation of merit. In relation to the individual whose name he had mentioned, he could not bring his mind to consent that the brothers and sisters of that young gentleman, the children of his amiable and respected mother, the children of his venerated father, should be deprived of the advantages which that clause of the bill might possibly afford to them. For his own part, he could not consent to leave unremembered and unhonored the memory of one whose name was connected, not only with his own State, but also with the glories of his country.

Mr. SPEIGHT remarked that he had said yesterday, and repeated again to-day, that he was opposed to the whole bill, and was opposed to it in principle. He believed he had as much sympathy for those who had been bereaved of their relatives by this great calamity of the loss of the Hornet, as any member on that floor; and when called in his individual capacity to administer to their wants from funds under his own personal control, he believed he would be as prompt to manifest it. But, he could not answer to his constituents, nor to his own conscience, the propriety of thus appropriating the public funds. As to the argument of the gentleman from Maryland, [Mr. DONAY] who advocated the bill on the score of gratitude to the gallant crew of the Hornet, or the glorious achievements of that vessel, he would ask that gentleman, if this principle obtained, where his pension law would stop? It was perfectly analogous to the whole system of the pension law, which he had opposed on former occasions, and which he could not consent to have crammed down his throat; and he hoped his opposition to it would not be emblazoned before him as a political sin. He contended that Congress had no power thus to legislate away the public treasury, and that, too, to individuals who had actually performed no services to the country. Should he vote for this bill, his constituents would have a right to demand of him on what principle he did so. If they ask me [said Mr. S.] whether I inquired into the pecuniary circumstances of those individuals to whom I voted this money, my answer must be "no; it was on the broad principle of national gratitude." And will this be a satisfactory answer? Sir, I wonder the gentlemen did not carry their gratitude to its fullest extent; and in the next thirty generations of the relatives of the deceased, in their bountiful provisions. The gentleman asks if the House is prepared to reject this provision of the bill. I trust in God, &c., it is prepared for it. The oppressive system of taxation for the increase of the revenue, must and will be put down by those who feel its burden.

In conclusion, [said Mr. S.] he could not vote for the bill. It seemed that when gentlemen put their shoulders to the wheel on the subject of pensions, they were disposed, to use a vulgar phrase, to "go the whole hog," and allow no bounds to restrain them. Mr. S. also alluded to the case referred to by the gentleman from North Carolina, [Mr. A. H. SHEPHERD] of young Forsyth, who was educated at the expense of his own State, without appealing to the National Legislature for assistance.

Mr. TEST said, he felt it due to himself to state, after what had been observed, the reasons why he moved the recommitment of the bill. The policy of it, [said Mr. T.] the grounds of it are questionable. What [he asked] was the object of making such appropriations to those engaged in our land or naval service? The object is, that

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when they are about to enter upon scenes of danger, they may not be appalled by the helplessness of their families, should any thing occur to them by which they might be deprived of their protection and support to encourage them to meet the perils of their station bravely, by holding out the certainty of future support to their bereaved families. This is the true ground on which the pension list is bottomed. Does this case come fairly within the range of the principle stated? It is certainly very doubtful if it do. All who belonged to the Hornet were there by their own free will, and there were many who envied them the situations they held. Was it a war they were engaged in when they perished? No. Did they encounter any danger? No. There would be much stronger ground for the proposition, had this lamentable occurrence happened in time of war. But the bill, as it now stands, is wrong in principle. And I ask with the gentleman from North Carolina, [Mr. SPRAGUE] if this principle is adopted, where is it to stop? It must go in *infinitum*. They did not encounter any extraordinary danger. Their loss was an act of Heaven—of the hand of God. There is nothing extraordinary connected with it, calculated to excite our sympathies, except the deplorable destruction of human life which might not have happened to any other vessel, either public or private; and it is evident that the places occupied by them might well have been desired by thousands. But how does the principle of the pension system apply to brothers and sisters? They are wholly unconnected with the service or its dangers. If, as the gentleman from New York [Mr. SPOONER] says, the brothers or sisters of any of these officers or men are poor, and their poverty is the consequence of this misfortune, I shall vote for them; but the sisters of some of them, for aught we know, may have husbands worth thousands of dollars.

Mr. T. denied that this principle had always been observed by this House; and, in corroboration of what he said, he instanced the case of the mother of Commodore Perry, whose claims for a pension were brought before Congress, under circumstances calculated to arouse all our sympathies. She was admitted to be poor at the time, and that she derived her sole support from her sons; yet her claim was rejected. The principle now sought to be established would soon become general, and a dangerous precedent [he said] it would be. He did not view this case in the light in which pensions are ordinarily given, for he did not think it would hold out any encouragement for persons to enter into the land or naval service. It was a hard duty he had to perform in moving the recommitment of the bill; and if he were to be governed by the dictates of his feelings, he could not have done it; but his judgment pointed out to him what was his duty, and he was forced to pursue its dictate.

Mr. T. concluded, by stating that he did not wish to vote against the bill, notwithstanding the questionable character in which it comes before the House; but, as it stands, its claims are addressed much more to our sympathies than our justice.

Mr. HOFFMAN expressed his regret that a discussion on this subject should have taken place, and proceeded to explain and defend the objects and the principle of the bill. He said the naval service was promoted by grants of this kind, and he hoped that the House would not depart, in the present case, from a rule so long established, and recognised in the proceedings of this House in several instances. A departure from a system, so beneficial in its consequences to the naval service, would diminish the encouragement now held out to persons to enter it. He hoped the discussion would not be protracted, and that the bill would be suffered to pass.

Mr. ELLSWORTH said, the bill rested more upon a principle of duty, than of mere favor and gratitude. Are gentlemen prepared to say that the representatives of these unfortunate men are not, upon principles of justice, en-

titled to this small pittance? Upon the strictest construction, the representatives of the officers and crew of the Hornet may demand what they were earning up to the moment of their loss. And is not the claim materially the same for a short time after that event? May not their families most properly look to us for that little portion of their subsistence which they were anticipating, and need the more because of this melancholy disaster? Why do we allow pensions? It is upon a principle of duty and strict propriety. And such is the case here. Justice and true national policy imperiously demand we should pass this bill. It is the settled policy of the Government. And, sir, if a wife and children may ask, upon the principle of right, I see not why brothers and sisters may not. We owe this money to the representatives of these men. Let us not add distress upon affliction, by withholding a momentary relief.

Mr. EVERETT inquired what was the precise question before the House?

The SPEAKER stated the question to be on the motion to recommit, with instructions to strike out the clause extending relief to brothers and sisters, in default of nearer relations.

Such [said Mr. EVERETT] was my understanding of the state of the question, and it seems to me, therefore, not in order to discuss the general principle of the bill. It has been admitted that this bill was to pass, and the only objection taken to it, in committee, was to this extension of its provisions to brothers and sisters. This objection assumes that the officers, seamen, and marines of our public armed ships belong to that class of the community in which they are likely to have wealthy brothers and sisters; such as stand in no need of the gratuity provided by this bill. No one can suppose that this is the case with the petty officers, seamen, and marines, who are, of course, the most numerous class of those provided for; and, as far as they are concerned, the objection falls to the ground. The same, in general, may, no doubt, be said of the officers as a class. It is by no means true, generally speaking, (as the objection before us supposes,) that they are of an affluent class in society. But granting that they are, and that the objection taken is well founded, do not gentlemen see that it proves too much? It is urged that, by extending this gratuity to brothers and sisters, we extend it to some of the richest persons in the country. If this be so, cannot, and ought not, these rich persons support their parents, their nephews, and nieces? But it is granted that these last are entitled to the gratuity; although, in proportion as these unfortunate officers, lost in the Hornet, have left wealthy brothers and sisters, in the same proportion their widows, children, and parents have no need of the public gratuity. But to deny it to these last, is against the admitted expediency of the whole bill.

It is plain, therefore, that there is no course for those opposed to the clause in question, but to go against the principle of the whole bill, as is done, in point of fact, by the gentleman from North Carolina, and the gentleman from Indiana. I shall not engage in the defence of that principle, for it is sufficiently established in the legislation of the country. I cannot, however, forbear a reply to one or two remarks of the gentleman from Indiana, [Mr. TAYLOR] by which he seemed to distinguish between this case and that of the widows and orphans of officers and seamen killed in battle. He thinks that, in time of peace, the service is on a different footing from what it is in time of war, and less meritorious. If there is any difference, however, the service is more attractive in time of war; and it is more peculiarly necessary, in time of peace, on public grounds, to strengthen the encouragements which it presents. As to the officers, of course, no distinction exists; they engage in the service for life. The men enlist for limited terms; but I believe the calculation, whether it is a time of peace or war, or whether a war is likely

sooner or later to happen, never enters into their heads; and, as far as the temptations to enlist exist, it is as easy to enlist a crew in time of war as in peace. I believe, sir, that every motive of fair policy requires these encouragements in the service rather in time of peace than war.

The gentleman said, the vessel was not lost in battle, but by casualty; it was not a danger to be bravely encountered; no energetic act was to be performed. I differ from the gentleman. I believe that a storm, violent enough to destroy a ship of war, is far more dangerous and terrific to landsmen or seamen, than any battle that was ever fought. Gentlemen recollect the descriptions that we have had of the frightful storm which swept the Gulf of Mexico, about the 10th of September, and in which it is supposed the Hornet was lost. A letter has gone the rounds of the newspapers, from a vessel which was on the outer verge of the range of this storm; and the captain represents it as dreadful beyond description. Do gentlemen tell me that the condition of a vessel of war, oppressed by her armament, in such a storm, is nothing compared to a battle? Sir, a battle has no terrors to the gallant seaman. It is full of hope, promise, glory, and even reward, if no higher motive operated. But what is there to animate and cheer him in one of those tremendous tempests, to enable him to bear the labor, and brave the dangers that surround him? I am well persuaded, sir, that there was not one individual, man or officer, on board the unfortunate Hornet, whose muscles were not stiff with labor; whose nerves were not strained with agony, before he went down to his watery grave. And suppose it had been told them, at the last dreadful hour, that, within four months, a pittance like this (and a miserable pittance, after all, it is) would be proposed in the Congress of the United States, for the relief of the widows, the mothers, the children, the sisters, dependant on them for support, and whom they should never behold again, and that this poor pittance would be denied, would it not have added unspeakably to the agony of that last moment, and have embittered the bitter cup of death? Sir, I speak with feeling on the subject; and with good reason. Among my neighbors, there are some included within the provisions of this bill. I speak for the widow and orphan, whose wants have been brought home to me. It is my duty to them, my duty to myself, to oppose the recommitment. I hope the clause will not be stricken out; but that the bill will pass, as it came from the Committee of the Whole.

The question being then taken on the motion of Mr. TEST, to recommit the bill to the Committee on Naval Affairs, it was decided in the negative, by yeas and nays, by 114 votes to 70.

The question was then taken on the passage of the bill, and decided as follows:

YEAS.—Messrs. Alexander, Anderson, Angel, Arnold, Bailey, Barber, Barringer, Bartley, Bates, Baylor, Beckman, Boeck, Boon, Borst, Brodhead, Brown, Buchanan, Butman, Cahoon, Cambreleng, Campbell, Chandler, Clark, Condict, Conner, Cooper, Coulter, Cowles, H. Craig, Crane, Crawford, Creighton, Jr., Crocheron, Crowninshield, John Davis, Deberry, Denny, De Witt, Dickinson, Doddridge, Dorsey, Dudley, Dwight, Earll, Jr., Ellsworth, George Evans, J. Evans, E. Everett, H. Everett, Finch, Ford, Forward, Fry, Gilmore, Green, Grennell, Jr., Halsey, Hammons, Hemphill, Hinds, Hodges, Hoffman, Hubbard, Hughes, Huntington, Irie, Jr., Ingersoll, Irwin, Isaacs, Jennings, Johns, Jr., R. M. Johnson, Kendall, Kennon, Kincaid, Adam King, Leiper, Lent, Mallory, Marr, Martindale, Martin, Thomas Maxwell, Lewis Maxwell, McCreery, McDuffie, McIntire, Mercer, Miller, Mitchell, Monell, Muhlenburg, Overton, Pearce, Pettis, Pierson, Potter, Powers, Ramsey, Randolph, Reed, Rencher, Richardson, Ripley, Rose, Russell, Scott, W. B. Shepard, Shields, Semmes, Sill, Smith, Smyth, A. Spencer, R. Spencer, Stanbery, Sterigere, Ste-

phens, H. R. Storrs, Wm. L. Storrs, Strong, Sutherland, Swann, Swift, Tahaferro, Taylor, Test, Vance, Varman, Verplanck, Washington, Wayne, Weeks, Whitley, C. P. White, Wickliffe, Wilde, Wilson, Young.—138.

NAYS.—Messrs. Alston, J. S. Barbour, P. P. Barbour, James Blair, John Blair, Chilton, Claiborne, Coke, Jr., Robert Craig, Crockett, Daniel, Davenport, Desha, Drayton, Foster, Gaither, Gordon, Hall, Harvey, Hayes, Cave Johnson, P. King, Lamar, Lea, Lecompte, Letcher, Lewis, Lyon, Magee, McCoy, Polk, Roane, Spright, Sprigg, Standifer, W. Thompson, Thomson, Trezant, Tucker, Vinton, Williams, Yancey.—42.

So the bill was passed, and sent to the Senate for concurrence.

### THE JUDICIARY.

The House again resolved itself into a Committee of the Whole House on the state of the Union, Mr. CALHOUN in the chair, on the bill establishing circuit courts, and abridging the jurisdiction of certain district courts.

Mr. WICKLIFFE, of Kentucky, moved an amendment, the object of which was to add three judges to the bench of the Supreme Court, and to arrange the circuits in the States of Ohio, Kentucky, Tennessee, Indiana, Illinois, Missouri, Mississippi, Louisiana, and Alabama, among these three additional judges.

After some observations from Mr. BUCHANAN in opposition to, and from Mr. JOHNSON, of Kentucky, in favor of, the amendment, it was rejected without a division.

Mr. SPENCER, of New York, then moved an amendment to the bill, the object of which was to equalize the Atlantic circuits thus: the first circuit, consisting of Maine, New Hampshire, Massachusetts, and Rhode Island, to remain as it is; the second circuit, consisting of Vermont, Connecticut, and New York, to remain as it is; the third circuit to consist of New Jersey, Pennsylvania, and Delaware; the fourth, of Maryland, Virginia, and North Carolina; the fifth, of South Carolina and Georgia; the sixth, of Ohio, Indiana, Illinois, and Missouri; the seventh, of Kentucky and Tennessee. The amendment then proposes that a circuit judge be appointed, with all the powers of a judge of the Supreme Court, (except that he is not to sit on the bench of the Supreme Court,) who, in conjunction with the district judges of the respective districts, shall hold circuit courts, twice in each year, in the States of Mississippi, Alabama, and Louisiana.

After this amendment was read and ordered to be printed, the committee rose.

[On Friday and Saturday there was no debate of general interest.]

MONDAY, FEBRUARY 22, 1830.

The House was this day principally concerned in the discussion of appropriation bills.

TUESDAY, FEBRUARY 23, 1830.

### THE JUDICIARY.

The House then again went into Committee of the Whole, Mr. CAMBRELENG in the chair, and took up the Judiciary bill.

Mr. SPENCER, of New York, rose, and addressed the committee about an hour and a half in support of his amendment, and in explanation of his views of the whole subject under consideration. He had not concluded, when he gave way for a motion for the committee to rise.

WEDNESDAY, FEBRUARY 24, 1830.

### INDIAN AFFAIRS.

Mr. BELL, from the Committee on Indian Affairs, to which was referred that part of the President's message which relates to the Indian Affairs, and sundry resolutions

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Indian Affairs.

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and memorials upon the same subject, made a report thereon, accompanied by a bill to provide for the removal of the Indian tribes within any of the States and Territories, and for their permanent settlement west of the river Mississippi; which was read, and committed to the Committee of the Whole House on the state of the Union, and, with the report and documents, ordered to be printed.

Mr. BUCHANAN said this was a subject of great importance; the more, as he had no doubt, from the nature of the numerous memorials presented to the House, that great misapprehension prevailed in the country on the subject. It was commonly believed that the Indians were to be removed from the Southern States by force; and nothing was further from the intention of Congress, or of the State of Georgia either, than this. It was right to correct the erroneous impression of the public on this subject; and he therefore moved that ten thousand additional copies of the report be printed for the use of the House.

Mr. BURGESS did not rise to controvert the printing of any number of copies of the report, but in some sort to controvert the idea suggested, namely, that misapprehension and error had gone abroad on this subject. The gentleman said nothing was further from the intention of this Government and of Georgia, than to remove the Indians by force. Mr. B. presumed that nothing of this sort was intended by the Government of the United States; but when he saw Georgia making laws to extend over the Indians her jurisdiction, and excluding them from the exercise of their own rights, and calculated to drive them off, he could not agree to the remark of the gentleman. He hoped the motion would be postponed for a week, by which time the report would be printed, and the House could see what it was, and whether it was as such to deserve this great circulation among the people.

Mr. WILDE said, he did not intend to be drawn into a premature discussion—premature, at least, in his judgment—of the highly important questions involved in the bill and report of the Committee on Indian Affairs, which had not yet been read. He agreed with the gentleman from Pennsylvania, [Mr. BUCHANAN] that great misapprehension had existed on this subject, and disagreed with the gentleman from Rhode Island, who insisted that there was no misapprehension in relation to the policy and conduct of the State of Georgia. That State had indeed made provision prospectively for extending her laws over every person within her limits. In doing so, she had done no more than had recently been done by some of the new States—nothing more than had long since been done by several of the old ones. He denied that the State of Georgia entertained the project of driving the Indians from her soil by force; and he believed he had at least as good an opportunity of being informed as to the views and policy of that State, as the honorable gentleman from Rhode Island.

On a proper occasion he would enter into an examination of that policy. And he imagined it would not be difficult to prove that she had treated the Indians within her limits with as much forbearance, humanity, and good faith, as any of the States in which she has found accusers. He would not institute, yet he should not shun, a comparison between her conduct in this respect, and that of any of the old States; and he promised gentlemen, if they did think proper to institute it, he would follow it out as far as his knowledge of their history extended, and the patience of the House would allow him.

At present, he was desirous merely of correcting another misapprehension, in regard to the great excitement and deep interest which it was supposed the State of Georgia felt in the proceedings of Congress on this subject. He believed there was no such excitement as had been imagined. That State knew her rights, and was always ready and able to maintain them. She knew her

duties, too, and had never yet failed to perform them. To the legislation of Congress, relative to the Indians within her jurisdiction, she looked without apprehension, certain that it would be limited to its only constitutional objects, and without solicitude, except that which she felt in common with every other State, in the condition of these children of the forest. Her interest in the question had been vastly exaggerated. The number of Indians within her limits was but little greater than that within the territory of New York, and their hunting grounds comprised about five millions of acres.

Her relations with the United States on the subject of these lands were indeed peculiar; and, when it became the subject of discussion, it would be seen whether blame rested any where, and with whom. It was enough now to avoid lending sanction, by his silence, to errors of dangerous tendency. He trusted that the largest number of the report proposed would be printed. All who had taken so active and ardent an interest in the affairs of the Indians and Georgia, would naturally be desirous of seeing the facts and arguments of the committee. It was to be hoped many of those persons were sincere inquirers after truth. Let us, then, afford them whatever light we have, to guide them in their search.

Mr. BATES could not, until he knew what the report was, consent to order this great extra number to be printed. He had great confidence in the committee which made the report, and especially for the honorable chairman: but he wished the report to lie on the table until tomorrow or next day, to afford an opportunity for examining it; and he moved to postpone the motion for the extra printing until to-morrow.

Mr. THOMPSON, of Georgia, called for the reading of the report. This was opposed by Mr. SUTHERLAND, as a useless waste of time; and was insisted on by Mr. THOMPSON, who said it was necessary, in as much as the not knowing what it contained was made a plea for objecting to the printing.

Mr. REED deprecated this departure from the old usage of the House, which was growing up. It had been the practice to print the usual numbers of a document, and, when read and understood, if found of great interest, to print an extra number. Now, it was becoming customary, when a report was made, for some gentleman, not a member of the committee, but knowing something of it he supposed, to get up, and move an extraordinary number of copies. He hoped before this was agreed to, in the present case, the House would be enabled to know the contents of the report.

Mr. THOMPSON said, in deference to the opinions of friends near him, he would withdraw the call for the reading.

Mr. TAYLOR said a few words in favor of the postponement; and if that were not carried, he should call for the reading himself, as he could not vote for this extra number without knowing something of the report.

Mr. BUCHANAN rose to insist on the opinion which he had expressed, that great misapprehension existed in the country respecting this Indian question. The memorials which loaded the tables of this House proved this fact. He was satisfied that the fears of memorialists respecting the intentions of the Government, and of the State of Georgia, were totally groundless. The forcible removal of the Indians was thought, in many parts of the country, to be resolved on—a great excitement prevailed on the subject—enthusiasts have been busy in scattering firebrands and arrows throughout the country relative to this subject, calculated to create discord, to sow the seeds of disunion, and to sever brethren who ought ever to be united. It was proper the people should have information to remove the error prevalent on this subject; and who [he asked] would desire to keep such information from the people?

Mr. WICKLIFFE would be willing to print the same number of this report as had been ordered of a report on the same subject made some years ago—he believed at the close of the nineteenth Congress—but no more. That report was made; and, without being read, a large additional number of copies were ordered to be printed.

Mr. EVERETT, of Massachusetts, said the gentleman was mistaken. He [Mr. E.] made that report himself, and he well remembered that it was read through to the House, before the printing was ordered. But as to the other question, the gentleman from Pennsylvania had said that great misapprehension existed in the country on this Indian subject; and gave that as a reason for moving the large additional number of copies of the report. Mr. E. said, he would not contend about the correctness of this opinion, because that would be plunging into the discussion. But when the House is told that great error of opinion prevails on this subject, and that a certain document is calculated to contradict that opinion and correct the misapprehension, would the House favor the extensive distribution of that document without first hearing it? Was it not proper first to know what opinions it contradicts, and what it affirms? He had so much confidence in the committee, that had the printing been moved without any reason but the interest of the subject, he would have voted for it without hesitation; but it was the reason assigned for the motion which made him averse to consent to it.

Mr. GOODENOW, of Ohio, was in favor of the extra number of copies. As the subject was one of great importance, and as he had perfect confidence in the committee, he was willing, on the faith of that confidence, to vote for the motion. There was nothing, he thought, more important, there was nothing more dear to him, than giving information to the people.

Mr. LAMAR, of Georgia, said he would not now enter into any discussion of the subject; but, when the time came, he could show, that, in the conduct of Georgia respecting the Indians, there was nothing inconsistent with the constitution or with propriety. That now was not the question; but it was true that great misapprehension existed in some parts of the country on the subject; the newspapers had teemed with statements and comments calculated to mislead the public mind; and he hoped that a large number of this report might be printed, and distributed among the people, to counteract the great misrepresentation on the subject.

Mr. STERIGERE, of Pennsylvania, took it for granted that the report embraced all the laws of Georgia respecting the Indians, and all the facts of the case, presented in a fair view; and, as it would therefore enable the people to form a correct opinion on the subject, he was in favor of printing the additional copies. Mr. S. concurred in the opinion that the most erroneous impressions were entertained among the people on this subject. His own correspondence, as well as the numerous petitions received by this House, convinced him of the fact. He had received a letter lately from home, expressing surprise at a proposition now before Congress, as was honestly believed, for removing the Indians by force; and the people in his part of the country were actually holding meetings to petition Congress against such a measure. Another letter was in favor of the extension of jurisdiction over the Indians by the State of Georgia; but protested against the contemplated forcible removal, in favor of that which has been done, and against that which is not intended. He cited other cases to establish the fact of great misapprehension on the subject; and as this report would correct those erroneous impressions, he was in favor of the extra number.

Mr. MILLER, of Pennsylvania, preferred knowing for himself what the report contained, before he voted for printing this large additional number. The debate had consumed more time than the reading of the report could

have done, and he wished it read. He had voted, some days ago, for printing six thousand copies of a report, without its being read, [the report made by Mr. CAMBRIDGE, from the Committee on Commerce,] and he confessed, if he had known what that report contained, he should have voted differently. He was resolved not to commit the same error again.

Mr. HAYNES, of Georgia, said the objection to the printing seemed to be the idea that the report was a partial one, an argument on one side. This was mere presumption, and ought not to hinder the distribution of the information which it contained among the people. Supposing the character of the report such as was imputed to it, the House had printed a large extra number of a former report of an opposite character, and it would be unfair to withhold this.

Mr. WHITE, of New York, seeing no end to this debate, and perceiving its tendency to a premature discussion of the whole subject, if indulged, moved the previous question; but withdrew his motion at the request of

Mr. CAMBRELENG, who regretted to hear what the gentleman [Mr. MILLER] had said about the report of the Committee on Commerce. He knew not whether to consider those remarks as implying a compliment or a censure, but he was bound to receive them as complimentary. Would that gentleman suppress information, or withhold it from the people, because it might not correspond with his own views, or because he might dissent from the deductions from it. Mr. C. was surprised at the opposition to printing the extra number of the present report. There had been an Indian war raging out of doors; and he wished to have the question brought in here, where they might have a fair and honorable war with the other side, who had been carrying it on out of doors. He should like to see who were the members that were opposed to having this question placed fairly before the people; and he, therefore, demanded the yeas and nays on the motion for postponement.

Mr. STORRS, of New York, said that he wished to vote understandingly on every matter connected with so delicate and important a subject as that before the House. He might or might not agree to the principles of the report, and could not say whether he did or not, as it had not been read to the House, and he did not know exactly what the report was. He hoped that he should not be pressed to vote blindfolded on any question relating to it. He had, during the debate, looked very slightly at some of the sheets at the table, but had not time to read a passage of it carefully. In that part which he cast his eye upon, he saw that a paragraph from an opinion was quoted from a case in the Supreme Court of New York, but he had not time to look and see whether the report further stated that the case had been reversed in the court of errors there. He wanted information as to the nature of the report and its principles. At any rate, he did not wish to act in darkness upon it. He moved that it should be read to the House, and asked the yeas and nays on that question.

The yeas and nays were ordered; and the question was taken on the reading of the report, and decided in the affirmative: yeas, 120—nays, 56.

The Clerk accordingly commenced reading, and had proceeded about half an hour; when

Mr. CLAY, of Alabama, moved to dispense with the further reading, which was agreed to—78 to 57.

A motion was then (about three o'clock) made to adjourn, and lost: yeas, 48—nays, 90.

Mr. WHITE now renewed his motion for the previous question, which was seconded by a majority of the House.

Mr. STORRS, of New York, then moved to lay the motion for printing on the table, and called for the yeas and nays on the motion.

The yeas and nays were ordered; and, being called, the motion to lay on the table was lost: yeas, 37—nays, 143.

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West Point Academy.

[H. of R.]

The previous question recurring.

Mr. VANCE demanded the yeas and nays on it, and they were ordered.

And the previous question being put, "Shall the main question be now put?" it was carried: yeas, 126—nays, 48.

The main question was then accordingly put, viz. on the motion to print ten thousand additional copies of the report, and decided in the affirmative, by yeas and nays, as follows: yeas, 113—nays, 56.

THURSDAY, FEBRUARY 25, 1830.

Mr. CROCKETT moved the following resolutions, viz.

1. *Resolved*, That if the bounty of the Government is to be at all bestowed, the destitute poor, and not the rich and influential, are the objects who most claim it, and to whom the voice of humanity most loudly calls the attention of Congress.

2. *Resolved*, That no one class of the citizens of these United States has an exclusive right to demand or receive, for purposes of education, or for other purposes, more than an equal and ratable proportion of the funds of the national treasury, which is replenished by a common contribution, and, in some instances, more at the cost of the poor man, who has but little to defend, than that of the rich man, who seldom fights to defend himself or his property.

3. *Resolved*, That each and every institution, calculated, at public expense, and under the patronage and sanction of the Government, to grant exclusive privileges except in consideration of public services, is not only aristocratic, but a downright invasion of the rights of the citizen, and a violation of the civil compact called "the constitution."

4. *Resolved, further*, That the Military Academy at West Point is subject to the foregoing objections, in as much as those who are educated there receive their instruction at the public expense, and are generally the sons of the rich and influential, who are able to educate their own children. While the sons of the poor, for want of active friends, are often neglected, or if educated, even at the expense of their parents, or by the liberality of their friends, are superseded in the service by cadets educated at the West Point academy.

5. *Resolved, therefore*, and for the foregoing reasons, That said institution should be abolished, and the appropriations annually made for its support be discontinued.

Mr. CROCKETT said he had endeavored some days ago to get an opportunity to offer this resolution, without being able to succeed. He submitted it in compliance with a duty which he owed his country, and to his constituents especially. The people who sent him here were opposed to this institution; he had talked to the people on the subject; they had told him what their opinions were respecting it, and, if he kept his mouth shut here, he would not discharge his duty faithfully. He believed the resolution to be correct; the institution was kept up for the education of the sons of the noble and wealthy, and of members of Congress, people of influence, and not for the children of the poor. Indeed, it could be of little use to the poor any how; for if a poor boy could by chance get appointed, he could not get there, the expense would be too great; and if he could get there, it would be at the risk of his ruin, as the chance would be that he would have to go home on his own means. It was not proper that the money of the Government should be expended in educating the children of the noble and wealthy; that money was raised from the poor man's pocket as well as the rich. Every poor man, who buys a bushel of salt to salt his pork, or a pound of sugar for his children, or a piece of cloth for his coat, pays his portion of the taxes out of which this West Point academy was maintained for the

education of rich men's sons for nothing, twenty-eight dollars a month besides. Another bad effect of it was, that no man could get a commission in the army unless he had been educated at West Point; but the army had been headed very well by men who never went to that academy. He remembered, in the little struggle we had a few years ago, he had gone out and performed his twelve months tour of duty in the defence of his country, as well as he could. He did not mention this to boast of it; he there saw thousands of poor men who had also gone out to fight their country's battles, but none of them had ever been at West Point, and none of them had any sons at West Point. A man could fight the battles of his country, and lead his country's armies, without being educated at West Point. Jackson never went to West Point school, nor Brown—no, nor Governor Carroll; nor did Colonel Cannon, under whom Mr. C. said he served, and a faithful good officer he was.

The truth was, [said Mr. C.] this academy did not suit the people of our country, and they were against it; the men who are raised there are too nice to work; they are first educated there for nothing, and then they must have salaries to support them after they leave there—this does not suit the notions of working people, of men who had to get their bread by their labor. He, therefore, felt it his duty to oppose this institution. He had intended, when the appropriation bills should come up, to move to strike out the appropriation for the support of this academy; and he waited the other day till after three o'clock, when it was expected they would be taken up, when the House was in committee; and, after he went away, the bills were taken up, and passed through the committee.

Mr. C. wanted information for the people about this academy: perhaps they did not know enough about it; some of them, maybe, had never heard of it, and he wanted to let them hear of it, and know all about it. He must say, however, that he did not offer his resolution with much hope of succeeding; there were too many gentlemen in the House interested in this academy, he feared, to allow his resolution to pass; but it was his duty to try.

A great deal had been said in the House about retrenchment, and they had been several weeks spending time every day in trying to dismiss a poor little draughtsman, who every body admitted had been useful, and whose duties were necessary; notwithstanding this, he must be dismissed for the sake of retrenchment. Well, what was the consequence? Why, as soon as his office was voted down, up get gentlemen to move that the committee have the same work done by the job, which every body knows is an expensive way of having public work done. That resolution, sir—[The Speaker reminded Mr. C. that it was not in order to introduce those resolutions in debate on the present question.]

Mr. C. said, he did not want to break the rules, but he thought it could do no harm to point out these things, and if we are going to retrench, [said he] let us retrench so that we can feel it. As for this academy, however, [said Mr. C.] the young men educated there did not suit our service; they were too delicate, and could not rough it in the army like men differently raised. When they left the school, they were too nice for hard service. He had seen them about here, and he supposed they had good salaries, which the poor people, who consumed the salt and other things which were taxed, had to pay.

Let us [said Mr. C.] put this institution down a little while, and see how it will work. He believed the true interest of the Government was to put it down, although he did not, for the reason before given, hope much to succeed. He wished, however, to see how the House stood on it, and he therefore requested the yeas and nays on his resolution.

Mr. McDUFFIE said that the resolution was one of much importance. He would agree with the gentleman,

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Ardent Spirits in the Navy.

[Frs. 25, 1830.]

that there were many abuses connected with the institution; but, as the resolution ought not to be hastily acted on, he moved to lay it on the table, and print it; which motion was agreed to.

### ARDENT SPIRITS IN THE NAVY.

Mr. CONDUCT offered the following resolutions:

1. *Resolved*, That the Committee on Naval Affairs be instructed to inquire into the expediency of inducing the seamen and marines in the navy of the United States, voluntarily to discontinue the use of ardent spirits, or vinous or fermented liquors, by substituting for it double its value in other necessities and comforts whilst in service, or in money payable at the expiration of the service.

2. *Resolved, also*, As a further inducement to sobriety and orderly deportment in the navy, as well as with a view to preserve the lives and morals of the seamen and marines, that said committee be instructed to inquire into the expediency of allowing some additional bounty, in money or clothing, or both, to be paid to every seaman and marine, at the expiration of his service, who shall produce from his commanding officer a certificate of total abstinence from ardent spirits, and of orderly behavior, during the term of his engagement.

3. *Resolved, also*, That the said committee inquire and report whether or not the public service, as well as the health, morals, and honor of the naval officers would be promoted by holding out to the midshipmen and junior officers some further inducements and incentives to abstinence from all intoxicating liquors.

Mr. CONDUCT remarked that this subject had been already referred to the Committee on Military Affairs, but they, under the impression that it was not within their province to report with respect to the navy, merely reported with respect to the army. They made a favorable report in regard to the army; and it was because they declined reporting on the other branch of the service, that he offered this resolution to refer the inquiry to the Committee on Naval Affairs.

Mr. HOFFMAN said that no man could rejoice more than he would if the use of ardent spirits were discontinued in the navy of the United States; nor was any man more convinced than he was of its injurious effects. But this ought to be left to the discretion of individuals, for he believed that no regulations would effect the object which the honorable mover of the resolution has in view. The resolution, it appears, deems whiskey that vulgar, democratic drink which Captain Basil Hull so strenuously condemned. Mr. H. said, that when the people could procure good wine, although it is not so strong a drink, yet they would not ask for whiskey. With all our anxiety, it would be found that any regulations we can introduce will be impracticable. The matter should be left optional with the officers and sailors themselves; and the example set to them by our people, and the judgment of the country, will be more effectual than any regulations we can adopt. It may be expedient [said Mr. H.] to make our sailors cold water drinkers. He did not think so. He feared it would have the effect of reducing their efficiency, of impairing the courage, the generosity, and bravery, and all the other qualifications incidental to the character of our navy. If by the resolution it is intended to dispense entirely with the use of ardent spirits in our navy, the object would not, in his opinion, be obtained. If any gentleman will point out some practical scheme whereby to do away with this practice—because some practical measure will be necessary—he would willingly give it his support. He called on any gentleman to point out a practical scheme. He felt indebted to the humanity of the gentlemen who brought this subject under consideration; but he repeated that he wanted them to send to the committee some practical scheme to effect their object, which the committee could report; otherwise, all their good and humane inten-

tions would evaporate, and the adoption of these regulations would not be attended with any practical results. No one in the service was now obliged to drink ardent spirits, and he thought its discontinuance could not be enforced with advantage.

Mr. WICKLIFFE said, he did not believe that any practical results would be derived from the adoption of this resolution. He did not like the introduction of such topics into this Hall; and, when he said so, he did not intend any disrespect to the gentleman who moved the resolution. He knew [he said] that temperance societies of ladies and gentlemen had been established throughout the country, and he did not doubt the benevolence of their efforts to prevent the use of ardent spirits. He objected to them for one reason only. What [he asked] would the future historian of this country have to say when he should be called upon to write the history of the events of the early part of the nineteenth century? Will he not describe us as a nation of drunkards? That historian would say, to such an extent had this vice been carried, that ladies formed themselves into societies for the promotion of temperance, and for the suppression of the vice of drunkenness. He hoped that to such a description of the state of our society, erroneous in point of fact, Congress would not give its false sanction by legislating on this subject, and especially when no practical benefit can arise from the adoption of this resolution.

Mr. W. moved to lay the resolution on the table, but subsequently withdrew it at the request of

Mr. DRAYTON, who said the gentleman from New York [Mr. HOFFMAN] is opposed to the resolution, because he thinks what it seeks for cannot be accomplished. He says, that in the Naval Committee the subject has been more than once considered, and that no practical mode occurred to its members, by which they could put a stop to intemperance in the navy or marine corps; that he deplored its existence as productive of the most injurious consequences, and would gladly eradicate it, if it were in his power to do so. He added, that whiskey, in moderate quantity, was not prejudicial; that it was sometimes necessary to the health and vigor of the seamen; that it ought not, therefore, to be altogether interdicted; and that he placed no reliance in legislation as a remedy for the evil complained of. The surgeons and the officers in the army and the navy tell us, as will be seen by documents which have been laid upon our tables, that ardent spirits never contribute to the health or permanent comfort of the sailor or the soldier; and that the intemperate use of them, in a greater degree than all other causes combined, occasions crimes, insubordination, punishments, diseases, and deaths. Admitting, then, that a small quantity of strong liquor is not injurious, as it is not beneficial, no reasons exist for drinking it. But it cannot have escaped our observation, that its habitual consumption, even in moderation, too frequently excites a desire for more, and gradually leads to the grossest excess. Much as I deprecate the baleful consequences of drunken debauchery, I entirely concur with the gentleman from New York, in the impolicy of endeavoring to correct it by a prohibitory law, which might raise a spirit of discontent, counteracting the object of the law. I am opposed to sudden and violent innovations. Reformation must commence with the delinquent himself. If, by appealing to the moral sense of the sailor, by diminishing the temptations to which he is exposed, by increasing his comforts, and adding to his pecuniary stipend, an impression can be made upon him, hopes may be entertained that the impression will be durable. Those powerful inducements to human action, self-respect and interest, may thus be brought to operate upon him. And this course, according to the language of the resolution of the gentleman from New Jersey, [Mr. CORNELL] is all that is required from this House. That from it beneficial effects may be calculated upon, has been demonstrated by several in-

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stapes, in which it has proved successful in the army, in the navy, and in our merchant ships.

The gentleman from Kentucky, [Mr. WICKLIFF] is adverse to the resolution, because he conceives it to have originated in temperance societies, or similar associations, from which have issued numerous memorials and petitions of a certain cast, with which our tables have been frequently covered. Sir, no one condemns more than I do the language and the spirit of many of the papers to which the gentleman alludes. I can assure him, that the only persons with whom I have had any communication relating to the subject before us, are physicians in the army and navy and military officers. But were it otherwise—were this resolution pressed upon us by visionaries and theorists, pushing their abstract notions of morality and benevolence to fanatical or ridiculous extremes, if it contained suggestions useful and practical, I would listen to them. Whether we shall be enabled, by any means which we can devise, to effect what is contemplated by the resolution, I will not undertake to determine. It is our duty to make the effort. If we fail, we shall have the consolation of reflecting, that we have attempted to check the progress of a vice which renders its victims not only useless and disgusting, but a burden upon society. If we succeed, though success may be only partial, we shall improve the intellectual, and moral, and physical condition of our army and our navy. I trust, therefore, that the resolution will be adopted, and that an opportunity will be afforded for making an experiment, by which much may be gained, and from which no possible injury can result.

Mr. HOFFMAN rose to reply, but the expiration of the hour cut short the debate.

#### INDIAN AFFAIRS.

The rule having been suspended,

Mr. VINTON moved the following order:

*Ordered*, That a law of the State of Georgia, and a law of the State of Alabama, and Mississippi, to extend the jurisdiction of those States over the Indian tribes within their respective territorial limits, be printed, and appended to the report of the Committee on Indian Affairs, directed yesterday to be printed.

Mr. VINTON said, that he wished, yesterday, when the question on printing an additional number of copies of the report of the Committee on Indian Affairs was under consideration, to make an inquiry of the chairman of that committee, but it was decided by the Chair that such an inquiry was not then in order. The object he had then in view, was to ascertain whether the laws of the States of Georgia and Alabama, extending the jurisdiction of those States over the Indian tribes residing within their limits, were appended to the report of the committee. Having since learned that they were not, he said that he had now risen to move that these laws be printed, and appended to it. It was yesterday said that wrong impressions had obtained in the community; that much misrepresentation had gone abroad in reference to the intentions of Georgia towards the Indian tribes within her territory; but as he had not seen the laws of that State relating to this subject, he was unable to form any opinion whether these impressions are correct or not. It is [said Mr. V.] a fair presumption that the State of Georgia intends to execute her laws, whatever they may be, bearing on this matter; and perhaps it would be unfair to presume that she intends to do any thing more than execute them. For the purpose of correcting the erroneous impressions which, it is said, have gone abroad, and to arrest the progress of the alleged misrepresentations, he voted to print an extra number of copies of the report of the committee, to be distributed amongst the people, so as to give them correct information on the subject. When the bill for the removal of the Indians shall come up for discussion, the character of the laws of these States, extending their jurisdiction over the

Indian tribes within their limits, will unavoidably be drawn into the debate. The questions, whether these laws conflict with the existing treaties of the United States with these tribes? with any of the admitted rights of the Indians or of the United States? These are grave questions, which we must decide. These laws, therefore, ought, in his opinion, to be published; and, unless they are, he would ask, how are the people to judge whether the impressions they have already received are correct? When we send out the commentary on these laws, why not also send out the laws themselves, so that the public may be enabled to decide whether the commentary is sustained by the text. Entertaining these views, he moved that the laws of Alabama, Georgia, and Mississippi, extending their jurisdiction over the Indian tribes within their territorial limits, be printed, and appended to the report of the Committee on Indian Affairs.

Mr. LUMPKIN said that the proposition of the gentleman from Ohio appeared to him to be one of an extraordinary character. A standing committee of this House makes a report on a subject according to their views of it; and, after having presented it, and the House has ordered it to be printed, a gentleman gets up in his place, and proposes that certain information, which he supposes is required, should be added to it. For my own part [said Mr. L.] I have no objection to the laws referred to, being distributed through every hamlet, town, and county in the United States; nor do I care how they are distributed; but I cannot consent that they shall be appended to a report of a standing committee of this House. There would be no impropriety in a motion to print these laws; but, to move that they should be printed as an appendage to a report, is, in my opinion, rather an extraordinary idea. The gentleman, with equal propriety, might move to print and attach to this report the laws of New York, Massachusetts, &c. relating to the Indian tribes. We are not unwilling to publish these laws, but we object to have a report of a committee of this House encumbered with them. We have had presented to us so many memorials on this subject, with references to books of history, &c., that it would be impossible to append them all to the report, without rendering it too voluminous. The committee have, therefore, exercised their judgment in making selections from the whole.

Mr. GOODENOW said, he did not rise to enter into the debate, but merely to make a few remarks with regard to the propriety of adopting the motion made by his colleague, [Mr. VINTON] whose suggestion, that peradventure the committee may not have made fair inferences from the laws of the States, by them quoted or referred to, and therefore we ought to append to their report those laws, tends to cast suspicion upon the committee and their report, and weakens its effect. To adopt this motion, would be setting a precedent, improvident, to say the least of it. When a respectable standing committee of this House make a report upon a subject referred to them, and illustrate their views by references or extracts from the laws of the States or of the Union, why suspect their integrity, or their commentaries, at the threshold, before any examination of that report is made—before an inaccurate quotation is detected—before any erroneous conclusion or inference is exposed? We refer matters submitted to the decision of this House to a committee always supposed to be in favor of the subject referred, who are expected to present in their report a fair, and, usually, the most favorable view of it; and, without knowing whether they have honestly and ingeniously examined, and made a full and impartial exposition of it, why should we censure them, by tacking to their report that which they did not consider necessary to accompany it? The opposition to the report, in its present form, seems to rest on the suggestion that perhaps the laws, sought now to be incorporated at large in the printing of the report, may be



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inaccurately quoted, or an unfair exposition thereof may have been made. When the gentleman shall have detected any misnotation, or error in commentary, then will the time come for the House to act upon his proposition. I hope my colleague will see, on reflection, that it would be setting a bad precedent, to say, by a solemn act of the House, before any inaccuracy or error be detected in a report of a respectable committee, lest it may contain an erroneous commentary, the original text shall be published, and appended to it. I wish the report to go to the world as the committee have given it to us, unincumbered by any extraneous matter; and I do hope, on further reflection, my colleague [Mr. VINTON] will perceive the impropriety of urging his motion.

Mr. FOSTER, of Georgia, said he did not intend to complain of the resolution proposed. He must, however, be permitted to say, it was one of a very extraordinary character. He would venture to say, that, if the journals of this House, from the organization of this Government down to the present day, were searched, a proposition to print the laws of a particular State, for the information of the people at large, could not be found. The House frequently, and for the use of its own members, on particular occasions, order the printing of a State law; but to publish them for general information, is unprecedented. But, [said Mr. F.] what is the reason assigned for the passage of this resolution? It is, that the people at large may be correctly informed as to the provisions of the laws which are to operate on the Indians. Now, sir, what object is to be thus attained? What effect can the particular provisions of those laws have on the question of the right of jurisdiction? If the States have the right to extend the operation of their laws over the Indians within their limits, the General Government cannot interfere, even if those laws be of the most cruel and sanguinary character. On the contrary, if they have not the right, they could not acquire it by the enactment of laws the most mild and benignant. He did not intend, at present, to go into an examination of this right—that would more properly present itself on a future occasion. He wished now merely to impress upon the House that the tendency of this resolution was to involve us in a discussion as to the character of State laws, the internal regulations of a State—a matter with which Congress cannot interfere.

But, if gentlemen are determined to publish the laws of Georgia, Alabama, and Mississippi, for the purpose of informing the public at large of their provisions, Mr. F. insisted on attaching to them the laws of all the other States which have extended the operation of their laws over the Indians within their limits. If those three States are to be put on trial before the country, let others, similarly situated, be brought to the same tribunal. Let them undergo a general inspection; place the different statutes of each side by side, and let the public have an opportunity of judging impartially between them. For this purpose, Mr. F. had prepared a substitute for the resolution of the gentleman from Ohio, [Mr. VINTON] which he would presently send to the Chair. But he protested against having these laws attached to the report of the Committee on Indian Affairs. The printing of that report had already been ordered, and he wished to have it before the public as soon as possible; but if these laws are to accompany it, considerable delay must be produced. He hoped, therefore, that, if the House determined to publish these laws at all, it would accept of his substitute, and print them separately from the report. For himself, [said Mr. F.] he would candidly add, that, even should the substitute be received, he should ultimately vote against its passage, conceiving it not only unnecessary, but improper, for this House to undertake to publish the laws of the States for the information of the public.

Mr. FOSTER then submitted the following, as a substitute for the resolution of Mr. VINTON:

"That the Clerk of the House be ordered to have printed the laws of the several States, extending and creating jurisdiction over the several Indian tribes within their limits."

Mr. VINTON said, it was not his object or desire to conceal from the House, or the people, any information that might exist in relation to this subject. He was willing to modify his resolution so as to include the laws of all the States referred to, if gentlemen so pleased. I have had [said Mr. V.] no opportunity of seeing the laws of Alabama and Georgia; and shall I be, under such circumstances, compelled to decide on this subject without ever having seen the laws relating to it? In my opinion, this information is required, not only by the people of this country, but by this House, for a fair and full examination of the subject; and when I say that, without it, the report is incomplete and imperfect, I do not mean to cast any reflections on the committee. In order to judge of the report correctly, we must read the laws upon which the report is founded; and when I have had an opportunity to do so, for one, I will endeavor to form a just and impartial opinion of their true character. I am willing, therefore, to accept the modification of the gentleman from Georgia, [Mr. FOSTER] and I hope he will withdraw that part of his motion which proposes to lay the whole upon the table. Mr. V. said he wished to have all the information which can be procured in relation to this question laid before the House and the country.

Mr. WILDE said, he would not oppose printing any document wanted for the information of the House: it could hardly be requisite, however, for that purpose, to print ten thousand copies of the laws in question. They had long since been published in the gazettes of the States which passed them, and copied into other newspapers throughout the Union. If they were now wanted for the use of the members of Congress, the usual number would be sufficient. But if information of this description was required, it occurred to him that a liberal curiosity would not be satisfied by looking into the laws of two, three, or four States only. He trusted it would extend itself to the acts of every State and every provincial assembly which had legislated for the Indians. Much interesting matter might thus be embodied, very satisfactory to the curious in legislation. An opportunity would be afforded for philosophical reflection on the polity of different communities, and various stages of society. He must be allowed, however, to express a doubt whether any errors in public opinion would be corrected, the harmony of the House increased, or the dispassionate consideration of Indian Affairs promoted, by singling out a few laws from a few States, to be dispersed over the country in the form of an appendix to the report of our committee. If injustice had been done to the Indians any where, by State Legislatures, and we are competent to its redress, let the inquiry be co-extensive with the evil. Why not embrace all States and all Indians? If our interference is proper in one instance, is it not equally proper in the rest? But, in any event, it could be necessary, in his view of the subject, to print only what was required for our own information; all beyond that would be sheer waste. He therefore moved to strike out so much of the resolution as proposed to print an extra number of copies to be appended to the report, and offered an amendment, which he hoped his colleague would accept as a substitute—"And, also, so much of the laws of the several States as relates to the Indians within their limits."

Mr. HUNTINGTON said that the gentleman from Georgia, [Mr. WILDE] with his usual candor, had admitted that no objection to the printing of these laws could be made, if they were necessary to enable the House to decide correctly on the bill accompanying the report, but that they ought not to be appended to the report; for, if they were needed at all, it was only for the use of the

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House. If this be so, why was the printing of an extra number of copies of the report deemed expedient? Ten thousand copies, surely, were not necessary for the House merely. Was not this printing ordered on the motion of a gentleman from Pennsylvania, [Mr. BUCHANAN] who urged as a reason for it that erroneous impressions existed in many parts of the country in relation to the subject embraced in the report; and that the people ought to be put in possession of a document by which these supposed misconceptions and erroneous impressions could be corrected? Now, sir, I do not admit that these impressions are erroneous; that the feeling and excitement which exist, in regard to this subject, are without cause. I say nothing now on that point; but if it be so, and this report will tend to remove errors and allay feeling, and an extra number of copies of it has been ordered to be printed to effect this object, surely the laws referred to in the resolution of my friend from Ohio [Mr. VINTON] ought to accompany the report; for they, among other things, have tended to produce the state of feeling and of public sentiment, in some parts of the country, to which allusion has been made. And if it be important that the report be extensively circulated, for the purposes suggested, is it not as important that the laws which are connected with the subject of that report should have an equally extended circulation? Ought they not both to go forth together to the people of this country? I submit, therefore, whether it be entirely consistent to vote for the printing of a large number of the report, for the reasons which were urged in support of it, and to vote against printing an equal number of the laws to accompany it, which are supposed to have an important connexion with the subject of that report.

Mr. H. said, he would make another suggestion. Would it not be as well for the State of Georgia, of which the honorable gentleman is so able a representative; indeed, should she not desire that these laws should accompany the report, if, as is claimed, they afford no pretext for the representations which have been made in various memorials presented to us, on the subject of the Indians within her limits? The honorable member is surely not unwilling that the people should judge for themselves; and, if these laws are of a nature which ought not to occasion any fears lest the rights of the Indians should be invaded, is he unwilling that the people should be possessed of them?

The amendment proposes the printing of such of the laws of the other States of the Union within whose limits Indian tribes exist, as extend or relate to the jurisdiction of such States over those tribes. I interpose no objection to this amendment, if they are appended to the report; though there seems to be a peculiar propriety in printing those referred to in the original resolution, as the Indian tribes within those States are those to which our attention has been particularly called, in the message of the President, and which the report of the Committee on Indian Affairs embraces. I hope, therefore, the honorable member from Georgia will consent to modify his amendment, so as to provide for the annexation of the laws named in it to the report; and let them all go forth to the people at one and the same time, and in one and the same document.

On motion of Mr. HOFFMAN, the resolution and amendment were laid on the table.—Yea, 94—nays, 42. The House then went again into Committee of the Whole on the Judiciary bill, when Mr. SPENCER concluded the remarks which he commenced on a former day against the bill, and in favor of his amendment. The committee then rose.

FRIDAY, FEBRUARY 26, 1830.

## ARDENT SPIRITS IN THE NAVY.

The House resumed the consideration of the resolutions moved by Mr. CONDUCT yesterday.

Mr. HOFFMAN said, the supposition of gentlemen, that

drunkenness prevailed in a great extent in the navy, is extremely incorrect. The case is not so. He was not an advocate of drinking ardent spirits in any form; but he was opposed to the interference of the Legislature on this subject; he was opposed to the proposition to commute the wages of seamen, if they will not drink their rations of ardent spirits. This is a matter he would leave to their own discretion; for, in attempting to devise measures necessary to effect this object, we must consult the habits and dispositions of the people for whom these measures are intended. All men are the best judges of their own concerns: sometimes we commit mistakes; but if we are wrong in judging for ourselves, we may be wrong in judging for others. The seamen and marines of the United States' navy can judge as well for themselves as the Legislature. These regulations may be adapted to the army, who are always supplied with good fresh water, and have no necessity for the vulgar, democratic whiskey; but it was different with respect to the navy. He had no objection to stopping the use of ardent spirits in the army, as it would, in his opinion, prevent desertions. Mr. H. said, the officers, seamen, and marines of the navy would, if left to themselves, follow the example set to them by the country.

Mr. REED said, if it was right for this House to legislate with respect to the navy, and to prescribe rules for it, it is certainly equally right to legislate on this subject. Dealing out spirits in the navy in small quantities tends to disqualify men for their duty, and is a direct way to make them drunkards. Mr. B. referred to the temperance societies which had been introduced into the debate, and said they contributed much to the improvement of the state of our society; manifestly so, to the great joy of all sober men. He had no hesitation in saying he attributed this improvement to the temperance societies established in the country. He had no doubt that the adoption of this resolution would have good effects on the navy. It has been stated by the chairman of the Committee on Military Affairs, [Mr. DRAYTON] that it has produced beneficial effects in the army. Why [he asked] would it not be attended with similar effects in the navy? Mr. R. hoped the resolution would be adopted.

Mr. RICHARDSON said, he should be unfaithful to the principles by which he professed to be governed in this House, and in all other places, if he gave not his voice in support of the resolutions under consideration. The existing law [said Mr. R.] provides that each seaman and marine shall be supplied daily with rations of ardent spirits. However temperate their habits, or disinclined by their taste or early education to the use of ardent spirits, the law holds out to them a strong inducement to become intemperate. It is too well known to be doubted, that the constant use of the quantity of spirits allowed by the law, must necessarily form a strong propensity to excess. The best judges of this matter agree that the use of ardent spirits gives neither vigor to the body, nor courage, nor any other valuable property to the mind. It is said that men are not compelled to the use of spirits. But, sir, it is provided for them by law, and by law measured out to them. If they reject it, they sustain so much loss. They are not permitted to substitute for it articles of real use or necessity. Thus intemperance is virtually imposed on them by public authority. And what do the resolutions propose? They do not propose to deny to any the use of ardent spirits; but they propose to the seamen and marines an inducement to abstain from the use of them. They offer to them the option of having, instead of their rations in spirits, articles that may conduce to their comfort; or double the amount of their rations, to procure bread for their wives and children, or to provide for the seasons of sickness and old age. Sir, [said Mr. R.] I thank the gentleman [Mr. CONBLY] who offered, these resolutions. They do him honor as a friend to his country.

I thank the gentleman from South Carolina [Mr. DRAVTON] for the able remarks he made yesterday in support of them. They furnish lessons friendly to public virtue. The existing law cannot be defended. With one hand it holds out to those engaged in the public service a constant and strong inducement to intemperance; and, on the other hand, the penalties of disgrace and death for crimes to which intemperance leads. Intemperance is the great instigator of crimes. Its name is "Legion," and its work destruction. The gentleman from Kentucky, [Hon. Mr. WICKLIFFE] yesterday said, that the efforts made "by temperance societies," and what passed in this House to check the vice of intemperance, would justify some future historian in describing this as a nation of drunkards. Do attempts to prevent a vice prove its entire prevalence? [said Mr. R.] That gentleman has been zealously engaged this session in the work of retrenchment. But it is a fair inference, to say that such efforts prove that this Government is extravagant and corrupt in all its departments? The premises will justify no such inference as he thinks may be drawn from them. Sir, I have no hesitation in declaring it as my opinion, and long and deeply settled, that if there be one vice which, more than any other, threatens the liberty and the prosperity of this country, it is the vice of intemperance. I therefore hope that the resolutions will be adopted, and that they will receive the deliberate and solemn consideration of the appropriate committee.

Mr. BURGESS said, he could demonstrate from principles, and would undertake to do it before any college of physicians, that nothing could be swallowed so invigorating, strengthening, and healthy, as cold water. He did not say this in jest; it was too solemn a matter to jest about. Nothing could be more injurious than giving him his regular eleven o'clock or his four o'clock. At first the palate of the boy of fourteen rejects the spirit, but in the mess room he sees, by the example of those who think cold water not sufficiently stimulating, that he cannot become a man until he can take his ration. Let him follow this until he is thirty years of age, and unless his constitution is made of steel, he will be, if not a drunkard, at least a confirmed tippler; and then, if his mind should be by some misfortune thrown off its balance, he would resort to maddening potations. He thought if they succeeded in saving one soul from this perdition, they should do a deed making them worthy of remembrance. When all seemed to be united in restoring the country to the station in which it was some years ago, he thought the House would be acting agreeably to the desires of their constituents if they united with the temperance societies.

Mr. ELLSWORTH said, he rose for the purpose of calling the attention of the House to certain communications laid on our tables, from the then Secretary of the Navy, intimately connected with the subject of this resolution; and, as he was now up, he would express his regret that any gentleman of this House wished to suppress the benevolent inquiry proposed to be instituted. Mr. E. said there had been no resolution before Congress, this session, of greater magnitude and urgency. He hoped the House would give it a most serious attention. It is one of vital importance to the navy and the country. He was persuaded that opposition must spring from either a disbelief of the fact, viz. the prevalence of intemperance, or that all attempts to eradicate or restrain it were futile. As to the existence of intemperance, to a melancholy degree, in the navy, as well as in the army, no one could, he thought, doubt. He did not wish to speak to the disparagement of the navy. He honored, he gloried in its fame and gallant heroism; but as to the matter of fact, it is as certain as that we are in this hall of legislation. The loathsome objects we meet daily wandering in our streets, the tears and broken hearts of thousands in our land, of parents, wives, and children, testified too strongly not to be

believed and felt. We have it, too, from the highest in authority—from the honorable Secretary, and the officers in the naval service. A very intelligent lieutenant of the navy recently informed me that a great proportion, I think he said eight-tenths, of the whipping on board of our national ships was made necessary by intemperance. He said it was a monstrous evil; and who would doubt it, if it caused nothing else but the brutal and debasing practice of whipping.

Mr. E. said, he was astonished that some gentlemen in this House looked upon this subject with so much indifference, if not contempt. As legislators, as men, we have a responsible duty here to perform. We hold in our hands the destiny of thousands, and the well-being of multitudes more. Sir, we legalize drunkenness in our navy. By law, we provide that all, both midshipmen and sailors, shall have their half a pint per day, under all circumstances, in fair weather as well as foul. An enlistment is ordinarily for three years. Now, sir, where are the men to be found, who, after having this daily allowance dealt out to them for this period of time, do not become the victims of a vicious appetite? It is almost impossible they should not. Some few there may be, who have self-government and consideration enough to resist the beneficent provision of the law. But hundreds comply where ten refuse. And such are the surrounding circumstances, that the young and inexperienced cannot resist the influences upon them. We tempt them to taste the poison. We virtually compel them to do it. There are among our midshipmen boys, mere boys; and so, too, among our sailors. Think, sir, of arranging these boys daily with the veteran topers, to participate in the ruinous potation, and drink their half a pint—twenty-three gallons per year. Let us blush for our laws. Let us mourn over the desolation and death we scatter through the land.

And now, [said Mr. E.] he had to ask if nothing can be done? Is all remedy so perfectly hopeless, that we will not even inquire if something may not be done? The intelligent lieutenant, to whom [he said] he had already referred, told him that something could be done; something like what is proposed in these resolutions; and Mr. E. said he would appeal to the good sense of gentlemen, if they did not believe much might be done. We certainly can place before our seamen a temptation to temperance. This expedient has succeeded on land—it may on water. Much [he said] had been done in some parts of this country; and, although the honorable chairman of the Naval Committee [Mr. HOWMAN] had, he thought, attempted to ridicule the efforts of temperance societies, and pronounced a sort of eulogy upon that "democratic thing, whiskey," as he repeated several times, for what purpose [said Mr. E.] he could not understand. He would lift up his voice, in this public place, in favor of these benevolent and efficient means of saving our fellow-men. Health, reputation, riches, and life followed in their train. The tears of parents and wives had been dried up, and their hearts made to overflow with expressions of gratitude and joy to the authors of these benevolent movements. Besides, sir, the experiment has been tried in naval service. Mr. E. appealed to France and England. The former [he said] used a cheap wine, and the latter beer, in their navies. We find, sir, [he said] in a letter from the honorable Secretary of War, laid upon our tables the other day, that, in his opinion, intemperance in the army cannot be restrained, because the soldiers will obtain liquor from those who plant themselves in the neighborhood of our military posts and stations. He says, that the most successful experiment in the army has been to impose no restraints upon the soldiers, but let them have as much, and as often as they want, except so far as, by rules of their own making, they impose restraints. Mr. E. said he was no believer in this doctrine. But, however difficult it might be to prevent soldiers from getting liquor from persons in the neigh-

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borhood on land, no such difficulty existed in the navy. A ship at sea was a little territory by itself. The commander could do as he pleased; and Mr. E. said he did not believe that there would be much difficulty in inducing habits of temperance, if the Government would set seriously and perseveringly about it.

Mr. E. said, he had detained the House longer than he was aware of, and would resume his seat after reading an extract or two from the letters of Doctors Heerman, Barton, and Harris. At the last Congress, by a resolution of this House, the Secretary of the Navy was requested to obtain the opinions, separately, of three medical officers of the navy, whether it is necessary or expedient that distilled spirits should constitute a part of the rations allowed to midshipmen, and also their opinion of the effect upon the morals and health of the individuals, and upon the character and discipline of the navy. In submitting these opinions, the Secretary says that he deems it unnecessary to add any remarks of his own, in illustration and enforcement of the views therein expressed, further than that they are earnestly concurred in. Mr. E. said, he wished he could read the whole of those letters; but time would not admit of it. He would recommend them to the serious perusal of every one in this House.

Mr. BUCHANAN said that he had but one remark to make, and that was, that the practice of this House had of late wonderfully changed, and gentlemen discuss resolutions, proposing merely an inquiry, as if a bill on the subject, or the merits of the question, was before them. He presumed that there was no gentleman opposed to the inquiry which these resolutions proposed, and he hoped they would be permitted to pass without further debate.

The debate was here arrested, the hour for considering resolutions having expired.

SATURDAY, FEBRUARY 27, 1830.

The House resumed the consideration of the resolutions moved by Mr. CONDUCT on the 25th instant; when

A motion was made by Mr. CHILTON to amend the said resolutions, by striking out from the word "Resolved," in the first resolution, to the end of the last resolution, and inserting the following:

"That the Committee on Naval Affairs be instructed to inquire whether the public interest and the cause of morality would be most effectually promoted, by emphatically prohibiting the use of ardent, vinous, and other fermented liquors in the navy of the United States, by the officers and seamen belonging thereto, or by permitting a continuation of the practice of issuing them as rations in said service.

"Resolved, further, That, in the event said committee shall be of opinion that it is expedient to continue the ration aforesaid, in the naval establishment, they be instructed to inquire into the expediency of providing some mode for procuring the discontinuance of the use of ardent, vinous, and other fermented liquors in the various civil departments, and among the members of Congress, and others holding offices of either trust, honor, or profit, under the authority of the people of the United States."

Mr. CHILTON said that he was proud to hail the present day as a day of "Retrenchment and Reform;" and indeed so many evidences had been given of a disposition to accomplish each, that it would now amount almost to moral treason to dispute the rapid and mystical progress of either. So far as relates to "Retrenchment," upon a mere guess, [said Mr. C.] I should suppose that not more than one hundred thousand dollars have been expended in arguing the question in its various ramifications, while not one solitary dollar, so far as I am advised, or can understand, has been saved to the Government. I am much surprised, sir, to discover gentlemen, as I humbly think, so vastly inconsistent, and yet so externally sensitive, and

ferociously virtuous. These "American system gentlemen," both by precept and example, adopt, in my opinion, a doctrine wholly at war with the provisions of the present proposition, and their former declarations. They have been clamorous for the "Tariff;" the encouragement of "Domestic Industry," and an increase of the duties on the importation of articles manufactured abroad. One of the staples of the Western country is whiskey, into which, by distillation, the farmers convert their immense surplus of corn, rye, fruit, &c. To have a market for this article, we must have consumers: to prevent its consumption, no legislative sanction can be adequate. Sir, I am no friend to intemperance, either on land or at sea; but I think it infinitely better to abandon the votary of intemperance to his fate, than to abridge the natural liberties of man.

I make the remark, and I make it seriously, that legislation upon this subject is as useless as was the attempt of King Canute, who, flattered by his courtiers, commanded the "tide to recede," and was well nigh overwhelmed in its waves, before he discovered his presumption and folly.

[Mr. DRAYTON, of South Carolina, here rose, and said that he had heard the amendment read, and it appeared the object of the gentleman was merely to indulge his humor. The SPEAKER, nevertheless, decided that Mr. CHILTON was in order. Whereupon, he proceeded as follows.]

Mr. Speaker: I must ask the gentleman's pardon for his polite interruption of me, while I was surely not interrupting him. I understood perfectly well what I had intended to say, and what it was in order for me to say; and if the gentleman will look more deeply into the question presented, and anticipate me with slower progress, he will perceive that I am in good earnest, and not playing with either the feelings or time of the House. But, sir, as I before remarked, while we are extending through so boundless a range the work of "Retrenchment," I should be gratified to despatch for its helpmate the fair nymph "Reform." Surely its way is lovely—its dimensions being small, and the company of a twin sister cannot be unacceptable.

Whether this "reform" in the navy is to be charged under the head of "cleansing the Augean stable," or whether it properly falls under some other head, I will not pretend to say. But I will say that the legislation is as partial in its effects and character, as was that which I witnessed in this House a few days since; when gentlemen, who even denied me the yeas and nays upon a proposition to "retrench" their own wages, voted to discontinue the humble draughtsmen of this House. I am determined in this case, as in that, to try the liberality of gentlemen, and to ascertain whether they are as willing to "retrench" their own allowances of intoxicating liquors, as they are to limit those of others. I venture to predict that in this, as in the instance alluded to, there will be opposition to having the question taken by yeas and nays. It behoves me to show why my substitute should be adopted. It is here attempted to bargain with men to become "virtuous." I am reminded, sir, of a maxim which I learned at an early age, and in which experience has confirmed me, to wit, that "virtue which required to be watched, is not worth watching." Vows to be temperate (where the restraints imposed by public sentiment—by the endearing and heart-rending tears which often flow around the domestic fireside—aided by the claims of helpless innocence)—are all insufficient. If the pride of character cannot avail, money cannot.

The question to agree to this amendment was decided in the negative.

Mr. PEARCE then said, he was prepared to express his opinions on this subject; but as he presumed the House had heard enough on it, he moved that the resolutions lie on the table; which motion was negatived: yeas, 57—nays, 108.

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The previous question was called for by Mr. STERIGERE; and, being demanded by a majority of the members present, the previous question was put and carried; and

The main question was then put, viz. Will the House agree to the resolutions as moved by Mr. CONDUCT? And passed in the affirmative.

MONDAY, MARCH 1, 1830.

#### INDIAN AFFAIRS.

Mr. BURGESS presented a memorial from the yearly meeting of the Society of Friends in New England, and moved to have it referred to the same Committee of the Whole to which was referred the report of the Committee on Indian Affairs, and to have it printed. The question was divided; and on the motion to print, a very animated debate arose.

[Some remarks were made against the printing by two or three gentlemen, which our reporter did not catch; no debate being anticipated on petitions. When he came in, Mr. WHITTLESEY had the floor.]

Mr. WHITTLESEY said, the objections urged by the gentleman from Georgia, against printing the memorial, were, that the expense would be onerous on the treasury; that the report of the Committee on Indian Affairs had been made, and therefore that the publication of the memorial was unnecessary for the action of the committee or of the House, and that the memorial might reflect on the committee. Mr. W. said, in relation to the expense of printing the memorial, he was an advocate for economy; and if he considered the publication to be unnecessary or unusual, or if it could be demonstrated that the treasury was not able to bear the expense, he would go with the gentleman in the vote he was about to give; but he said he much admired, in casting his eye over the House to see who were opposed to the printing of this short memorial, they were of the number who had voted for printing ten thousand copies of the report on Indian Affairs, without hearing it read, or knowing the contents of it, and who had forced the question on the House by calling the previous question. He said it was a subject of much astonishment with him, that gentlemen should be so profuse in expending the public money on one day, and so remarkably economical on another. He said he thought it a little remarkable that it should be objected by any gentleman from the State of Georgia, that the committee had reported, and therefore that the printing was unnecessary. He said he had, since the question was under discussion, examined the executive documents, and he there found that there were many memorials printing on the application of the gentlemen from Georgia and South Carolina, remonstrating against imposing any additional duties on imports. Has the gentleman forgot the presentation of these memorials, and the order of the House to print them? Would the gentleman have been contented, and would he have remained silent, if there had been an objection by any supporter of the great protective system, against printing those memorials which were sent here by agricultural societies and by individuals. By looking at the dates when these memorials were presented, [said Mr. W.] it would be found that they were ordered to be printed both before and after the Committee on Manufactures had made their report. The application, then, [said Mr. W.] was not without precedent. As to there being any thing in the memorial that would reflect on the committee, he said he thought that extremely improbable, from the highly respectable source from whence it emanated; and he believed when it was inspected, he thought it would be as temperate at least as the memorials to which he had referred. He said he thought the objections entitled to but little weight, and expressed a hope that the printing would be ordered.

Mr. HUBBARD, of New Hampshire, said, if this memorial had been presented to the House before the Commit-

tee on Indian Affairs had reported, would it have been printed? Would the House have ordered in the first instance its publication? Certainly not. Such a course had been unusual. Such a course would not have been taken with this memorial. It would have been referred at once to the committee for their examination, for their consideration, and for them to have reported upon. This has been the course which similar memorials have taken during our present session. And it is the uniform course of proceeding in legislative assemblies. Why, then, I would ask, will you order this single memorial, at this time, to be printed? The only reason which I have heard offered in favor of such a course is, that in as much as the committee have reported on the memorials which have been referred, and as this cannot therefore receive the consideration of the committee, there would be a propriety and fitness in causing it to be printed for the use of the members of this House, who must soon be called upon to act on the subject matter of this memorial. And this of itself would be, in my opinion, a sufficient reason, if the memorial now before us contained any new views, or any different considerations from those which have already been considered. And I was, sir, much gratified when the gentleman from Georgia called for the reading of this paper. I gave particular attention to it. I was anxious to ascertain whether the memorialists had set forth any new views of this all-absorbing subject—whether they had urged any reasons different from those which had been inserted in other memorials which had already received the attention of the committee, and upon which they had already acted; and the views the committee entertained in relation to them, were clearly and distinctly embraced in the report which they had already presented, and which the House had already ordered to be printed, and which report would soon be placed on our tables. But, sir, I take liberty to inform the House that, as far as the reading of this memorial proceeded, not a single new view was taken, not a new argument was set forth, not an additional reason was urged, which have not already claimed the deliberate attention of the committee. I ask, then, sir, why order this single memorial at this time to be printed? If it had contained views, if it had been replete with considerations not embraced in those which have already been presented, referred, and acted upon, I would most cheerfully agree to the printing of it. I am entirely disposed to give to the people all the information on this subject which can be obtained. But I am wholly unable to discover any good and sufficient reason why this single memorial, at this particular time, should be printed.

I most freely admit, sir, that it has emanated from a highly respectable society in New England. I know that society well. Some of this family reside in my own neighborhood; and there is not a man on the floor of this House who entertains a higher respect for the Society of Friends than myself. My opposition to the printing of this memorial does not arise from any disrespect to the memorialists.

But, sir, it does appear to me (perhaps I may be wrong) that, at this time, after the report of the Committee on Indian Affairs has been presented, should the House order the memorial just offered to be printed, containing no new views from those which have already been considered by that committee, it would seem to declare, as the sentiment of this House, that the reasoning of the committee on this subject had not been satisfactory, and that the House would now order this memorial to be printed, to impugn the report of the committee, and this even before that report had received the deliberate consideration of the House.

Regarding it in this light, I cannot but consider the printing of the memorial at this time, and under these circumstances, as in some measure reflecting on the doings of the committee. I must therefore oppose the proposition.

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Mr. THOMPSON, of Georgia, asked if there was not some difference between the claims of the present administration and those of the last. The President was elected by a large majority; he was looked up to for a renovation, and such a one as should secure to the people their legitimate rights. The gentleman from Ohio [Mr. WAITTLESS] had said that the tariff memorials of South Carolina and Georgia were printed at the expense of the Government, and the Southern gentlemen made no objection to the expense. Had the gentleman forgotten that memorials from the manufacturing districts were printed also? The gentleman should remember that the system there forced upon us took money from the pockets of the Southern people without their consent, and put it into the pockets of the people of the Northeast, without returning to the Southern people an equivalent. He remembered the mammoth petition upon that subject, which was rolled into the House from Boston. He had been told by a respectable gentleman from New England, that one, or that some of the signers of that memorial had just imported one million seven hundred thousand pounds sterling worth of foreign goods. With respect to the printing of the present memorial, he repeated now what he said before, that it was unnecessary to print it, for the vanity of the authors, if nothing else, would induce them to publish it. He thought the printing would be a useless expense of public treasure. If there was more information upon this subject before the people, it would appear that in some of these intermeddling memorials Georgia has been wantonly aspersed, and that the claims of Georgia are founded in justice, and nothing but sheer justice.

Mr. BATES made a few remarks in reply, in which he said the time spent in the discussion of this motion was worth twenty times told more than the printing. How did the gentleman from Georgia know that the vanity of the Quakers would induce them to publish this document? He apprehended the meeting and the memorialists were influenced by very different motives. Mr. B. referred to the course which had been pursued during the session by the gentleman from Georgia. Hardly a memorial had been presented upon this subject, but it must lie one day upon the table—one day for those gentlemen to inspect it, before it was referred to the committee. But when the committee made their report, no delay was allowed. They called for the printing, and there must be no delay—not a moment. The reading of it also was denied; and the printing of ten thousand copies was ordered, without our knowing any thing about the contents. But now, when a memorial came from the other side, and we asked for the printing of it also, the gentlemen object to it. Oh! it is very expensive! it is altogether useless! He hoped the memorial would be printed.

Mr. BURGESS said, he was refreshed and invigorated when he found no arguments offered against the printing but such as were offered. It would cost too much to print one and a half octavo pages for two hundred and sixteen members to read, because, if the House did not print it, the vanity of the New England Quakers would induce them to publish it themselves! He did not wonder, after this declaration, that the gentleman from Georgia had supposed the New York memorial emanated "from an accidental assemblage in a grog shop." The gentleman seemed to suppose that no one would be induced to write such a thing unless he wished it printed. He could inform the gentleman that it was not an extraordinary thing for a man in New England to know how to write. It would not be wonderful if a laboring man, after his week's work was done, should write as good English on a Saturday afternoon, as a committee of the House. When the gentleman objects to the printing on account of the expense, I believe that to be his real motive, not because I am bound by courtesy to believe it, but because I know the gentleman. But the people will believe no such thing. The people

will say that the gentleman must be mistaken as to his motive. We have the charity to believe that he is mistaken.

The other objection which has been urged against the printing of this document, is more extraordinary still. It is not extraordinary that the House should shudder at incurring an expense of five dollars in printing; but it was a little wonderful that a New England gentleman [Mr. HUBBARD] should get up in his place, and say the memorial should not be printed, lest it should reflect on the report of the Committee on Indian Affairs; lest it should reflect on a report which he had not read, and with the contents of which he was not acquainted! Who ever said he reflected upon that report? In the name of all that is merciful, pure, or intelligent, who ever dreamed of such a thing—who ever thought of it, who suggested it? No one. It has not been mentioned. Our object is to obtain contrary views, opinions, and arguments, to read, collate, and compare them. Who ever before deemed that receiving a memorial was reflecting upon the report of a committee? But perhaps the gentleman from New Hampshire [Mr. HENNING] meant a sort of logical reflection; as if, because the committee has published a report, if we subsequently receive a paper containing different views, it indicates that the House thinks the committee has not gone exactly right.

We are told by the gentleman from Georgia, [Mr. THOMPSON] as if to sanctify the opposition to this motion, that the things done under the last administration are not to be looked to as precedents for what we shall do under this. He seems to say that, because General Jackson was elected by such an overwhelming majority, the people are not to expect to have their memorials printed! I am willing to admit that the President was elected not only by a plurality, but by a majority, and that he had every vote if the gentleman pleases, but even then I do not see through the reasoning of the gentleman. I do not know what he would say, unless he means to be understood that, in these days of reform and retrenchment, the President will propose, and this House will save all the money that was lost under the last prodigal administration!

Mr. HUBBARD said, the member from Rhode Island has observed "it was a little wonderful that a New England gentleman should get up in his place, and say that the memorial should not be printed, lest it should reflect on the report of the Committee on Indian Affairs; lest it should reflect on a report which he had not read, and with the contents of which he was not acquainted." Now, sir, I am the member to whom the gentleman has so courteously alluded; and why and wherefore, he perhaps can tell, but I cannot. Sir, I am from New England; and I rejoice in that consideration. And when I shall misrepresent the interests of my own State, or the interests of New England, then let the gentleman express his astonishment at my course. When that gentleman takes occasion here to allege that I have not seen, examined, and well considered the report of the Committee on Indian Affairs; when he undertakes to say that I am not acquainted with the contents of that report; when he undertakes to cast so severe a reflection upon my conduct, he states that which he does not, and which he cannot, know. His attack upon me, sir, is not only unkind in its character, but wholly unmerited as relates to myself. What right has the gentleman from Rhode Island to make such an allegation against any member of this House? What right does he possess to cast so foul an imputation upon me, sir, when I have hardly the honor of a passing acquaintance with him? Such insinuations and such reflections, when made on this floor against me, coming even from the gentleman from Rhode Island, will not pass unheeded. As a member of the Committee on Indian Affairs, I should feel, sir, as though I richly merited all the abuse which that gentleman seems disposed to cast upon me, if I had consented that the result of their doings, that the report which had found its way into this House, had been pre-

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sented here without my examination. And I know not by what authority the gentleman from Rhode Island has taken the liberty to assert here that I had not examined the report which proceeded from the committee of which I am a member. Sir, I cannot fail to regard this charge as highly reproachful upon my character as a member of this House; and I stand here to repel it, to declare that it is without foundation. And no gentleman shall take the liberty to utter such language in relation to myself, without at least receiving such an answer as the character of the allegation would seem to call for, and would seem to justify. Now, [said Mr. H.] what were the remarks which I took occasion to make (when up before) in relation to the proposition of the gentleman from Rhode Island to print this memorial, and which have (wholly unprovoked on my part) called from that gentleman the most virulent strictures upon my conduct? Did I object to the printing on account of its being a tax upon our treasury? No, sir. I made no such objection. Did I object on the ground of withholding information from the people? No, sir. I made no such objection. Did I object on the ground that the memorialists were not respectable? No, sir. I am too well acquainted with the character of the Friends in New England, to be warranted in making any such suggestion. Sir, I will endeavor to repeat, substantially, what I said.

I commenced my observations with the inquiry, if this memorial had been presented before the committee had reported, would the House have ordered it to be printed? I said, no; that such a course would be unusual; that it would have been referred to the Committee on Indian Affairs in the first instance, without being printed, as a matter of course; and the committee would have considered it, and would have reported upon it: and that such had been the invariable proceeding of the House in relation to similar memorials; (with, I believe, a single exception, the memorial from the ladies in Ohio;) and this, in my opinion, was ordered to be printed more from a spirit of commendable courtesy to the memorialists themselves, than from a sense of duty. I remarked, further, that I was rejoiced when the gentleman from Georgia called for the reading of this memorial, as I was anxious to hear it, and that I did hear and did understand it as far as the reading proceeded; and I most distinctly stated that this memorial presented no new views, urged no considerations, not already embraced in other memorials, which had been presented to the House, referred to the committee, and which had received their consideration. The views of the committee on these memorials had been clearly set forth in the report which they had presented to the House.

I did not pretend, sir, that I had heard read the whole of this memorial. But I did state that I had attended to the reading as far as it proceeded; and, that no views were taken of the subject, which had not already claimed the attention of the committee; and I would here suggest, that if this paper had contained any different reasons which had not been considered by the committee, sure I am that the gentleman from Rhode Island would (and properly, in my opinion) urge that circumstance upon the House as a reason for printing this memorial. But, sir, no such argument was offered, for no such fact existed; and I stated, further, sir, as a reason why I opposed the proposition of the gentleman to print, and which I felt myself bound to state, that the presentation of this memorial, at this particular time, after the report of the Committee on Indian Affairs had been made, should the House order it to be printed, in as much as new views were contained in the memorial, that had not been before presented, would seem to declare, as the sentiment of the House, that the reasoning of the Committee on Indian Affairs, that the conclusions deduced from their premises, as presented in their report, were not satisfactory to the House; and, regarding the action of the House in this particular as prematurely impugning the report of the committee, even

before that report had been considered, I felt myself bound to oppose the printing of this memorial; and, sir, whether right or wrong, it was the honest impression made on my mind at the time. Not that I am unwilling to give this to the public; if it is the desire of the gentlemen, I will go with them, and print all the memorials presented, some of which are now on the table, and some of which have been referred to the committee, and have been by them considered. If such a proposition were made, I would not oppose it, but I would support it. But I stated, further, sir, that I was not in favor of giving this memorial single handed to the public, and on this account I should vote against the motion to print. These were, substantially, the remarks, and all the remarks, I made; and I ask, was it possible for any gentleman, from my observations, not to understand that I had been a member of the Committee on Indian Affairs, and, of course, presumed to be somewhat acquainted with their doings? And yet the very honorable gentleman from Rhode Island rises in his place, and expresses his perfect astonishment at the remarks which I, as a member from New England, had seen fit to make, and the reason which I had suggested against publishing the memorial—that “it reflected on the report of the Committee on Indian Affairs,” and most equivocally asserted that I had not read either the report or the memorial. Sir, as much disposed as I am, and as I ever shall be, to respect age, I never can, and I never will, suffer such a charge of dereliction of my duty to this House, as is implied in the allegation of the venerable gentleman, to pass unnoticed. Sir, this is the first time that I have thrown myself upon the notice of the House, and most regret that the debate has taken such a course as to bring me into personal collision with any gentleman.

Mr. REED observed that the gentleman [Mr. BRADSHAW, of New Hampshire] was altogether mistaken as a point of fact, in relation to the mode of doing business in the House, and this error had probably led him to an erroneous result. He asks, “would the House have ordered these memorials printed, before the committee had reported?” Certainly; it has been the common course of business in this House, when a petition is presented, if requested and deemed of sufficient importance, to order it to be printed, and at the same time referred to a committee. On the very subject now under consideration, two memorials or petitions have been printed.

This memorial comes from a class of men whom I know to be highly respectable, called Friends or Quakers. They are unobtrusive, and interfere very little with the Government of their country. We see few of their petitions or remonstrances; at the same time, they may justly be ranked among our most valuable and useful citizens. If on the present occasion they have thought proper to present a memorial to this House, stating their views in relation to the Georgia Indians, why not publish it? Why not treat it with the respect and consideration due to the subject, and those who present it? Why not treat it like other memorials of the same character? On what occasion has this House refused to publish a memorial presented by so large and respectable a class of men as the yearly meeting of Quakers in New England? Let it be printed. Let it be read and examined! The Committee on Indian Affairs have no just ground of apprehension on account of their report upon the subject. If their report be correct, it will stand the test of argument. The memorial can do it no harm. On the other hand, if the report be erroneous, it should be the desire of all to know it. It should be our aim to seek light and truth wherever to be found, and finally judge with impartiality.

Mr. DANIEL made a few remarks, the purport of which was, that there was an excitement in the country, owing to the want of proper knowledge upon the subject, and that the extra number of the report was necessary to enlighten the people.

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Mr. THOMPSON, of Georgia, said, he did not doubt but that the memorials were signed by many honest gentlemen, who erred for want of knowledge upon the subject. He did not object, when up before, to the expense of printing, but to the uselessness of the expense. Mr. T. made some remarks in reply to Mr. BATES, and concluded by saying he was not surprised at the course of the gentleman when he advocated remarks so indecorous, and so ungenerous to Georgia, as were contained in the memorial from the city of New York.

Mr. STERIGERE then moved to lay the motion to print upon the table.

Upon this motion, Mr. BATES called for the yeas and nays; which were ordered, and the motion was rejected: yeas, 66—nays, 108.

The question then recurred upon the motion to print the memorials.

Mr. BELL said, it was due to the House that he should say a few words. He did not think the opposition to the printing arose from the supposition that it would throw light upon the general subject. He had stated before that he thought it ought not to be printed, unless all were printed. He understood the gentleman from New Hampshire [Mr. HUBBARD] to place it upon the ground that, if all were printed, he did not object to the printing of this one. When the gentlemen examined the memorials, they would see that they were most of them before the public; some of them were in the papers before they reached the House. If any light was to be gained from them, the public was in possession. He alluded to the productions of "William Penn," upon which almost all the memorials were founded; the facts were the same, and the general reasoning was the same. He stated this, to repel the insinuations that the printing was opposed in order to withhold light. He thought the attention of the House should be drawn to this fact. His voice would not have been raised against this one, if he had known that a precedent had already been printed; and if such a motion had not been made, he now moved to print all the memorials at the same time this was printed.

Mr. BATES said, he agreed, if the House should print one and refuse to print the others, it would be invidious. There was not a single application to print a memorial, which was refused. The printing had not been refused, because it had not been asked for.

Mr. BUCHANAN hoped that his friend from Tennessee [Mr. BELL] would withdraw his motion to amend. Whenever this Indian question came before the House, it produced a strong excitement. For his own part, he was determined to keep himself perfectly cool, and consider it as he would any other important subject. A long and an animated debate had arisen upon the simple question of printing a memorial from the Society of Friends in New England. For his own part, ever since he had held a seat in that House, he had always voted for printing any memorial which the member who had presented thought it was proper to print, either for our own information or that of the public. He was anxious that all the light should be shed upon this subject, which we could obtain. But even if he were not so, he well knew that the attempt to prevent the printing of any memorial, served only the more to attract public attention to it, and thus give it an importance which it might not deserve. Had this motion to print prevailed, as it usually has done, without an objection, the memorial would have been quietly laid upon our tables; and there the matter would have ended. He had not read it; but, from the source from which it proceeded, it ought to be treated with respectful attention.

Mr. B. said, he could not vote for the amendment to print in mass all the memorials which had been presented to the House on the Indian question. It was wholly unnecessary. If any gentleman, however, should ask for the printing of any of them, upon his own responsibility, after having examined its contents, he should cheerfully vote

with him. He would vote for printing this memorial, and trusted that the time of the House would not longer be occupied in discussing this very unimportant question.

Mr. GOODENOW said, he rose principally for information. There were in the House upwards of fifty memorials.

He understood that no part of these memorials would constitute a part of that report. If a memorial was presented, containing views different from any before advanced, only the day before the final question was taken, and if it was printed, he thought it was making an invidious distinction between that one and those which were filed away. If this motion did not prevail, he should move to print a memorial which he had himself presented.

Mr. HAYNES said, he was opposed to the printing, because it would have a tendency to keep up the delusion, which existed in some parts of the country. A moment's consideration of the President's message would convince the people that it was not intended to do any thing more than to induce them voluntarily to emigrate. He had examined with some attention the legislation of Georgia on this subject. There was nothing in the acts of Georgia, which assumed the right to coerce the Indians to remove. It was only because he thought it would keep up a delusion that now existed.

Mr. CRAIG, of Virginia, said, it was one of the things between the doing of which and the not doing of which was of so little consequence, that it was not worth speaking about. He had voted for laying it on the table, in the hope to get rid of it. He hoped it would be disposed of as courtesy should dictate, that the amendment would not prevail, and that the wishes of the gentleman who presented it should be acquiesced in.

Mr. BELL replied, that he submitted his amendment merely on the ground that it was said the opposition to the printing was to withhold information. If they were printed, the House would find them to contain very much the same matter.

Mr. BURGESS regretted extremely that he should have been misunderstood. He made a very ordinary motion to print a memorial from a respectable source. Gentlemen had accused him of making an insinuation. He did not know how to make an insinuation. He had all his life said, in as plain a manner as he could, the thing that he thought. With regard to previous remarks of the gentleman from Georgia, [Mr. THOMPSON] he believed he had not used precisely the gentleman's words, but he thought he had not misrepresented them. The gentleman did not object to it on the ground of the expense, but because it was useless expense. Now, the uselessness of the printing was according to the judgment of the gentleman who made the objection.

As to his reverend appearance, it was not a matter of his own choice; whether he should have a gray hair or not, was not a matter in which he had a volition. He would say to that gentleman that he took no shelter behind his gray hairs from any fair argument. He allowed the servant boy to consider himself as reverend as he pleased. Though that gentleman's hair was now black, it might happen that a time would come when allusions to his age would sound ungracious in his ear.

He did think the motion to print them, *en masse*, was very much like an attempt to overthrow the whole. The gentleman from New Hampshire [Mr. HUBBARD] did say that the printing of the memorial would impugn the report. This the gentleman could not know, because he had not read this memorial. If it impugned the report, he would not ask for the printing of it. But if it impugned the principles of the report, he should ask to have it printed, for every one in the community had a right to impugn its premises and its conclusions. When he was up before, he was not aware that the gentleman from New Hampshire was a member of the Committee on Indian Af-



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fairs, or of course he should not have said the gentleman had not read the report. He was not bound to know that the gentleman belonged to the committee. As to this memorial from the Friends of New England, the men of peace, he thought it ought to be printed; and if it were not disrespectful to the House, he would say that he would himself pay the expense, which would not exceed one dollar and a half—of informing the House, and thus save the treasury from the onerous burden. The step about to be taken would change our whole policy in relation to the Indians, and decide whether we should purchase the land of the Indians, or expel them by force from the land of their forefathers.

Mr. GOODENOW made a few remarks in reply to Mr. BUNOZA, and said he hoped the motion would prevail to amend; and, if it should not, he should vote for the motion of the gentleman from Rhode Island.

Mr. BUCHANAN said, he rose for the purpose of denying that the question to be hereafter decided by the House was of the character which had been stated by the gentleman from Rhode Island, [Mr. BUNOZA.] That gentleman had entirely mistaken its nature. He would not say the mistake was intentional, because he did not believe it was; but this he would say, that, unless it were corrected, it might do the same injury in misleading public opinion, as though it had been intended. Sir, [said Mr. B.] we are not about to decide, as the gentleman supposes, whether we shall change the settled policy of this country in regard to the Indians, nor whether we are about to expel them by force from the land of their forefathers. Far, very far from it. God forbid that I, or that any gentleman upon this floor, should entertain the cruel purpose of using the power, of this Government to drive that unfortunate race of men by violence across the Mississippi. Where they are, there let them remain, unless they should freely consent to depart. The State of Georgia, so far as we can judge from her public acts, entertains no other intention.

The question may possibly be debated here, whether Georgia has a right to extend her laws over such Indians as reside within the limits of her sovereignty. That is a question, however, which will not either naturally or necessarily arise, upon the discussion of the bill reported by the Committee on Indian Affairs.

What is the nature of that bill? It presents the strongest inducements to the Indians to leave a land, in which, from the nature of things, they never can be happy, and rejoin that portion of their tribe which have already emigrated across the Mississippi. It proposes to them that they shall have a country and a home, guaranteed to them by the faith of the United States—by the most solemn pledges which the Government can make—where they shall be forever free from the intrusions of the white man—where, under the protection of the United States, they may be governed by their own laws and their own customs—and where the efforts of benevolence and Christianity may be exerted for the purpose of elevating their moral and social condition.

And would not this be better for them, than to remain in a State, within the limits of which they have attempted to establish their own sovereign authority, in defiance of that State? Ought we not then to hold out inducements to them voluntarily to remove to this land of refuge? That is the question, and the only question which the bill will present.

Mr. BURGESS said, he intended to say may change the policy of the Government. The question referred to the Committee on Indian Affairs was, whether the Cherokees had a right to establish a Government within the boundary of Georgia. We have by solemn treaty guaranteed to the Indians their possession of the country; and the right to govern themselves in it. If the conclusion of that committee goes to show that the Indians have not the right to

govern themselves, then our policy towards them is to be changed.

Mr. DE WITT here moved the previous question.

The main question was put on printing the memorial, and carried. Yeas, 106.

TUESDAY, MARCH 2, 1830.

The House resumed the consideration of the resolution offered by Mr. VINTON, to print, and append to the report of the Committee on Indian Affairs, the laws of certain States extending their jurisdiction over the Indian tribes—the question being on Mr. FOSTER'S substitute for the resolution, proposing to embrace the laws of all the States relative to the Indians within their limits.

Mr. BELL opposed the resolution as unnecessary to the extent proposed, and, if necessary to that extent, that there were other documents, treaties, &c. which it would be as proper to include.

Mr. TEST proposed to confine the selection to the original laws of the States extending their jurisdiction over the Indians.

Mr. FOSTER declined this modification, and supported his substitute as it stood.

Mr. STERIGERE moved to commit the resolution to the Committee on Indian Affairs. If the printing were ordered, as proposed, it would take all the summer to prepare the collection; and he thought the committee could better designate what was necessary.

Mr. EVERETT, of Massachusetts, opposed the commitment, and advocated the original resolution, considering it essentially necessary that the House should be in possession of the acts in question, to be able to form an opinion on the questions which the House would be called on to decide at the present session, in relation to the Indians.

Mr. ELLSWORTH was also in favor of the original resolution. Memorials had been received from the Indians, complaining of the laws of those States as violating the treaties of legislation of the country; and it was necessary to have the laws printed, that the House might decide the justice of those complaints. It was useless to print the laws of States from which no complaints had been received.

Mr. HOFFMAN opposed the printing of the laws, and appending them to the report of the Indian Committee, because it would smother the report, and keep it from being read by the people. He was in favor of the commitment.

Mr. WILDE suggested the propriety of sending the resolution to the committee, with instructions to select and report so much of the laws, treaties, and judicial decisions of the several States, as they may deem proper to print for the information of the House, and advocated this course.

Mr. STERIGERE accepted the instructions as a part of his motion.

Mr. VINTON demanded the yeas and nays on the question; but just then the expiration of the hour cut off further proceeding for to-day.

WEDNESDAY, MARCH 3, 1830.

The House resumed the consideration of the resolution of Mr. VINTON, on the subject of printing the laws of the several States in relation to the Indians within their territories, being on the amendment offered yesterday by Mr. WILDE, to recommit it with instructions to the Committee on Indian Affairs.

On this amendment the yeas and nays were ordered.

Mr. LUMPKIN said, in justification of the vote he should give, against referring this subject to the Committee on Indian Affairs, he would ask to be indulged with

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submitting, in a few words, the reasons of that vote. He was the more inclined to do so, from the consideration that he should vote differently from most of those with whom he generally acted upon this and other subjects. The report upon the Indian subject, already submitted by the committee, goes into detail, and presents their views of the subject in its various bearings. The various references contained in the report, to treaties, laws, and other documents, will prove that the committee have not been wanting in labor.

From the indications which have been exhibited on this floor, it is manifest that some individuals suspect the committee with having made a partial report, favorable in its bearing to one side of the question, omitting what should have been submitted on the other side. It must have been from such suspicions as these that the gentleman from Ohio, in the first instance, proposed his extraordinary appendage to the report of the committee. Admitting, as he did, the intelligence of the gentleman from Ohio, he would repeat his surprise that he should have so far departed from the well known custom of this House. If the member from Ohio had proposed simply the printing of the laws of any State or States, for the information of the House, the presumption is, no objection would have been made.

Mr. L. said, the committee had performed their duty, with how much ability it was not for him to say. He was content to leave that to others.

They had already submitted to the House all they deemed necessary and proper. Should they make a selection of the laws of the States, in conformity with the proposed instructions, no matter with how much fidelity and impartiality, they would again be liable to the censure of those who are disposed to suspect them of a partisan and one-sided spirit. The House understood the subject as well as the committee; whatever laws or other documents they might consider necessary to the elucidation of this subject, let them order it to be printed. Mr. L. said, as a member of this House, or that of a committee, he never would labor on responsibility. His motive in opposing this reference was not to avoid either; but, from a conviction that, when the committee had performed the duty proposed, the gentlemen who are not satisfied with the report of the committee, will be no better pleased with their selection of the laws of the States.

Mr. L. thanked the House for the respectful attention which he had uniformly received since he had the honor of a seat here; which consideration [he said] always admonished him not to consume a moment of the time of the House unnecessarily. He would therefore add no more, relying, as he did, on the wisdom of the House to give a proper direction to this subject.

Mr. STORRS, of New York, also gave his reasons for voting against the recommitment of the resolution. It would make a large volume. Such a task was almost impracticable. In the first place, all the laws are not here. It would be fitted to defeat the object. As for the laws of Georgia, he had been furnished with a newspaper containing them, and, therefore, for his individual use, he cared but little about them.

Mr. BURGESS also opposed the recommitment, on the ground that the printing of all the laws on this subject would so far protract the time, as to prevent its being acted upon during the present session, and it was understood that the laws of Georgia were to go into effect in June. He was about to state the effect of that law, by its giving the power to every officer in that State, down to a constable, to call out the militia—[when he was called to order, the question being only on the recommitting of the resolution, and not on the merits of the law of Georgia.] Mr. B. proceeded to show the effect of attaching all other laws to those proposed to be printed. It would overthrow the intention of the resolution, and he therefore should not vote for it.

Mr. POLK said, he hoped if any laws upon this subject were to be printed, all of them would be. He asked if Georgia was the only State to be arraigned there as having passed laws on this subject. He was in favor of the recommitment.

Mr. EVERETT, of Massachusetts, rose to inquire how long it would take for the committee to arrange these laws for publication.

Mr. BELL said it would be difficult to answer the question. It would involve the committee in responsibilities which they would gladly avoid. He did not conceive that the laws of Georgia, Mississippi, and Alabama, had been referred to that committee. He hoped, if the gentleman would take the pains to modify his resolution, it would be framed so as to be satisfactory to all.

Mr. INGERSOLL said, he understood the President's message to refer particularly to the laws of Georgia, and those States which had lately passed laws upon the subject. It had been stated, and reiterated on that floor, that it was not the intention of the Government to compel the forcible removal of the Indians. This was the point at issue. He referred to the importance of having these laws in question before the House, in order that a proper judgment might be made on the subject.

Mr. GOODENOW said, it seemed to be dangerous that they should not come to any decision upon this subject, and he would therefore make a motion which would leave it open to debate as now, but, he believed, bring the question nearer to a close. He moved an indefinite postponement.

The SPEAKER informed Mr. G. that this was not a previous question.

Mr. GOODENOW then moved to lay the resolution on the table.

On this Mr. HUNTINGTON asked for the yeas and nays; but, the hour having expired, the subject was laid over.

The unfinished business of the day was laid over until Friday next.

THURSDAY, MARCH 4, 1830.

There was no debate of general interest this day.

FRIDAY, MARCH 5, 1830.

The House again resumed the consideration of the resolution moved by Mr. VINTON, proposing to print the laws of the States of Alabama, Georgia, and Mississippi, concerning the Indians within them; and the motion of Mr. STERIGERE, to commit the same with instructions to the Committee on Indian Affairs; with the pending motion of Mr. GOODENOW, to lay the whole on the table.

The motion to lay the whole on the table was decided in the negative by yeas and nays, as follows: yeas, 68—nays, 108.

Mr. WILDE then rose to address the House, but the expiration of the hour for debating such subjects prevented him from proceeding.

SATURDAY, MARCH 6, 1830.

The House resumed the consideration of the order moved by Mr. VINTON on the 25th February ultimo.

The question recurred on the motion made by Mr. STERIGERE on the 2d instant, to commit the said order to the Committee on Indian Affairs, with the instructions stated in the proceedings of the 2d instant: whereupon,

The said instructions were, on motion of Mr. WILDE, and by the consent of the mover, modified as follows: To collect from the Library of Congress, or any of the executive departments, such and so much of the colonial and State laws, as may there be found, respecting the government, privileges, restraints, protection, regulation, pre-

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servation, or destruction of Indians or Indian tribes, residing, or heretofore residing, within the several colonies or States, respectively; so much thereof as regards their lands or hunting grounds, their civil rights or disabilities, crimes committed, or contracts entered into by them; and the civil and criminal jurisdiction exercised by each colony or State over them—and to cause a sufficient number of copies of such laws, so collected, to be printed for the use of the House.

Mr. WILDE rose: The House, [he said] by the vote given yesterday on the motion of the gentleman from Ohio, [Mr. GOODE] had indicated a disposition to print whatever might be requisite for a proper understanding of the subject. The gentleman's motion did not receive his vote, because he was desirous—sincerely desirous, to get this information. When he asked for a withdrawal of that motion, it was only for the purpose of stating a few facts. He fancied an erroneous impression prevailed in relation to the labor of collecting and the extent of printing these laws. The gentleman, however, as he had a perfect right to do, thought proper to press his motion—probably only to test the sense of the House, to whom it proved as unacceptable as it was to himself. It being now obvious that a majority was in favor of printing all or a part of the information sought for, the inquiry was, how our object could be most easily and speedily effected. He had had an opportunity of reflecting on this point. He had the advantage of some conversation, too, with gentlemen for whose opinions he entertained great respect. He intended to propose a slight change in the instructions, and would detain the House with a word or two in explanation.

He omitted altogether the treaties included in his former proposition. He had inserted them then, rather in deference to what he had imagined had fallen from the honorable gentleman from Tennessee, the chairman of the Committee on Indian Affairs, [Mr. BELL] than for any other reason. These treaties, up to 1826, had been compiled and printed by order of the War Department. They were easily accessible to every one. Further reflection had satisfied him it would not be necessary to include them, and, in that opinion, he believed he might assume the gentleman himself concurred.

He [Mr. W.] had originally proposed to print a portion of the judicial decisions of the States, leaving it to the committee to select. Perhaps he owed some of the opposition his motion met with to that cause. He was unwilling, without strong reasons, to increase the labor or responsibility of the committee. This must be the case if they were required to abridge the decisions. To print them entire might impair the value of the collection, by increasing its bulk. On the whole, therefore, it had been thought best to omit judicial decisions. The committee, then, if the motion were adopted, would only be required to select the State and colonial laws, and of these there would be printed merely a sufficient number for the use of the House.

He had employed an hour in examining the State laws to be found in the library. The result of that examination induced him to believe that the laws of fifteen of the States, which had legislated most in detail for the Indians, would not occupy more than sixty-three pages, printing them entire. If abbreviated, as they well might be, not so much. Every gentleman, on looking at them, would admit there were many minute, local, or temporary provisions, that might be safely excluded. In the digests of the remaining nine States, little or nothing was to be found. Their statute books, or old colonial acts, might contain a few laws or parts of laws proper to be extracted. Assuming, however, that these nine States had legislated to an extent equal to an average of the others, ninety-five or a hundred pages would include the whole.

The time and labor required for this purpose could not be much. The expense, compared with the object, was

nothing. No gentleman, he believed, would deem it worthy a moment's consideration. We printed yearly much larger documents on less important subjects. He might instance many. The claims of the Massachusetts militia—those concerning French spoils—those of Meade and Beaumarchais—and, that he might not be thought to discriminate invidiously, he would add, the claims of Georgia and South Carolina. He mentioned all these merely and purely as examples. He indicated no feeling of disapprobation. They were all, doubtless, proper to be printed.

In proposing to limit the inquiries of the committee to the Library of Congress and Department of State, he did not design to exclude light from any other quarter. He did it wholly in deference to the fears of gentlemen who apprehended delay, and the great evil of a great book. Both he most earnestly desired to avoid. Some acts might not, some old colonial ones probably would not, be found there; but, if so, gentlemen would no doubt supply any that might be deemed important. They would at least be discovered, and referred to in debate. Enough certainly might be collected to exhibit the general tone and character of legislation adopted by each State and colony. He thought knowledge of this kind would not be found useless. If it answered no other purpose, it might teach us forbearance. It was well said, that the first idea of justice arose from hard knocks between equal adversaries; of toleration, it might be added, from mutual intolerance. Perhaps when gentlemen saw before them the legislation of all the colonies and States—when they saw and knew that others must see likewise whatever had been done—recently by their countrymen, or in times past by their forefathers—it would occur to them that a community of errors might well authorize the indulgence of a little mutual charity. Some allowance would probably be made for strong interests and excited passions, among people who had suffered much from savage violence, if it should be found that different societies, at distant periods, in separate provinces, had each acted on common maxims, adopted a similar policy, and treated the same subject in like manner, and with the same feelings. He did not mean to intimate that examples the most venerable could consecrate a wrong. Still less that any portion of our fellow-citizens were to be reproached with the sins of their fathers, if sins they had committed. God forbid that he should reflect on the memory of those brave, but somewhat stern—honest, though bitter zealots in the cause of civil and religious freedom, who, though persecuted themselves, could hardly tolerate toleration; and who, suffering every thing for conscience's sake, endured the perils, and hardships, and privations of the wilderness, that they, and their children, and their children's children, might escape the house of bondage. All he meant to say was this: If his countrymen were impatient of the long continued presence of their savage neighbors, and sometimes struggled with them in the unamiable and unchristian interchange of wrong for wrong, it might extenuate their restlessness to remember that men more patient had also, in their day and generation, been sorely moved to wrath by the cruel and wicked conduct of the red heathen.

Mr. W. said, there was a further suggestion he felt bound to make. We are told, we must examine the laws of Georgia, Mississippi, and Alabama. They must be printed. And why? Not to ascertain whether those States have a right to legislate over the Indians. No. It is admitted, the right to legislate does not depend on the mode in which it may be exercised. But our course, it is alleged, should be shaped to meet the character of their legislation. We must inquire whether it is such as, in its effects, will compel the Indians to remove. And why, then, is our inquest to be confined to Georgia, or Alabama, or Mississippi? The petitions and memorials of the

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various religious societies, public meetings, and benevolent ladies, are general in their terms. Why should we attempt to limit the operation of their disinterested and expansive philanthropy? The bill reported by the committee is general. It is intended to provide, beyond the Mississippi, a permanent home, subsistence, comfort, and the means of improvement, for such of the Indians as think proper to remove. Not to force them from their present abodes, nor to set them down in the wilderness to starve. What, then, limits our views to the Indians within the territory of Georgia, or that territory which was once hers? Are we to have no feeling, but for one set of paupers, whom we are advised, in the teeth of our own contract, to settle, not at our expense, upon another parish? If the legislation of any other State, besides those favored with the presence of the Creeks and Cherokees, operates hardly or oppressively on other Indians, may we not inquire whether the acts of that State are not calculated in their effects to degrade, or compel them to remove? What excludes those Indians from our pity, or the legislation of that State from our cognizance? But the Indians of other States have not complained. And have the Choctaws or Chickasaws complained?

The merit of his proposition, if merit it had, was, that it would lay open all the information we could desire. It comprehended all laws, all States, and all Indians. It made no invidious distinctions—none that could ever be considered such.

No gentleman had avowed an unwillingness to see the laws of his own State printed, scrutinized, and canvassed. He presumed—it was his duty to presume—he took pleasure in presuming, no such unwillingness existed. For his own part, he most explicitly disavowed it. There was, there should be, no room for doubt, as to him. Every gentleman would see, with pride and pleasure, whatever was wise and humane in the legislation of the State he represented; whatever seemed otherwise, he could doubtless justify, explain, or excuse. But it could not be requisite for the information of any one there, that the laws of his own State should be presented to him. All, he supposed, knew, and many of the members, he believed, were professionally skilled in the laws of their respective States. With those of others, it could hardly be assumed they were more than generally, and somewhat superficially acquainted. It was the laws of States other than his own, then, that every gentleman most desired to see. And for the same reason that gentlemen from Ohio, and Massachusetts, and Rhode Island, wished to look into the laws of Georgia, and Mississippi, and Alabama gentlemen from Mississippi, and Alabama, and Georgia, might like to see the laws of Ohio, and Massachusetts, and Rhode Island. For himself, he confessed an anxiety to behold that paternal or patriarchal code, (if there were any such,) under whose shade numerous and warlike tribes, such as the Pequods, the Mohicans, or the Narragansetts, had survived in peace as independent nations, or gradually and harmoniously blended with the family of their white brethren.

Those States, under whose benign protection and legislation the Indians had increased, flourished, been civilized and converted, could not be unwilling to enjoy the honorable fame of such noble and generous actions, except from an excess of christian humility. To that rare and holy feeling, wheresoever it existed, he now, and at all times, did profound reverence; not with his lips merely, but he hoped with his heart also. But in this instance, if it were necessary, for the sake of great public interests, he trusted the House would do gentle violence to the retiring spirit which concealed its charities. Surely, when so pressed, it would not withhold from others the benefit of its example, or a knowledge of the means by which such great additions had been made to the sum of human happiness.

Those States would impart their lessons and experience,

and others, who had been less fortunate or less zealous, might, if it were not too late, attend and profit by them. Gentlemen might be found there, willing to transmit to the legislatures and people of their States whatever might be found worthy of imitation, in those beneficent provisions which had protected, so effectually, the Norridgewocks, the Scatecocks, the Orondocks, and the Pigwacketts. His countrymen, he trusted, were not envious or fastidious. If an example were good, they would not ask who set it. Its value was the same, whether it came from the pious pilgrims of the East, or the hardy pioneers of the West. From the practice of either, they would be glad to learn how the progress of the white, and preservation and happiness of the red men, might be reconciled.

[Here the SPEAKER reminded Mr. W. that his remarks were taking too wide a range.]

Mr. W. continued: He was proceeding to show some of the advantages which might result from the adoption of his motion. If they were too numerous, or he had pursued them further than was agreeable to any gentleman there, or beyond the usual license of debate, he regretted it. He had listened without impatience, while other gentlemen discussed this matter with much zeal and some freedom. Originally he did little more than state his proposition. Nothing till now had induced him to reply. It was not his custom to trouble the House long or often. He would rather be tasked for silence than checked for speech; but when he saw his motion in danger both from friends and adversaries, he was bound to offer it his feeble assistance. He had so shaped it now, in deference to the opinions of others, as to secure its principal advantages, and expose it to less opposition. His colleague, [Mr. LUMPKIN] in particular, he trusted, would no longer oppose it. His object principally had been to show how little trouble and how little printing it would cost. We had been threatened by gentlemen with a huge volume, if his motion were adopted. A small pamphlet would be found sufficient. He had no affection for ponderous tomes of any kind, not even those on Indian laws or treaties. He believed, with Goldsmith, if angels should write books, they would never write folios. The recorded speeches, too, of those heavenly visitants were few and short. In that they differed from all mortal eloquence, saintly and profane. He hoped that every gentleman who desired to address the House, had now fully expressed his opinions of the motion. He hoped it would prevail. He hoped the laws would be speedily collected and printed; and that they would proceed promptly, but calmly, to a consideration of the main subject, with that temper which became matter of great moment, supposed to involve so deeply the rights of the States, the welfare of the Indians, the character of that House, and the honor of the nation.

Mr. GOODENOW rose to explain why he did not withdraw his motion yesterday to lay the whole on the table, when the gentleman who had just addressed the House intimated his desire to speak. It would have given him great pleasure to have done so, and he should have done so had he been aware that the gentleman was going to communicate to the House the information he has now given. My object [said Mr. G.] was to save time, and to enable us to act upon this subject immediately; it is important it should be acted upon, and not pass over this session. Mr. G. said he wished the question to be presented in its best possible view.

Mr. SPENCER said, it was never his object to shut out any light which was considered for the decision of a question. He expressed his concurrence in the proposition now made, and he hoped it would be adopted without further debate.

Mr. LUMPKIN said, that, having opposed the former project of his colleague, [Mr. WILSON] and believing that this was different from it, and calculated to accomplish the object he had, he would vote for it. The former pro-

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position required the committee to print the laws of all the States relating to this subject—the legal decisions connected with it; and to examine, also, the decisions of the Supreme Court. That would make the duties of the committee too laborious, and so tedious that it would protract the object to a period at which we could not have time to act upon it. I concur in the proposition, [said Mr. L.] and I hope the House will concur in it without further discussion.

Mr. EVERETT, of Massachusetts, inquired of the gentleman from Georgia, [Mr. WILDE] whether this amendment would include the laws of Georgia, Alabama, and Mississippi, for the last two or three years. These were the only laws needed to enable the House to act on the bill from the Committee on Indian Affairs. He said that the laws were not punctually received at the library.

Mr. WILDE replied, that if the laws referred to in his proposition were not in the library, they might probably be in the Secretary of State's office. It was with this view he worded his amendment. If it was not sufficiently explicit, he was willing to modify it, so as to meet the views of gentlemen.

Mr. EVERETT thought that they would be more probably found in the office of the Secretary of War, or, in the Indian bureau, than in the office of the Secretary of State. He suggested so to modify the amendment that it would embrace "in any of the offices of the public departments."

This modification was accepted by Mr. WILKIN.

Mr. BURGESS said he would be glad, for the sake of history, that all the laws of the several States having relation to the Indian tribes residing within them should be printed. But his object, in the present instance, was to see the laws of those States which brought us to a consideration of this question. He wished to see the laws of the Southern States, which were before the Committee on Indian Affairs, and upon which the committee has reported. We have not seen these laws, and he hoped they would be all printed as soon as possible.

Mr. B. then went on to consider the amendment proposed by Mr. WILKIN. It includes [said he] the judicial decisions made on the subject of the Indians. We do not want them; and, if we did, it would be impossible for the committee to select and have them printed in any reasonable time. No historian would dare to make such a compilation in less than six months' research. As to the laws mentioned in this proposition, no one knows where they are to be found. He hoped, therefore, that the committee would not be delayed in this antiquarian research.

Mr. B. then proceeded to show the dissimilarity which existed between the relations of the Northern and the Southern States to the Indians residing within them, respectively. With the Indian tribes who resided in the Northern States, no treaties have ever been made, yet a remnant of them still reside there. What relation, then, what connexion, [he asked] had their situation with that of the Indian tribes residing in Georgia, Alabama, and Mississippi?

The SPEAKER here informed Mr. B. that the hour for considering resolutions, &c. had elapsed. He then discontinued his remarks.

MONDAY, MARCH 8, 1830.

The House resumed the consideration of Mr. VINTON'S motion to print the acts of Georgia, &c. relating to the Indians—the question being on Mr. STERIGER'S motion to commit the resolution, with the instructions moved by Mr. WILDE.

Mr. BURGESS concluded the speech he commenced on Saturday on the subject, and was replied to by Mr. BELL and Mr. HAYNES. On the suggestion of Mr. BELL, the instructions were modified, so as to omit the word "discussion," and substitute "restraint."

The question was then taken on the motion to commit the resolution, with the proposed instructions, and decided in the affirmative, by yeas and nays—133 to 49.

TUESDAY, MARCH 9, 1830.

### THE JUDICIARY.

On motion of Mr. BUCHANAN, the House went into Committee of the Whole on the state of the Union, Mr. CAMBRELENG in the chair, and resumed the consideration of the Judiciary bill.

Mr. WICKLIFFE took the floor, and addressed the committee until the usual hour of adjournment, when the committee rose.

WEDNESDAY, MARCH 10, 1830.

Mr. ANDERSON moved the following resolution, viz. *Resolved*, That the Committee of Ways and Means be instructed to bring in a bill allowing a drawback of nine cents per gallon on all rum distilled in this country from foreign molasses, when such rum is exported to a foreign country.

Mr. ANDERSON accompanied his motion with remarks in its explanation and support, which he had not concluded when the expiration of the hour interrupted him.

### JUDICIARY BILL.

On motion of Mr. BUCHANAN, the House then resolved itself into a Committee of the Whole, Mr. CAMBRELENG in the chair, and resumed the consideration of the Judiciary bill.

Mr. WICKLIFFE addressed the committee in continuation of his remarks of yesterday; and, when he concluded, Mr. SPENCER, of New York, rose, and spoke in reply.

Mr. DANIEL then renewed his motion to amend the bill in the manner heretofore proposed by him. When the amendment was read by the Clerk,

The committee, on the motion of Mr. DANIEL, rose, reported progress, and asked and obtained leave to sit again.

[The following is a full report of the remarks of Mr. WICKLIFFE.]

The bill under consideration [said Mr. W.] is admitted, by all who have participated in the debate, to be of vital importance to the Union. It proposes to extend the judiciary system of the United States to that portion of this confederacy, which, under its present organization, is excluded from all participation in that important department of our Government. To do this, it is believed to be necessary to increase the number of the justices of the Supreme Court. If the subject does not of itself possess sufficient interest; if the able and talented gentlemen who have already favored the committee with their views, have not been able to impart to it importance sufficient to elicit the attention of the members, whose duty it will be soon to decide upon it, I despair of success in any effort of mine.

But, sir, I owe a duty to my constituents, to myself, to a member of the judiciary committee, and to that committee, which I must discharge, however unsatisfactory to myself, or painful to those who honor me with their attention.

Sir, this is no new subject thrown upon this House; it is no innovation upon the established institutions of our country. It is one to which the deliberations of every Congress for the last ten years have been invited, by the messages of three successive Presidents of the United States. It is not connected with the party politics of the day, and should be discussed and decided, with reference to the question itself, as one worthy of a liberal and enlightened judgment.

The constitution vests the judicial power of the United States in one Supreme Court, and in such inferior courts

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as Congress, from time to time, may ordain and establish. Whatever inferior courts Congress shall ordain and establish, should alike extend themselves to the whole Union. The system should be one system for all the States, uniform in its character, and harmonious in its action.

At the commencement of the Government, uniformity in the organization of the judiciary department was preserved throughout the then thirteen States; and, in every change of the system since made, uniformity has been sedulously preserved.

For a moment allow me to call your attention to the history of the judicial system of the United States, as illustrative of what I have said upon this subject:

In 1789, Congress, in obedience to the mandate of the constitution, organized the Supreme Court, and established the district and circuit courts in the several States, and imparted to them severally most of that jurisdiction which they have since exercised. A district and a circuit court was established in each State, and the Supreme Court was constituted of six justices. The Union was divided into three circuits, the eastern, middle, and southern circuits. Two of the justices of the Supreme Court were required to hold, jointly, two terms in each year, in each of the States, besides two terms of the Supreme Court, at the seat of Government. In 1792, the justices themselves, in a memorial to the President of the United States, complained of the onerous duties exacted of them under the act of 1789, and declared their inability to perform the labor which that act imposed upon them. This memorial was made the subject of Executive communication to Congress, and, in that year, instead of three circuits, six were created, and one justice of the Supreme Court was required, in conjunction with the district judge, to hold the circuit courts in each State, twice in each year.

At that time, sir, our population did not exceed six millions; our Union was composed of thirteen States; the banks of the Ohio formed, in fact, our western boundary. The Congress of 1789 did not then think six judges of the Supreme Court were more than necessary to the discharge of the high duties confided by the constitution and laws to that tribunal. The judges themselves, and the Congress of 1792, believed that the duties imposed by the judiciary act of 1789 were too onerous; and they divided the labor of the circuit duties. From that day to this I have never understood that those justices had not enough to do. Indeed, I have often heard it said they had more labor to perform than they could well discharge, in justice to themselves and to the country. Now, sir, when the number of States has nearly doubled; when our population has increased from six to twelve millions; when our commerce has extended itself to every country and clime; our relations as political communities have increased in importance, and every day becoming more and more delicate; the gentleman from Pennsylvania [Mr. CHAMBERLAIN] is ready to start these judges upon a judicial race over twenty-four States twice in each year. The gentleman from New York, [Mr. STRECKEN] conscious that his friend from Pennsylvania has exacted more than human labor can accomplish, stops the judges at the limits of Alabama, Mississippi, and Louisiana, and proposes to give to these States a provincial judge, a judge with full and ample salary, but he is not permitted to take his seat upon the Supreme Bench, that is, the judicial *sandum sandorum*, which must not be contaminated by a western man. The one proposition is, of itself, utterly hopeless of success, and the other cannot be regarded, though not so intended, but as an insult to the States who are thus marked by the exclusion alone as applicable to themselves. A system something like this of the gentleman from New York, was reported by the judiciary committee, in 1823. That system, however, allowed the provincial justices, when it should please God to remove by death any of the then justices of the Supreme Court, to take the place thus vacated. It

met with one universal condemnation from the nine western States, and was by the committee abandoned, as utterly offensive to those whom it proposed to benefit. Such, I have no doubt, will be the fate of so much of the amendment of the gentleman from New York as proposes to send to these three proud and gallant States a provincial judge.

I proceed, sir, with the history from which I have been diverted in a moment's reply to a part of the opposition to the bill under consideration.

The system remained under the organization of 1792, until that eventful period in the political history of our country, the month of February, 1801. The party then in power, but which was soon to retire, under the indignant frowns of an insulted and abused people, looked to the judicial department of our Government as a point of safe retreat—a point from which they could renew their assaults upon their conquerors, the people; and succeed in establishing principles in our Government, which the constitution did not warrant, and which the people abhorred.

In that year, the judicial system of the United States was changed. The Supreme Court was to consist of the six justices then in commission, to discharge appellate duties only. Thus separated from the States, and the people of the States, the judges were destined to become the mere engines of power, devoted to the establishment of a great consolidated government, and regarding the States as mere corporate existences, deriving their power from, instead of imparting it to, the General Government.

The better to effect this grand purpose, six circuits were enacted, and three circuit judges in each circuit were appointed, besides the district judges then in commission.

It will only be necessary to look to the then state of the times, and to the names of such judges as were commissioned, some in the hour of midnight, to justify the inferences which I have made.

This system did not require the test of experience to satisfy the American people of its enormity—its want of adaptation to the system of government, such as the Union was and ought to be; and so soon as they could lay their hands upon it, they crased this federal citadel to the foundation, and rebuilt that of 1789.

Between 1789 and 1807, Vermont, Kentucky, Ohio, and Tennessee had been admitted into the Union, and, in the latter year, (1807,) a seventh justice was added to the Supreme Court, to reside in the seventh circuit, and to hold circuit courts in the States of Ohio, Kentucky, and Tennessee. Vermont was added to the eastern circuit; and thus the system of 1789 was made to expand itself, and to embrace these four new States, and has continued from that time to the present moment.

It has given to our nation a character, at home and abroad, for judicial intelligence and weight of character, which the gentlemen opposed to this bill have been emulous of each other in praising.

I will not detract from the just claims of our national judiciary, nor will I speak of it irreverently.

I have no incense to burn at the altar of any department of this Government; and if I had, it would not burn at that of the judiciary.

That department, like every other, is filled by men liable to err, and responsible to the people, whom I regard as the supreme power in this Government. To them and to their will I acknowledge my obligations; and, in the execution of that will, as their representative, I will speak of the other co-ordinate departments of their Government as I think they deserve.

This is in theory, and should be in practice, a representative Government, in all its departments. The Executive, in his appropriate sphere, is no less the agent or representative of the people, than the members of this House, though his functions are different. The judges

must be regarded as the agents or representatives of the people, in the discharge of their functions in the judicial department of this Government.

The doctrine which repudiates the idea of representation in the judicial department, is anti-republican, is at war with the genius of our institutions.

Gentlemen startle at the idea of judicial representation, and say they do not comprehend it. If they do, they have not dealt fairly by those who believe that there ought to exist in that, as in every other department, the representative principle.

The member from New York [Mr. Strong] seems to be astounded at its mention. He never before heard of the idea of "judicial representation." In his mind, it must mean, if I have his words correctly, the representation of the prejudices, the passions, and the factions of the people. There is a class of politicians in this country, who have always, when speaking of the people, supposed them to be governed alone by prejudice, passion, and faction. I will not say that the gentleman belongs to that class, but he will pardon me for entertaining an opinion more favorable of the intelligence and virtue of the people. They are capable of thinking, reasoning, and acting, free from prejudice or passion.

The other gentleman from New York [Mr. Spencer] repudiates, in strong terms, as wholly improper, the idea of preserving in our judicial department the representative principle. Indeed, he seems to go further upon this subject than his colleague. He would have the judge unknown to the people, and the people unacquainted with the judge. He would have the judge, in order to preserve him from the contaminating influence of the people among whom he is to administer the laws, reside as far as possible from them, to be sent among them at a distance from where he resides.

If these views be sound, if there be any thing in them consistent with propriety, and in harmony with the principles of our Government, it would be well to test them by experiment. Let us disband our own judicial corps, and call upon the chancellor of England, the judges of the courts of King's bench and common pleas, to visit us, and decide upon the rights and liberties of our citizens. They would be as likely as any set of men, if not the most so, to preserve unimpaired the new and pre-eminent qualification of a judge, a total ignorance of the people of the United States, and consequently the genius and spirit of their institutions, which depend upon public opinion for their excellence and pre-eminence of character.

For my own part, I am wholly averse to the idea of importing judges as we import our cattle, under the hope of improving their breed.

When my rights are involved in a judicial contest, I like to know something of the men who are about to decide upon them. When a judge is known to the people among whom and for whom he administers justice, to be a man of high character, undoubted integrity, and legal attainments, his decisions give satisfaction, and inspire confidence in the public mind. Not so with a judge of whom the people know nothing.

I will tell the gentlemen what I understand by judicial representation.

In the first place, as this is a representative republic, I would not have upon the bench a monarchist in principle. I would have the judges responsible to the people; and, if I were about to form a constitution, I would limit the term of their office, and remit them to the appointing power, at stated periods.

To come to the question now under discussion: In the organization of a court, such as that of the Union, whose jurisdiction is defined by the constitution of the United States, whose powers are co-extensive with the boundaries of twenty-four distinct and sovereign States, the same system should be extended to each State. In making the

appointments to office, I would look to the various geographical divisions of these sovereign communities, and I would make the selections from among the citizens of these States, with a view to give to each its due and relative proportion and weight in the judicial department. To illustrate my idea, I would extend the present judicial system to those six, I might say nine States, to which it has not been extended. I would give to those States, when divided into proper circuits, a judge selected from among the citizens of those States, to reside within the respective circuits, and administer justice in the inferior courts, and to repair, once in each year, to the seat of Government, bringing with them each a knowledge of the local law and judicial decisions of the respective States, and, if gentlemen will have it so, possessing, in common with the people, those principles of government, and attachments to our institutions, so necessary to make a man either a good politician or a sound judge.

To illustrate my idea of judicial representation further, I need only advert to the fact that your court is now composed of seven judges—six of whom reside on the side the mountains, and administer justice in courts of original jurisdiction in States containing a population of about seven millions, while nine States, with a population little short of five millions, is left with but a single judge, and he confined to three out of the nine States.

If the honorable gentleman will, for the sake of the argument, imagine the entire vacancy of the Supreme Bench, and that the President would be weak or wicked enough to appoint the whole seven from the State of Kentucky or Ohio, and the Congress of the United States unjust enough to say, by its legislation, that, in the six New England States, and in the "great State" of New York, there should not be held a circuit court, they will then have a just conception of my idea of judicial representation. My word for it, sir, if that were the case, and it were necessary to extend the system to these States, to increase the number of judges to nine or ten, this bill would pass.

I put it to the candor of gentlemen to say, if it is consistent with their own notions of equality in the States, with their own notions of justice to the people west of the Alleghany, that the present system, limited as it is, shall remain when these States, in their sovereign character, present their high claims to the Congress of the United States, demanding the extension of this system to them, and claiming, as they have a right to claim, an equal participation in the administration of this Government in all its departments.

The gentleman from Connecticut [Mr. Hendrickson] has informed us, that the complaint of Indiana, Illinois, Missouri, Alabama, Mississippi, and Louisiana, is not that their business is not done, but that it is not as well done as in the other States; that there is no business in the new States to justify the extension of the system; and he has resorted to the docket of the Supreme Court to ascertain the number of appeals there depending, in order to ascertain the number of causes annually instituted in those States. The gentleman must be aware that this species of evidence is not entitled to weight, and does not justify the conclusion to which it has conducted his mind. He has, however, found some causes from all of those States, and, therefore, is forced to admit that there are some causes instituted and tried in the district courts of those States.

If, however, he had extended his examination of that docket, he would have discovered that from his own State (Connecticut) there was not a single appeal depending in the Supreme Court; and he would not be willing to assert, on this floor or elsewhere, that there was no judicial business in the circuit court of that State, or that there was no necessity for a court of the United States to sit in Connecticut.

If the gentleman had been familiar with another fact, that in the new States the amount in controversy in each

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suit is seldom equal to two thousand dollars, which is necessary to give the Supreme Court jurisdiction, he would have at once perceived the reason why a greater number of appeals are not annually pending in that court from the new States. From this circumstance, too, he might have seen the greater necessity of affording to the litigants in those States the security to private rights derived from having the opinion of a court composed of two judges instead of one.

But the gentleman has another reason why he will not extend the system to the new States, and that is, because there are no petitions presented to Congress, requesting the extension. Sir, I will say to the gentleman, the Western people are not a petitioning people. They look to their representatives on this floor to express their wants and feelings, not in the tone of humble petitioners, but in the higher language of demand and remonstrance. And when he hears from the true representatives of those States, he will hear but one voice, and that will be, the States and the people of those States demand the passage of the bill on your table.

Upon this subject, however, the Western States and the people of those States, feeling the manifest injustice which has so long been done them, have not been silent; they have, by memorials from their Legislatures, and by the people, demanded of the Congress of the United States the extension of the present judicial system to them. They desire no change, no alteration of the system, but require that it shall be made to embrace them in its practical operation, and that their full relative weight, as component parts of this confederacy, may be felt in the judicial, as it is felt in every other department of your Government.

Sir, I hold in my hand memorials from the Legislatures of Alabama, Tennessee, and Indiana, and from the citizens of some of those States, presenting, in strong and bold terms, the grievances under which they are placed by the present arrangement of the courts of the United States, and demanding, as an act of justice, that they be placed upon the footing of equality with the other States in this Union. I will not detain the committee by reading any of them. I will hand them over to the gentleman from Connecticut, and, after he shall have read them, I am persuaded he will waive this objection to the bill.

The gentleman is forced to admit, that, "if he believed there was as much business in Kentucky, Ohio, and Tennessee now, as there was in 1826, he would give the relief asked." If the business have diminished one half, which I undertake to state is not the case, relief is necessary, and no judge can discharge his duties in that circuit and in the Supreme Court, with satisfaction to the public and to himself.

I am firmly persuaded that the labors imposed upon the judge of that district murdered Judge Todd, if they did not in some degree contribute to the death of Judge Trimble. The gentleman is wholly misinformed, when he states to this House that the business in Kentucky will not require more than four weeks during the year. He tells us that land litigation is done in Kentucky. I wish I could hear that from higher authority—the Supreme Court of the Union. The assertion of the gentleman depends mainly for its accuracy upon the decision of one question, now pending in the Supreme Court, and which I have been anxiously watching for years past, determined to defend, to the extent of my poor feeble powers, the right of my State to prescribe, by legislation, a limitation to suits for land in her territory, which right is denied by those interested in prostrating what is known there as our "seven years law." If that law shall fall by the fiat of this august tribunal, the floodgates of litigation will be again hoisted, and misery and affliction incalculable will be poured on that devoted State, and her youngest son will not survive their effects. The delay in the trial of causes in that court has led to losses, disappointments, and exactions upon the honest occupants, of which but few have a just conception.

If there be one obligation paramount to another upon a government, it is, a speedy and sound administration of justice. This we have not heretofore had in the Western States, and we have felt the baneful effects of it.

The member from Connecticut, as also the chairman of the Judiciary Committee, have taken occasion, in this debate, to allude to the relief laws of Kentucky, and said the State court had declared them to be constitutional, and the United States' court had given a contrary decision. From this erroneous assumption of fact they have predicated the charge, that the public had lost confidence in the State tribunal; consequently, the docket of the United States' circuit court of that State had been greatly increased. Though it is not necessary for my argument to correct the statement, I could not feel that I had discharged my duty, as one of her representatives, if I passed over this uncalled for allusion by the gentlemen to the internal policy of the State of Kentucky. The fact is directly the reverse of what the gentlemen state it to be. I state the fact, that the court of Kentucky decided some of the relief laws unconstitutional; the Supreme Court never did. This relief system, Mr. Chairman, was a domestic, a family quarrel, well understood in the State, but not understood out of it. The gentleman from Connecticut will perhaps be surprised when I tell him that he has now in his own State a much worse and more outrageously unjust law, upon the subject of collecting debts, than we ever had at any time in Kentucky. At a time of great pecuniary distress, produced by the revulsion in trade, the destruction of a foreign market by the universal pacification of Europe, the depreciation in the value of estates, the want of a circulating medium, the Legislature of Kentucky, believing they had the power, and that it was expedient to exercise it, enacted certain laws, the object and the effect of which were, to prevent the sacrifice of the property of the country, by instantaneous and unlimited sales under execution. The debtor had a right, by giving good security, to replevy his debt for two years; if he was unable to give this security, his estate was to be sold upon a credit of two years. His land was to be valued by men appointed by the court; and if it would sell for two-thirds of its value thus ascertained under execution, it was directed to be sold for the money, to pay the debt. These, sir, are the principal features of this relief system. I was not its advocate at home; but I will compare it here with the system in the gentleman's own State, and claim for it a pre-eminence.

In Connecticut, sir, and indeed in most of the New England States, that land of steady habits, they have a law now in force, by virtue of which a debtor defendant in execution has the right "to set off his land against the execution," I believe the phrase is, and it is done in this way; men are called upon to value the land of the debtor, and the plaintiff is obliged to take the land in satisfaction of the execution, at its full price; the officer has no right to sell it; the plaintiff must take the land or nothing. [Here Mr. HUNTINGTON remarked, that if he did not choose to take the land at the appraised value, the plaintiff could issue a *ca. sa.* against, and take the body of the defendant.] Mr. WICKLIFFE continued: Worse still, Mr. Chairman. In Kentucky, thank God, no man's body can be seized at the will of his creditor, and incarcerated for debt; that is, of all others, the poorest discharge of a judgment; it does no good to the creditor, and often inflicts misery and ruin upon the debtor and his unoffending family.

To satisfy the members of this committee that the Western States do not demand too much by this bill, I have availed myself of the statistics of a member of this House in 1826, which, with some slight modification I have made, I adopt as my own, and believe them in the main correct. It will furnish us with some accurate information of the labor then performed by the judges, and that which they



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will have to perform if the bill passes; and I am sure no gentleman would desire to increase the quantum now imposed, if any credit be due to the following table:

CIRCUITS.	Population.	No. of Suits for 1826.	Travel to Circuit Court.	To Supreme Court.	Total Mileage.
1st. Maine, New Hampshire, Massachusetts, Rhode Island,	1,148,842	130	940	1000	1940
2d. Vermont, Connecticut, New York,					
3d. New Jersey, Pennsylvania,					
4th. Delaware, Maryland,					
5th. Virginia, North Carolina,	1,704,195	70	750	250	1000
6th. South Carolina, Georgia,					
7th. Ohio, Kentucky, Tennessee,	1,568,534	1700	12 00	1400	2600

This exhibits the labor of the judges under the present system. If there be added, as I believe there should, three justices, the following will exhibit the labor in the three new circuits:

7th. Kentucky, Ohio,	900,000	1200	700	1400	2100
8th. Tennessee, Alabama,					
9th. Louisiana, Mississippi,	228,855	120	2100	2000	4100
10th. Missouri, Indiana, Illinois,					

Here, sir, is labor enough for ten judges, and still the gentleman from Pennsylvania, [Mr. CRAWFORD] under his system, would impose the whole of it upon the present judges, most of whom are far advanced in years. If I desired to deprive the country of the services of the present judges, I would adopt the plan of the gentleman, for I am sure those who did not resign would ere long share the fate of the lamented Todd.

I will not consume more of your time, to convince you that the addition of at least two, I say three, justices is necessary to the discharge of the business in the nine Western States. All admit that the system ought to be extended to them in some form or shape. I prefer the present system, so do the people West; and if we cannot have it extended by the addition of two or three justices now, we will sooner "bear the ill" we have, than fly to others we know not of." We will prefer to remain excluded the judicial pale, rather than be forced to adopt the system of 1801. We view our present wrongs as local to the States;

but a resuscitation of the midnight judiciary act would, in our opinion, be a national calamity affecting our whole Union.

And allow me to say to my Western friends, whose constituents labor under the present temporary evils, not to yield to the repeated attempts which are making, to fasten the system of 1801 upon the nation, under pretence that it is made necessary to do so, in order to accommodate the Western States. Be patient; another census will enable the Valley of the Mississippi to speak in a voice, on this floor, which will be felt in the councils of the nation; and that which cannot now be procured by the voice of reason, will be obtained by the eloquence of members, which I find at last is the most powerful here as well as elsewhere.

Mr. Chairman, it must be manifest that the present number of judges is not equal to the discharge of the business in the several States, and to the discharge of their duties as an appellate tribunal.

It is evident that nine States of this Union have just claims upon us, which we cannot deny; we may evade them by sophistry, and unjustly postpone them.

This committee have decided, by the rejection of the amendment of the gentleman from New York, [Mr. STANON] that they will not change the present system of our courts. The Congress of the United States have heretofore refused to change it. The people will not consent to a change, by which there shall be an appellate court here, composed of judges who are not required to discharge circuit court duties.

The present system, by which the justices of the Supreme Court are required to visit the several States, and to perform circuit duties by holding courts of original jurisdiction, has been tested by the experience of forty years, and that of itself is a sufficient reason why it should not now be abandoned. My rule in public and private life is, "to let well enough alone."

But, sir, I believe the present system is best, to ensure public and private confidence in the judiciary. The people wish to know something of the functionaries in this department. When they know them, and witness their acts in the administration of justice in the States, recognise them as citizens of the States, though in the discharge of official duties as officers of the United States, confidence is infused in the public mind, and the opinions of a judge, known and respected by the people for his private and public virtues, will always be respected and obeyed. It will not be the case if we call these judges from the States, and from the people, and require them to supervise the opinions of those judges whom the people know whose acts they witness.

That system of our judiciary is best organized, which is best calculated to ensure public confidence, so necessary to its safe and wholesome action.

In reference to the judges themselves, it is best they should be required to perform circuit duties. It has been remarked, and it is in fact true, that "he is the best judge who decides the most causes." If you wish a man, after he has attained the age of forty, to continue to be a good judge, you must make it necessary for him to read law; he will never read it for amusement, no man does that. If, however, you bring the judge in daily contact with the bar, where he must witness the war of intellect among the profession, waged on questions which he must publicly and promptly decide, he will feel the necessity of preparing himself for such decisions. His pride of character and official responsibility, quickened by the lynx-eyed watchfulness of the lawyers, and their clients, will stimulate him to study and to read the otherwise dry and musty pages of the law. In the discharge of duties like these, he ascends the Supreme Bench with his brother judges, the better prepared to discharge the still higher duties of reviewing in bank what has been done at *non prius*. He has made him

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self familiar with the local laws, and the decisions and practice of the States in which he has been called to act, and brings his due proportion of stock into the common fund.

When the whole number of judges convene upon the Supreme Bench, the local laws, the legal and judicial intelligence of every portion of the Union, are represented in that tribunal, in the judges whose business it has been to make themselves acquainted with them. And when they return to the circuits, they have a fair opportunity to witness the effects of the principles which they have settled, when carried into practical operation.

Separate a judge from this constant law school, confine him to the duty of revising some eighty or a hundred causes in the Supreme Court, and my word for it, ten years' service on that bench will unawyerize him. He will be content to consult the advocate's brief, and cull his arguments, and decide the cause.

I have an utter abhorrence for a political judge or court, and upon that account I would not consent to relieve the judges of the Supreme Court from the performance of circuit duties.

If the judges of that court are required to perform appellate duties only, it is, in the nature of things, that they would locate themselves in and near the place where their official duties call them. In this district, under the almost certain and irresistible influence of the Executive, would the judges place themselves. The tendency of all the departments of this Government is encroachment upon the State Governments, and an enlargement of the powers of the federal head. Appointed by the President for life, fed by Congress, located within its exclusive jurisdiction, and breathing the atmosphere of federal power which infects this ten miles square, the judges would forget that there existed such political communities as State Governments, or, if they remembered them at all, it would be to allow them the poor privileges of petty corporations.

With an Executive educated in the school of consolidation, seconded by a Congress deriving powers by implications on constructions, and a court such as I have described, what would be the fate of our happy Union?

When the gentleman from New York [Mr. STRONG] was laboring the other day to establish such a court, I was not surprised that the star chamber of England presented itself to his mind. It is strange, however, he did not foresee that the striking similarity between that court and his was unfriendly to his argument. Establish the system of 1801, the favorite of all who have spoken in opposition to this bill, and the Supreme Court will, in the progress of time, like its parallel, the star chamber of England, "extend its powers to the asserting of all [decrees,] or orders of State, to the vindication of illegal commissioners, and justifying the grants of monopolies, holding for [constitutional] that which pleased, and for just that which profited, enjoining to the people that which was not enjoined by the laws, and prohibiting that which was not prohibited, punishing disrespect to the State," [and offences against the powers that be.] No alien and sedition law would ever find its tomb in such a tribunal; no act of the President or Congress would ever be annulled by such a court.

It was the just and well founded apprehension, such as I have attempted to describe, of the dangerous tendency of such a judicial tribunal, which induced the republicans of 1802 to abolish the system of 1801. The numbers of the judges, and the increase of expense, were as drops in the bucket in the minds of those whose judgments declared the act of repeal. The system required no experience to test its virtues. There are some measures, so utterly at war with the republican sentiment of this nation, that need not the aid of experiment to excite public condemnation, and the midnight judiciary system of 1801 was one of them. The Presidential election, of the same year, is another. I could swell the list, if it were necessary to lead the minds of gentlemen to more recent events.

I do not, therefore, think that the gentleman from Pennsylvania is obnoxious to the censure which the member from Connecticut [Mr. MURPHY] bestowed upon him, for having characterized this judicial system of 1801, by the strong terms which he used, and which appropriately belong to it.

That gentleman complains of the harshness of the language employed in reference to the act of 1801, and says that, although the gentleman from Pennsylvania [Mr. BRANCH] was not of the household, he was certainly of the family to which that political offspring belonged, and that filial affection, if nothing else, should have prompted him, while opening the vault in which were entombed the measures of the administration of the elder Adams, that if he found the remains of any thing there worthy, in his opinion, of commendation, to have given it a passing notice.

I am in public as I am in private life, averse to interfering in family quarrels. Between these two members of the same political family, therefore, I will not interfere, further than accord to the gentleman from Pennsylvania the humble meed of my cordial approbation of the boldness of language and freedom of manner, in which I have, on more than this occasion, heard him denounce the system of 1801 as an illegitimate offspring of the federal household.

I have heard others, however, of the same political family, weep over its fate with all that fondness of recollection which belongs to filial affection, for with it died the last best hope of that household, who looked to the increasing energies of this offspring as the surest means to restore their lost power, and to establish a system of government for the benefit of the few at the expense of the many; a Government for the "gentlemen," at the expense of the "simple men."

Hence, the often and repeated efforts of the descendants of this political family to reanimate this fondling of their ancestors.

The present system I believe to be best adapted to our form of Government, and it ought not to be abandoned. This opinion is entertained, and has been expressed, by every one who has advocated the present bill; yet its friends are charged before the nation, in the speeches of gentlemen, with an intent to destroy the judiciary, and render it weak, inefficient, and worthless. If nothing was known of the nature and character of the measure before us, but what might be collected from the speeches of gentlemen who oppose it, in the eyes of the nation the Judiciary Committee would be justly obnoxious to the charge of proposing an innovation upon the established system of our Government; to effect which, they had invaded the sanctuary of the courts of the United States, and demolished the pillars of the judicial temple.

We propose to do no such thing; we desire to preserve the same system which the fathers of the constitution built up for their country; we desire to extend that same system of courts to the new members of the confederacy to which it has not been extended.

This ought to be done in reference to the local business in those States. It ought to be done, if we regard the political rights of these States. It must be done, if we desire to promote the sound, safe, and salutary action of the Federal Government, within its appropriate sphere, when applied to the States.

When our opponents are driven by argument from their favorite scheme of organizing a Supreme Court upon the plan of 1801, they seek refuge from the discomfiture, to a point which they imagine is impregnable, and that is, the impolicy of increasing the number of judges on the Supreme Bench.

Accustomed to look at the organization of the Supreme Court in their respective States, whose duties are confined to questions of "*meum and tuum*"—a court organized to settle questions for a single State, composed of from four to six judges, gentlemen conclude a greater

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number is not safe for the Supreme Court of twenty-four Justices.

They bring with them into this discussion the prejudices incident to long use and legal education, and persuade themselves that nine judges of the Supreme Court would become a mob; one gentleman compares such a court to a town meeting.

I propose to consider briefly some of the objections which have been urged on the other side, against an increase of justices on the Supreme Bench. To answer all, would prolong a speech already exceeding the limits which I had prescribed to it.

The gentleman from New York [Mr. SPENCER] is of opinion that an addition to the present number of the judges would tend to divide individual responsibility.

If, then, individual responsibility be a paramount consideration, the present number is already too large; and if the honorable gentleman would have individual responsibility increased to its maximum, I would advise him to reduce the court to a single judge. If that were done, he would avoid another evil which he thinks will certainly arise from an increased number of justices upon the Supreme Bench, namely, a division in opinion among the justices; for if his Supreme Court shall be composed of one judge, he will always have the advantage of a unanimous opinion upon all questions, added to individual responsibility.

Another objection against the increase of the number of justices, is, that it will diminish the force of the opinions and decisions of the Supreme Court. This implies the idea that the concurrent opinion of ten men is not entitled to as much weight does not possess so much force, as the opinion of seven.

But say the gentlemen, if you add two more judges, you will impair the public confidence in that court. Is this true? Has it been shown to be probable by any arguments or illustration? unless the gentleman means to say, that two judges who shall breathe the atmosphere of the West, will infect the present judges, and contaminate that purity which has been so highly commended on the present occasion.

Again, it is said the business of the Supreme Court cannot or will not be done if you increase the number to nine.

If seven are able to do it now, the addition of two more will not prevent them from doing it, if the two should or should not assist the present seven in the labors, or in the discharge of the duties of that court. I had inclined to the opinion that nine men, when united, could do as much labor of any kind, as seven of the same nine.

There was another reason assigned by the gentleman from New York, [Mr. SPENCER] which did not strike me with the same force it seemed to have done the mind of the gentleman.

It is this, (if I comprehend the idea,) that if you put nine judges upon the bench, you will have more minds to enlighten by the arguments of counsel. There are two more judges to speak to, I grant; and if a lawyer was compelled to address himself to each judge in a separate argument, he would perhaps be required to make nine long speeches instead of seven. At present, however, he addresses the whole seven; and if there were two more placed by their side, it would neither increase or diminish his labors. I should regret exceedingly that it should add to the customary length of the arguments in that court. The mode of doing business in and by the Supreme Court, should have satisfied the honorable gentleman that his objection was not sound. The judges hear the case argued in court, they retire to their room of consultation, in that they examine the record—one reads, and the others listen; they interchange ideas, discuss in the conversational style the points in issue, form their judgment, and one of them is designated to write out the opinion of the court.

At this council board, then, I would not think the increased number of minds to be enlightened, could or would retard the business of that court. If the mere labor of that court is considered, the advantage is certainly in favor of the larger number.

The two honorable gentlemen are opposed to an increase of the number of justices upon the Supreme Bench, because, in their opinion, such a measure will tend to unsettle the decisions of that court; and the member from Connecticut, who last addressed the committee, [Mr. ESSA WORTH] told us of the deep regret which was felt and expressed by Lord Mansfield, when, after thirteen years of his service upon the bench, one of his associates assumed courage enough to dissent from his lordship. Did the honorable gentleman, in his own mind, draw the parallel between the transcendent abilities and powers of that distinguished jurist and another chief justice, or did he, by the allusion, desire those who heard him to do so?

If I thought the addition of two more justices upon the Supreme Bench would have the effect to unsettle some of the decisions of that court, I should feel much more zeal for the passage of this bill, than has been manifested by its friends. Some of the decisions of that court might be unsettled to the advantage of the country, in my humble judgment. I allude to that class of decisions which have prostrated many of the most salutary laws of the State Legislatures, passed for the protection and advancement of the rights and interests of their own citizens. I could point to some of them, if I had time, and it were proper for me to do so in this debate. This objection I lay upon the shelf.

Gentlemen, in their ardor of opposition to this bill, tell us that no tribunal exists in any civilized community, purely appellate in its character, with so great a number of judges as we propose to place on the Supreme Bench. When we refer the gentleman from Connecticut to the House of Lords of England, he tells us there is no analogy between the two, that the House of Lords in England possesses legislative as well as judicial powers. I will not agree, that, even in that respect, practically, the analogy fails.

When the gentleman from New York [Mr. SPENCER] is pointed to his own State, in which the high court of error is composed of the Senate of the State, consisting of thirty-two members, he conducts us to the local history of New York, and informs us, that tribunal was constituted in the period of the revolution. There was one part of his historical facts new to me, and I regret they existed. In giving the reasons why that State constituted her Senate a court of errors, I understood him to say that most of the lawyers of New York of distinction and eminence in their profession, when the revolution commenced, proved to be tories, and adhered to the enemy; consequently this court of errors was constituted for the want of legal characters out of which to form a court of errors.

This is the only instance in the United States, sir, in which the profession of the bar was found opposed to the principles of liberty and self-government; and I have a hope none of their descendants now live in that great State, to hear the tale of their ancestors' disgrace told.

As a humble member of the profession, I had contemplated with pleasure the mighty deeds of a Henry, a Hancock, and an Adams, in giving "the first impulse to the ball of the revolution." In the history of every age, we find the much abused profession of the law, in every conflict between liberty and power, contending on the side of liberty. To the intelligence and patriotic exertions of the members of the American bar in the councils of the nation, and the valor of her sons in the field, we are alike indebted for our national independence. The one directed with wisdom, and the other executed with firmness, the measures which produced that happy result.

I have heretofore considered it necessary to increase the number of judges, in order to extend the system

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to the new States, as an act of justice to the States and the people of those States.

I may be singular in my opinion; but if there were no circuit court business in the several States, and it were left to me, I would not constitute the Supreme Court of this nation, composed of twenty-four separate and distinct sovereign States, with less than ten judges: I would not go beyond that number.

The gentleman from Connecticut [Mr. ELLSWORTH] told us the jurisdiction of the Supreme Court of the United States was unequalled by that of any other judicial tribunal upon earth. I agree with him, and say, that, by the express grant in the constitution, there exists no judicial tribunal of which we have any account, clothed with such transcendent powers. When I open the book of the constitution, and read that the judicial power of the United States extends to—

1st. All cases in law or equity, arising under the constitution of the United States;

2d. The laws of the United States;

3d. Treaties made or which shall be made by the United States;

4th. To cases in which ambassadors, public ministers, and consuls may be interested;

5th. To admiralty and maritime causes;

6th. To cases in which the United States shall be party;

7th. To matters of controversy between two or more States;

8th. To controversies between citizens of different States;

9th. Between citizens of the same State claiming land under different States—the question presents itself to my mind, is it safe to confide the exercise of such high powers to seven men? For one, I answer no. If you wish to preserve the peace and harmony of this Union, and save it from civil discord, beware how you confide the exercise of such high powers to so small a body of irresponsible public agents.

The Supreme Court is now claimed by some gentlemen to have been constituted for higher purposes than the trial of your cause or mine. As a court for the latter purpose, it is sufficiently large; but, as a tribunal before which, in succession, each proud member of this Union, nay, sir, the Union itself, has or may be arraigned, the functionaries who compose it on such occasions should be more numerous. If it is desirable (as I admit it to be) that respect, confidence, and obedience to the mandates of that court should be promoted in cases within its unquestioned jurisdiction, those States who have now no voice in the court should be heard.

The independence of the States, the permanency of the Union (which depend upon the existence of the States, as sovereign communities) are in no danger from the open assault of any usurper. The danger to their existence is from the regular, systematic encroachment by the Federal Government upon State authority, sanctioned by the mandates of the Supreme Court.

THURSDAY, MARCH 11, 1830.

## THE TARIFF.

The House then resumed the consideration of the following resolution, submitted yesterday by Mr. ANDERSON:

*Resolved*, That the Committee of Ways and Means be instructed to bring in a bill allowing a drawback of nine cents per gallon on all rum distilled in this country from foreign molasses, when such rum is exported to a foreign country."

Mr. ANDERSON addressed the House in continuation of his remarks of yesterday.

Mr. ANDERSON said, he was aware that it was the general practice of this House to instruct its committee to inquire into the expediency of adopting a measure, rather than to instruct them to bring in a bill; but as the Com-

mittee of Ways and Means had brought in a bill embracing the subject matter of this resolution, and as that bill was rejected by the House, this, or any other committee, he apprehended, would not deem it expedient to act again on this subject, unless they were under the especial direction of the House; and Mr. A. deemed it due to the House to say, that, if the subject of this resolution had been presented, unconnected with other matters, and had been acted on by the House, he should so far respect such decision, as not again to agitate the subject this session. But, as many gentlemen saw, or thought they saw, objections to some of the items of that bill, and voted to reject the whole, who, Mr. A. believed, were disposed to sustain this resolution, he submitted it in this shape, deeming it as well to take the sense of the House directly on the proposition to bring in a bill, as to take the opinion of the House after a bill is introduced.

The tariff of 1828 [said Mr. A.] proposed to encourage American manufactures, and to protect domestic industry. This resolution relates immediately to the manufacturer, and proposes to restore him in part to the situation in which that tariff found him, and, if adopted, will not only aid the manufacturer, but various other important branches of American industry. The resolution does not place this class of manufacturers in a situation as good as they were before the passage of the law, for it still leaves them oppressed with the whole of the enormous increased duty on the raw material used by them, which must still be paid if the article is consumed in this country; but as it will open the foreign market for their manufactured goods, it will be a great relief both to this class of citizens and to the commercial interest of our country. Before the passage of the tariff of 1828, the duty on molasses was five cents per gallon; then a drawback was allowed of four cents on each gallon distilled into rum, and sent out of the country. The duty is now ten cents per gallon; and this resolution proposes to allow a drawback of nine cents per gallon on all rum made from this molasses when it is exported, still having the double duty to be paid on all that shall be used in this country. I cannot conceive what rational objection can be urged to the re-establishment of this drawback. We grant a debenture equal to the duty on the same article distilled by foreigners and in a foreign land, while, by our law, as it now stands, we refuse it to our own citizens, and yet we please ourselves with the idea that we are protecting American industry. When this drawback was repealed, it was done with the expectation of helping the whiskey distiller. It was thought that it would increase the demand and price of whiskey, and thereby aid the grain grower. We have now tried the experiment nearly two years, and I believe all are convinced that its expected benefits have not been realized. Does whiskey find a more ready sale or better price than it found before the tariff of 1828? Or has the demand and price of grain improved since that period, in consequence of this restriction on the distillation of molasses? I believe, sir, if we take every price current which has been published since June, 1828, we shall find that neither whiskey nor grain has improved one cent, but, on the contrary, both have fallen greatly in price. If then, the repeal of this drawback has not answered the expectations of those who voted for it, if it has not benefited the interest it was thought it would subserve; if it does good to no one, and a positive injury to some, why should we not restore the protection, and again extend to this class of our manufacturers the encouragement we profess to extend to all others. If we wish to introduce the more general use of whiskey, and thereby aid so much of the grain market as is used in this article, it is certainly expedient to open a passage through which this rum may go out of the country, and give place to the consumption of whiskey. The effect, and only effect, this repeal of the drawback has, is to encourage and aid the foreign distiller, at

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the expense and to the destruction of the American distiller, to confine this rum to our own market, force it to compete with our domestic spirit made of grain, and, so far as this competition can go, to destroy the market for whiskey at home. If we honestly intend to encourage domestic industry, and enable our manufacturers to compete with foreign manufacturers, we ought to allow our citizens to obtain the raw material on as good terms as the foreigner. Let our duties on imports be what they may, it is for the interest of the manufacturer and for the country to encourage the export of all such imports as by our labor and skill shall be made of double value to the foreign purchaser; and the export will not be so well encouraged in any way, as by allowing a return of the duties paid on the raw material when it is exported in the manufactured article. While we have commerce, cargoes must, in some way or other, be made up; and as long as it is necessary for a profitable voyage to make a part or the whole of a cargo of rum, so long will rum be obtained, and continue to be an article of merchandise.

It is in vain for us to attempt to regulate the wants or tastes of foreigners. We cannot do it even with our own citizens, much less of foreigners with whom we trade, and who are independent of us. They will purchase of us, if we carry to them an article they want; and it is not the work of a moment to convince them that an article they do not want is better than one they do want. We are not alone in the foreign markets; we have the commerce of the world for competitors. If we cannot furnish them with rum, they will purchase of those who can furnish; and while foreigners prefer rum, so long will our merchants be compelled, if they trade at all, to continue to supply their customers; and if our merchants cannot obtain it of our own distillers at a rate as cheap as that distilled in the West Indies, they must take that of the foreigner, thus throwing the whole of this branch of industry into the hands of foreigners. In fact, as the law now stands, we give a bounty of ten cents per gallon on all the rum of the foreigner exported by our merchant, to break up and destroy our own manufacture, and we must continue to patronize and encourage the foreigner just as long as we deny this drawback to our own citizens.

This civil will not be remedied by a repeal of the existing debenture on foreign rum; for, as I before stated, while this article continues to be one of merchandise, it will form part of our cargoes; and if we prohibit its exportation, it will be taken in at foreign ports, or the whole trade, the carrying as well as the distilling, thrown into the hands of foreigners, so that the repeal of the existing debenture on foreign rum will only make a bad matter worse—it will only strike an additional blow at our commerce. It is not merely for the distiller that we should pass this resolution, but for other extensive branches of industry that will receive great relief and support from it. Every branch of industry connected with the West India trade will be relieved, revived, and protected by it. And let me here remind the House, that we never had cause of complaint, and never, so far as my knowledge extends, have complained of this trade. It is a trade of fair, free, unrestricted exchange. It is a market for any thing we choose to send out; and many articles that now form a valuable part of the exports of our country would be nearly, if not quite, worthless without this trade. We can in this market exchange what is of little or no value to us here, for articles of great value to us—articles that not only administer to our wants and comfort, but out of which, if we do not tie up our own hands by restrictions and prohibitions, we can make an important and valuable article of export. Sir, this trade is worthy of all encouragement. It gives life and employment to a vast amount of the labor and industry of this country. On this trade the lumberman, millman, ship carpenter, fisherman, and sailor are almost entirely dependant for employment; and there is

no class of men in this country more deserving of our protection than these, if severe, hardy, and unremitting labor can entitle them to our protection. Sir, the life of the northern sailor and fisherman is too well known to require any comments from me. Hardier beings never floated on the ocean. But the life and hardships of the lumberman, I believe, are known to very few on this floor. We should think an army making a winter campaign in the storms of our northern frontier entitled to our sympathy and applause for the sufferings and hardships that must unavoidably be endured through the severity of water. Trying and severe as may be such a service, it is no harder than the lumberman endures as regularly as the winter comes. In November, or the first of December, these men go into the forest with their teams and provisions, construct a rude camp, barely sufficient to break off the wind, while they sleep on a bundle of straw, or, as often on the boughs of the pine, and work from daylight until dark, in the snows of the forest, until the rivers open in the spring. When the snow melts, and the ice of the streams breaks up, they commit their lumber to the river, and close their winter's work with a labor that no men but those accustomed to repose comfortably on a snow-bank could endure for a single week. Day after day, and week after week, these men are immersed in the river, when the water is as cold as ice and snow can make it; their garments are a perfect sheet of ice, and the comfort of a dry jacket is unknown to them; and yet you find them hardy and healthy men. Hundreds may be found now engaged in the forests, with constitutions firm and unimpaired, who have, for more than forty winters in succession, been engaged in this service. I believe, ton, sir, that you will not find, in any other description of mills, such constant, unceasing labor as in our lumber mills. The saw is running continually day and night—the millmen relieving each other at six in the morning and six in the evening, as regular as a watch at sea, and the labor is as uninterrupted and unceasing as is the motion of the current that turns the wheel. This, sir, is the labor and these the men that any relief given to the West India trade will aid; and I ask you if these men, who breathe the pure January north-wester, are not as valuable to you in peace or war, and as much entitled to your consideration, as those who are inhaling the confined atmosphere of a crowded manufacturing establishment?

This trade is made up of, and sustained by, industry alone. The original value of the timber in the forest is a mere mite, compared with the value this labor gives to it, after it has passed through all the operations of manufacturing, exporting, exchange, and the return of the article for which it is exchanged. It bears nearly as small a relative value to the return which labor enables it to produce, as does the spade or the hoe to the crop its diligent application eventually brings forth; and you would not more directly tax the labor of the country, where you tax an agricultural product, because a foreign spade or foreign hoe was used in raising it, than you do by taxing this trade.

No article of export employs so much tonnage in proportion to its value as a West India cargo, and the cargo obtained in exchange. A vessel that will carry out a cargo of cotton or manufactured goods, worth from fifty to one hundred thousand dollars, would be fully freighted by one-thirtieth to one-fiftieth of that sum in lumber, and so with a return cargo of molasses; and yet she will employ as many seamen, and give double the employ to landmen, who live by loading, discharging, and tending on vessels, for she will make two voyages to the other's one, and add as much to the naval strength of the country as the rich freighted ship; and all her repairs are made in this country, the West Indies being more expensive ports to repair in. Not so with the European trader; she obtains her repairs and equipment abroad: for, by reason of the enormous duties we have imposed on every article necessary to the

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outfit of a ship, it is for the interest of our merchant to refit and equip his ship abroad.

This material, used by the distiller, is as much the produce of our soil as the whiskey which the farmer gets in exchange for his grain, the produce of his soil. We exchange our lumber, which is the fruit of our labor, for molasses; and without this exchange the whole of our industry engaged in this branch of business must stop. In the prosecution of this trade, the grain grower is more benefited than he can be by making his grain into whiskey; for, while the lumberman and the millman are engaged in procuring and manufacturing the outward cargo, the mariner in transporting it to market, and bringing home the return cargo, the distiller in converting it into rum, and the mariner again exporting this rum abroad, they, and the ship carpenter, and their dependants, are, of necessity, consumers of the grain raised by other hands. Some of this industry has been diverted already by the operation of the tariff, and been turned to raising grain, and unless you restore this drawback, a still greater number will be forced from their accustomed employments, and, as their only alternative, must go to foreign countries, or become agriculturists: and, instead of effecting the great object for which we started, to draw off numbers from agricultural pursuits, and increase the demand for agricultural products, our legislation will have exactly the contrary effect. 'Such is the connexion and dependencies of commerce and agriculture on each other, that any check or embarrassment thrown upon the one, is inevitably felt by the other. Our commerce first felt the tariff of 1828: it bore hard on this important branch of our wealth, industry, and strength, from the very day of its operation; and, now when commerce is sinking under this load, agriculture begins to feel the blow. Some of the shackles on our commerce must be taken off, and this drawback, trifling as it may seem, will save to the nation thousands of tons of shipping, if not millions of capital. Freight, we all admit, is the soul and life of commerce; and it is our duty, while we regard its prosperity, to give every facility to multiply freights at home, and to obtain them abroad.

Grant this drawback, and you give to your vessels additional freights, by making a valuable article of export of your imports. And as it will enable you to increase your imports in this trade of exchange, so it will greatly increase your original export, and in all its operations infuse new life into this depressed trade.

As I before observed, while we have any commerce left, we must make up our cargoes to suit the wants of our customers. And the only question is, whether you will allow our own citizens to exchange what is of little or no value to us, for articles of foreign growth, and, after doubling the value of the foreign product by the labor of our manufacturer, allow it to be sent out of the country, or compel us to abandon this trade, and our merchants to purchase the goods of the foreign manufacturer, and pay for foreign labor.

The commerce of a country is not built up or destroyed in a day. Pass what acts you will, even lay an embargo, and your tonnage account will not show much decrease the first or second year; for where commerce can sustain itself, new tonnage is constantly building to supply the loss by decay and the loss at sea; and a restrictive act, while it will detain your tonnage in port, and thereby lessen the risk of the sea, will not prevent the increase of new tonnage, the building of which commenced before the passage of the restrictive act. The tariff of 1828 has produced but a small decrease of tonnage in the year 1829; for the contracts for vessels were made before the passage of that law, and vessels once begun were from necessity completed. If they remained in the stocks partially finished, all was lost—if completed and launched, a part was saved. But our tonnage account for the years

1830, 1831, and 1832, will, if all the present restrictions continue, show a fearful falling off in the item of national wealth and strength.

The loss of a hundred thousand tons of shipping, though it will involve many individuals in ruin, and will be felt by the whole community, is not the greatest loss. Every ton of our shipping that is withdrawn from a foreign trade, is immediately supplied by foreign tonnage. The moment we cease to supply, others take our place. The channels of trade are changed—we become less important to the comfort and prosperity of those dependant on us for supplies—new associations are formed, which will not be so easy for us to break up—and the markets that gave employ to our labor and our commerce may be gone from us forever.

It is much easier for us to retain the trade while we have it in our hands, than to regain it after we have abandoned it to our commercial competitors. Our distillers must transfer their capital and men to the West Indies. Our ship carpenters will be dispersed, many of them driven to British provinces, and the residue of them to other pursuits—they can no longer take and instruct apprentices; there will be no longer a corps of young men coming annually on the stage to fill the place of their instructors—and when we shall be convinced of our erroneous policy, and would retrace our steps, we shall find a vast amount of skill and capital forever lost to our country.

Gentlemen who were in favor of the tariff of 1828, who think every interest of the country should be subservient to a few classes of our manufacturers, if they would look to the permanent interest of those they are so zealous to protect, would be the last to oppose this, or any other measure that would relieve and aid other equally important branches of national industry. If they feel conscious that these manufacturers can, with a fair protection, sustain themselves, and wish such protection to be anything like permanent, they ought now to come forward and advocate a revision of that tariff. I did hope and expect that the friends of that measure would come forward and propose such a revision—that they would be willing to smooth off some of its hard and sharp points, which so injuriously affect a large portion of the community without benefiting any. That, now while they have the power, they would show mercy, and not risk the whole by an unyielding defence of such of its provisions as are admitted by all candid men to be ruinous, oppressive, and absurd.

I know, when I speak of permanent protection, that we cannot, by our acts, bind those who succeed us, but I also know, that whatever is done in a spirit of fairness, mutual concession, and compromise, is much more likely to be lasting, than that which is effected by mere force of numbers.

An inquiry is now going on among the people, that will bring this country to a right result—an inquiry that cannot be stifled, stopped, or diverted. It is an inquiry each man is making of himself. What have I gained—what has my neighbor gained—what has the country gained, by these restrictions? The answer is uniform, depression, loss, embarrassment, and, in too many cases, bankruptcy and utter ruin. And the result of this inquiry will, ere long, be felt on this floor.

The very interests most clamorous for aid have sunk under the weight of the protection granted them. So peculiarly inconsistent are the provisions of the tariff of 1828 with its intention, that foreign labor and foreign manufacturers are protected and benefited by it, while our own labor and our own mechanics are taxed and oppressed, and many important branches of our own industry suspended or destroyed.

If it is expedient to oppress ourselves with these enormous taxes—if it is determined to force a surplus of millions annually into the treasury, over and above its wants, let us at least see that all bear something like an equal proportion of the burden. Above all, let us make the

burden as light for our own citizens as we do for the foreigner. This is all I ask for the American distiller. I request no exclusive privilege to the injury of any of our citizens—no tax on any class of labor—I only ask that you will place our own citizens on as good a footing as you have the foreigner—that you will extend to them the same privileges you grant the foreigner—that this branch of national industry may not be absolutely destroyed.

I fear, sir, that the commercial interest of this country is not a subject of even secondary consideration with this House; still I do hope that it will receive so far our consideration, that we shall not refuse to extend to it relief, when by so doing we injure no other interest of the country. And if we regard our navy, and expect it to sustain the character it has already acquired, we must turn more of our attention to the merchant service. We must aid and sustain our commerce, or our appropriations for the navy are worse than thrown away. We have yearly expended millions to repair, sustain, and increase our naval establishment; and the same Congress that appropriates millions to build additional ships of war, passes acts that must and will sweep the decks of their ships of American seamen. It is in vain to build the ship, while we are destroying the means of manning her. Shall we profit nothing from the disasters of others? Have we not in the French navy an example, showing us that ships are but built for the enemy, unless you have the sailors to line their sides? Better ships never floated than the French ships of war, and braver artificers could not be found than were put on board of them; but they were as sure a prize to the English sailor as he came alongside of them. Yet, sir, it is gravely proposed to man our navy with landsmen, and two years' service as a marine, it is said, will make a prime sailor. Why, sir, I do not believe that twenty years' service would make a sailor out of a marine, unless he was first a sailor. If you mean to have prime sailors, you must encourage your merchant service, and begin with the boy—enure him to the ocean when young, and when he grows up your flag will float safely in every sea, while your ship has a crew of such seamen to man and defend her. Remove the useless and oppressive restrictions and burdens now imposed on our commerce; give to our merchants the protection enjoyed by those with whom they have to compete on the ocean, and our merchant service will raise and support in time of peace a corps of seamen, who will sustain, if they cannot increase, the reputation of our navy in time of war.

This resolution, if adopted, will be of more substantial, permanent benefit to our navy, than all the ships of war you will build these ten years. It will go to sustain that branch of our commerce, which, more than any other, causes the boy to embark on the ocean, and to these boys we must look to sustain our reputation as a naval power.

Sir, I will not longer trespass on the time of the House. The proposition is so plain a one, that I am perhaps hardly justified in consuming the time I already have taken up.

If we mean any thing by saying we are disposed to encourage domestic industry—if we are willing to place our citizens, our own manufacturers, on the same ground we have placed the foreign manufacturer, we shall not refuse to adopt this resolution.

I ask gentlemen, if they are prepared to say to our citizens, if you will renounce your allegiance to this country, take your capital and workmen and go out to Cuba, establish yourselves there, and become subjects of the King of Spain—we will give you the protection you ask; but if you remain in this country, and continue to be a citizen, subject to our laws, we will give you no relief. And this is what, by a rejection of this resolution, you will say to every American citizen.

Mr. POLK moved to amend the resolution, by adding, "and to allow also a drawback of four and one-half cents per square yard on foreign cotton bagging, exported

either in the original packages, or around the cotton bale, to any foreign country."

Mr. POLK said, in offering this amendment, he did not intend to indulge in any general discussion of the principles of the tariff. A very few remarks in explanation of the reasons which had induced him to offer it, was all that he then deemed necessary. The resolution of the gentleman from Maine proposes to instruct the Committee of Ways and Means to bring in a bill to allow a drawback of nine cents per gallon upon the exportation of rum distilled in the United States from foreign molasses. The reason given why this would be proper, is, that the navigating interest of the East, as well as the manufacturer of spirits from this foreign material intended for exportation, were oppressively burdened by the imposition of a duty of ten cents per gallon, imposed by the tariff of 1828, on the exportation of foreign molasses. If this was a satisfactory reason why a drawback should be allowed upon this article, then he thought it could be clearly shown that, upon the same principle, a drawback should be allowed on the exportation of foreign cotton bagging wrapped around the cotton bale. The two articles stand upon the same principle, and he could see no reason for allowing drawback in one case and refusing it in the other. Foreign molasses, upon their importation into the United States, were subject to pay a duty under the present tariff of ten cents per gallon. The molasses were distilled in this country into spirits, and in that state exported to foreign countries for market. The gentleman from Maine proposed, upon the exportation of the spirits thus made from molasses, to allow a drawback of nine cents per gallon, leaving in the treasury one cent per gallon of the duty levied upon the importation of the molasses, to defray, he supposed, the incidental expenses and charges at the custom-house. Now, did not the article of cotton bagging stand precisely upon the same principle? That article, upon its importation into the United States, was charged with a duty, under the tariff of 1828, of five cents per square yard. When it was received in this country, it was used almost exclusively by the cotton planter in baling and preparing his cotton for market. It was again exported wrapped around the cotton. It was not consumed in the country any more than the molasses distilled into spirits and exported were. His proposition was to allow to the cotton planter, upon the exportation of his cotton bales, a drawback of four and a half cents per square yard on the bagging with which his cotton was wrapped for market, leaving in the treasury half a cent per square yard of the duty originally paid upon its importation. The East, or at least a portion of the East, complained that the duty on molasses was onerous, so much so, that it prevented its distillation into New England rum for exportation, and thereby affected the shipping interest; and that, therefore, a drawback of the duty should be allowed upon exportation. The South might, with equal reason, at least, complain that the duty of five cents per square yard on cotton bagging was an onerous and unnecessary tax upon the cotton planter; that, in consequence of it, he was compelled to pay five cents per square yard more for his cotton bagging, than he would have to pay if the duty was not levied; and that, therefore, upon the same principle, a drawback should be allowed to him upon the exportation of that article. If a drawback upon rum was allowed, New England would be relieved upon one item of the tariff, and could again, the gentleman from Maine has said, engage in the molasses and lumber trade. If the drawback which he proposed on cotton bagging was allowed, the effect would be, that the cotton planter could buy his cotton bagging for four and a half cents less per yard than he had now to pay for it. The only difference between the proposition contained in the resolution of the gentleman from Maine, and the amendment which he had offered, was, that the one was intended to relieve a portion of the

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East, and the other a portion of the South and Southwest, from a very small portion of the oppressive and unequal operation of the present tariff system. He thought, therefore, that molasses and cotton bagging, however strange the association might seem to be, should not be separated so far as the proposition of drawbacks was concerned. As the object was to reduce duties on one for the benefit of one section, a correspondent reduction should be made on the other, for the benefit of another section. This was but even-handed justice, and he was willing to refer both propositions to the Committee of Ways and Means together.

A drawback upon cotton bagging exported around the cotton bale stood, too, upon the same principle precisely as the drawback now allowed by law upon pickled fish, cured with foreign salt, exported for market, stood. There was not the slightest difference. Upon the importation of foreign salt, it was subject to pay a duty of twenty cents per bushel; but if the salt was used in curing or pickling fish for market abroad, the duty paid upon the salt upon its importation was paid back to the exporter of the fish in the shape of drawback. Indeed, by the drawback allowed upon the exportation of pickled fish, the East was the only portion of the Union which did not feel the effects of the enormous duty now imposed on imported salt. An attempt had been made, at the present session, to reduce the duty on salt, but we had seen that a majority of the House would not even permit an inquiry to go to one of our standing committees of the House, but had voted the proposition down upon its first introduction. He would [he said] have preferred a direct repeal of the duty on cotton bagging, to the drawback. He had offered the amendment in the shape of a drawback, only because the original proposition was in that shape. The effect of the one or the other would be very nearly the same.

No duty was ever imposed on the importation of foreign cotton bagging until the tariff of 1824 was passed. At that time a tax of three and three-quarter cents per square yard was imposed. By the tariff of 1828, it was increased to five cents per square yard. And for whose benefit, for the advancement of what interest, or rather to whose prejudice, was this tax imposed? It was intended, it was said, to furnish a market in the Southern States for the Kentucky bagging, by excluding the importation of the foreign article. Has this been the effect? Directly the reverse. In the Southern States, the planter was still compelled to buy the foreign cotton bagging, burdened as it was with this heavy tax. The foreign article was still almost exclusively used in a great portion of the Southern States. Not a bale, he understood, of the Kentucky bagging was ever carried to some of the Southern States for market, because it would not bear the land transportation so great a distance. This duty, therefore, had not, and could not benefit the Kentucky manufacturer, in those States to which his bagging was never carried to market; and, if it did, it would be unjust. It was a useless and oppressive tax upon the Southern planter, and never ought to have been imposed. Why keep on a tax that operates thus oppressively upon the South? He knew that this was but one small item in the general system of restrictive policy, adopted by the tariff of 1828; and if this Congress were determined not to do more, he trusted they would knock off, in the language of the gentleman from Maine, some of the rough corners of this system, and at least modify some of its detail. He had hoped, at the commencement of this session, to see a disposition, on the part of the friends of this policy, to meet the oppressed and suffering South, at least, on middle ground, and modify and remove, at least, some of the burdens of which they complain.

The State, [said he] from which he came, might be said to be situated upon middle ground, between the conflicting interest of the East and of the South, growing out of

this policy. In that State, the people felt the oppression and injustice of the system, but not perhaps to so great an extent as in the Southern States. They could live under any system; but they could live better without this restrictive policy, than with it. The great body of our people were planters; many of them were cotton planters—in a great part of the State, cotton was our principal staple for market. But, at the same time, we had a fresh and fertile country, abundant in all those productions necessary to sustain a dense population. This was not the case in some of the more Southern States. We [said he] can produce any article, and in as great abundance, too, that Kentucky can; and our climate enables us to produce cotton, which could not be grown in Kentucky. We could grow hemp as well as Kentucky; and if driven to it by high taxes imposed by the tariff policy, we could, and were beginning even now to make a part of the cotton bagging necessary for our own consumption. It would promote our interest if the taxes generally imposed by the tariff were reduced, and we could procure this and other articles, necessary for our consumption, at less prices. In his judgment the interest of Kentucky, too, would be promoted by a general reduction of the taxes imposed by the tariff. He had never been able to perceive what interest Kentucky could have, any more than Tennessee, in favoring the protecting policy. Her supposed interest in the article of cotton bagging was, he was persuaded, more ideal than real.

He was, [he said] upon principle, opposed to the whole system of the protecting policy called the tariff; but, as he had said in the outset of his remarks, he would not now go into the general discussion of the question. He had submitted this single proposition at this time, because it rested, as he had endeavored to show, upon the same principle with that offered by the gentleman from Maine; and because, if the friends of the system would not now modify it generally upon the principle of mutual concession and compromise, between conflicting interests of different sections, they would, he trusted, agree to alleviate the oppressive operations of some of its details. He explored the friends of this system in this Congress, to consider deliberately the present excited and agitated state of the country upon this subject; to give a listening ear to the long neglected complaints of the suffering South, and alleviate their burdens. He appealed to them to know if it was not for the permanent interest of all sections to modify the system and quiet the public mind. By adopting the single proposition he had offered, they would, he knew, go but one step towards effecting so desirable an object, but it would be some manifestation of a disposition, on the part of the majority in this Congress, to afford at least some alleviation.

Mr. MALLARY said, he was fully aware, that, whenever the tariff, in any shape, came before the House, much excitement prevailed. Whatever might be the tendency of the subject itself to produce this effect, he was determined that no excitement should be justly chargeable to any observations or remarks he might be required to make. As to the resolution introduced by the honorable gentleman from Maine, [Mr. ANDERSON] Mr. M. said he would make a brief remark. It requires the Committee of Ways and Means to bring in a bill to allow a drawback on spirits distilled from molasses, when exported. It is well known that this subject was discussed, considered, and decided in 1828. Congress determined that no drawback should be allowed. It is also well known that he was opposed to that decision at the time. He believed that the effects would be injurious to some interests, and beneficial to none. But the House, after the fullest consideration, in its wisdom determined otherwise. A majority decided that sound policy, the prevention of frauds on the revenue, the promotion of the agricultural interest, required the drawback should not be allowed. It was thus fixed: it was thus settled. No reason is now offered for a repeal, that was not fully



urged against the passage. It was as well understood then as now. No changes have taken place which were not fully anticipated. Unless a general understanding prevailed to make the change without involving any other provision of the tariff, he was in favor of no alteration. If a general disposition did exist to make the proposed change, the proposition of the gentleman from Maine would probably have his support.

But [said Mr. M.] what is the consequence? What immediately follows? The proposition of the gentleman from Tennessee, [Mr. POLK.] Mr. M. said he had been in favor of the duty on cotton bagging. He had supported that duty for the purpose of affording aid to an important domestic manufacture. The reasons for imposing that duty certainly sustain it at the present time. There is no change in the necessity or policy. In establishing a general tariff, it could not have been reasonably expected that every branch of industry would derive all the aid that was anticipated. The manufacturers of the coarsest kind of wool complain. No doubt some had been injured. He had been urged to attempt to obtain some change in the duty on that raw material. At the time of the passage of that tariff, he was opposed to that duty on such wool as was not produced in the United States. A majority of Congress considered that the duty ought to be imposed. It was done. He would let it remain. Many were opposed to the dollar minimum. The effects were pointed out. It was fully examined and adopted. He was unwilling to disturb it. Many were opposed to the additional duty on molasses. A majority decided otherwise. He was opposed to a change. The whole tariff system is, and must be, founded on a liberal compromise among the numberless interests of this extended country. In passing the tariff of 1828, they were all consulted. It was passed on that ground. Without a just and liberal compromise, no law, involving a variety of the great interests of the country, could ever be adopted. He had no doubt the tariff of 1828 had operated in general most beneficially. But its benefits will be greatly diminished, if not wholly destroyed, by perpetual agitation. Continual attempts to change its details, before its effects are fully developed, will do a thousand times more injury than all the benefits anticipated from any proposed alteration. It was due to all whose interests were dependant on the policy of their Government, to be allowed some little repose—not to be continually alarmed for their safety. He could not consent to the proposed alterations.

Mr. MARTIN, of South Carolina, said, this proposition to allow a drawback on cotton bagging, had come on very unexpectedly. It was one he would not have made, and he did not believe it would have been proposed by any of his colleagues. It is a small, a very small business, [said he] compared with the great drama in which they wished to take a part. But, as it had been made, he should offer no apology for intruding himself on the House. It would be expected, he presumed, that he should say something; but, independently of that expectation, he obeyed the suggestions of feelings and duty, in the course he was about to pursue. It must be admitted [he said] that the gentleman who has offered this amendment, occupies neutral ground; he stands between the manufacturers and those they would make the consumers of their bagging. He cannot be looked on in any other light than as one wholly disinterested; and so far as his object be to relieve the South of the least of its oppressions, it was, and should be, properly appreciated.

However unpleasant it was to some gentlemen who hear me, [said he] I shall feel bound to tell them some solid truths. I shall call things by their right names, even in this discussion on what all must consider as only introductory to what we will lay before the people of this nation if we may be allowed. Of all the duties imposed by your tariff, sir, [said Mr. M.] that on bagging is the

most iniquitous and untenable. The facts bear me out in this assertion; they are incontrovertible. I repeat now what I said in 1828, when the tariff was under discussion. I told gentlemen they might impose the additional duty on bagging, but they could not justify it on their own principles or pretences. They did not attempt to answer the arguments urged against the increase of duty, yet they passed it, for the same reason they would have passed any other amendment, the operation of which would have been the advancement of certain portions of this Union, at the expense of other parts of it. Yes, sir, there was something due to the West for its loyalty to this idol, nicknamed the "American system;" and those who were disposed to reward idolatry, bestowed their blessing, in the form of increased duty on bagging. Orit may be that some were disposed to punish those who consume the bagging, on account of certain very obnoxious votes given on other parts of the tariff bill. Of such, we ask nothing; and so such, we have no concessions to make. The course we pursued on that subject, has been admitted to be legitimate in legislation: I will not say since its commencement, but certainly since our acquaintance with it. How be their supposed course (he would not charge it on them, he might do them injustice) can be sustained by principle, he would not now stop to inquire.

It is charged against the South [continued Mr. M.] that we are too easily excited. Have they not sufficient cause to be excited? Do not their first and last dollar find their way to Northern pockets, without even touching your treasury? And what produces this state of things but the great scheme of depredation, of which this subject forms but a small part? It would be out of order, sir, to go into a discussion of the whole tariff; if it were not, he could tell gentlemen why they were excited by reciting the misdeeds of this House. He hoped, however, an opportunity would occur, when he could not be restrained in the discharge of a duty he held sacred.

What claim has the manufacturer of bagging to the protection of Government? What are their numbers, the amount of capital invested, or the product of their factories, no one will pretend to assert. It is carried on to a very moderate extent in Kentucky; it is still more limited in New Jersey; he knew of no other establishments, though possibly there may be some on a small scale in Ohio or Tennessee. So little claim has the manufacture of this article on the protection of the Government, that it cannot be justified even on the doctrines of the most absurd, profligate, and extravagant advocates of the tariff. A new scheme must be organized, and new theories must be manufactured, to give protection to this article the color or semblance of plausibility.

It is important to the interest and prosperity of the nation, say gentlemen, that her supplies should be drawn from her own resources. And pray, sir, [asked Mr. M.] what has the nation, as a nation or a Government, to do with the growth of cotton, or the manufacture of bagging? A small portion of your Southern Atlantic States only grow cotton, and no others can grow it. They have not asked your protection or your aid in any shape: they deprecate your interference with their concerns as an officious, intermeddling, and an unconstitutional exercise of authority given you for other purposes. If they are content to receive foreign bagging as they have done, and pay for it with their own money, not with funds abstracted from the Middle or Northern States, by what authority do others interpose, or for what purposes? Not for national purposes, for it is not a national affair—not for your benefit, for you do us positive injustice and injury. I was wrong, sir, when I said the cotton business was not a national affair. It has been made so of late by the pernicious legislation of this House. It is the first and greatest resource of the Government in paying its debts, and supporting its civil list, and sustaining all its institutions. Yet the great and lead-

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ing object of gentlemen in this House is so to embarrass its culture, and obstruct its transportation to a foreign market, as to compel us to suffer it to be manufactured at home; and this is what they call a "home market." Yes, sir, by paralyzing the industry of the South, and obliterating its capital, the market of the United States, any part of which is glutted by a single ship's cargo, and which consumes at most not more than one hundred and fifty thousand bags per annum, is to be converted into a market for the whole product of the United States, which now averages seven hundred thousand bags! And do gentlemen really expect us to submit to such a state of things, without being "excited?" If they do, they know less of us than we had supposed.

To sustain the proposition I have just stated, as one on which the advocates of the restrictive (I might say the non-intercourse) system rely, they tell you it follows as a consequence, that the interest of a few, or of one particular section, must yield to that policy which promotes the general good. He denied the application of any such doctrine in a Government like ours, except it be on those subjects upon which the power to legislate has been conferred on Congress. But, without discussing that question now, it was easy to show the absurdity of pretending to apply such a rule to the impost laid on bagging. No, sir, it is the converse of the proposition which was enforced when this duty was laid. Kentucky alone manufactures—for the rest are not sufficiently extensive to be mentioned—while there are no less than eight States who consume, not her manufactures, but the European fabric, if they can be allowed to do so: and to four of those States, it is a fact known to all, that the article from Kentucky cannot find its way. It can neither bear transportation over the mountains, or down the Mississippi, and thence, through the Gulf of Mexico and around the coast of Florida, to the Southern Atlantic States, at a price which will enable the holder to bring it into competition with foreign bagging. No one, however extravagant in support of the tariff, or any branch of it, will deny these facts. One who has not devoted some attention to the subject, could scarcely believe that such a state of things existed in any part of this country. But the worst has not yet been told. The gentleman from Kentucky, [Mr. CLARK] on whose proposition this duty was increased in 1828, was himself examined before the Committee on Manufactures; and from his evidence it will be seen that the factories in Kentucky already make better bagging than is imported, and that unless the crop of hemp be short, which compels the manufacturer to give a high price for the raw material, they can drive the foreign fabric out of the New Orleans market, or at least they can procure a better price than is paid for foreign bagging. Here, then, facts are at war with theory, and principle abandoned in practice. Who, sir, that has ever heard or read three distinct sentences, written or spoken by a manufacturer, or an advocate of the tariff, will not recollect that one of those sentences consisted of a declaration that, if you would protect their factories until they passed from infancy to maturity, and obtained possession of the market, they would ask it no longer? Then it was a millennium was to be produced in the commercial, manufacturing, and agricultural world. Yet, with the capital, and all other facilities to make a better fabric, and in the possession of the market, to the exclusion of foreign bagging, the factories of Kentucky were to be protected—I will not say it was no protection, but they were to have a bounty; it is nothing less than a bounty, let others call it by what name they may. With the possession of the New Orleans market, and wholly unable to reach the Atlantic markets, who can be so rash as to attempt a justification of this duty? But the manufacturers of Kentucky are scarcely blamable. It was a day appropriated to the distribution of Southern capital and Southern labor, by a species of legislative lottery, and they had,

perhaps, some claim to a share in the scheme, as an equivalent for the service they had rendered. How far the people of Kentucky have been benefited by the drawing of this lottery, is a question upon which they have not been very communicative.

Trifling, sir, as this duty may appear, it is one of the highest among your imposts. The duty is five cents on the square yard, but the width of bagging makes it about six cents the running yard. This, as an ad valorem duty, will vary from thirty to fifty per cent. The revenue collected by the Government in South Carolina on this duty alone, is more than all the taxes paid for the State Government, if you exclude that collected on a particular species of property: and it is nearly one-fourth of all collected from every source of taxation for State purposes. And for what purpose is this extortion practised? For the protection of the manufacturer of Kentucky? No, sir; I have shown he is not benefited by it. Is it to pay your public debt? No, sir; the design most prevalent is to divert the funds of the Government from that purpose. Is it levied for the support of your Government and its institutions? No one will pretend that such is the object. With what view, then, in the name of justice, was it originally imposed, or is it now continued? It was first used, sir, as a punishment for the pertinacious resistance of the South, and is now continued as a fit source from which to construct roads and canals. I have said this much in relation to the imposition of this duty and its operation. I will now speak of the amendment, proposing to allow the drawback on bagging re-exported, whether in bolts or around the cotton. What do we understand by a drawback? It is paying to the shipper, by the Government, whenever he exports a foreign article, the same or a lesser duty than that received when the article was imported into the country. It has for its justification satisfactory reasons; it is not the policy of the Government to retain the duty on an article which is neither used or consumed; and the repayment of the duty is often an inducement to reshipe the article, thus giving employment and activity to capital, and aiding in the navigation and commercial operations of the country. Another and important feature in this policy is, that when an article is imported, and manufactured or converted into a different fabric, and re-exported, by paying back the duty, encouragement has been afforded to the carrier, the capitalist, and the domestic industry of the country. These, I take it, are the grounds of the policy. Where the material is exported in its original state, there are few or no facilities for committing frauds: nor are these to be apprehended, with the guards adopted, even where the article has changed its character. Salt pays a duty of twenty cents on every fifty-six pounds; yet, on the exportation of fish packed in foreign salt, the duty on salt is repaid to the exporter of the fish. Bagging is imported, and pays a specific duty. It is used for packing cotton, and immediately re-exported. Is not the analogy so striking as to be irresistible? If there be any distinction, is it not in favor of allowing the drawback on bagging? Both are imported, and the duties paid. One is used in consummating the enterprise and industry of the fisherman, the other in preserving the fruits and labor of the agriculturist. Both are necessary to the objects in view, and both seek a foreign market.

Thus far the claims of the two articles to a drawback are equal, unless, indeed, the agriculturist, the husbandman, who gives life and vigor to all our pursuits, be less entitled to the favor and protection of the Government than the fisherman, whose claims, by the bye, it is not my purpose to undervalue. But here the claim to a drawback on the bagging rises superior, because, by reason of its identity, it affords fewer facilities for the commission of frauds on the revenue. It is imported in bolts, and undergoes no change, except that of being cut into pieces of four or five yards, and made into bags for the reception

of the cotton. You have scarcely an appraiser in a custom-house of the Government, who could not be able, after the first comparison, to distinguish between the domestic and foreign bagging. But as to the use of foreign salt, that must depend on extrinsic evidence—on affidavits. Now, without intending the least imputation on those who receive that drawback, I cannot but say the temptation and the facilities to commit frauds on the Government are greater, and more numerous, than would exist in regard to bagging. I appeal to the chairman of the Committee on Manufactures, [Mr. MALLARY] who has just taken his seat, to name, if he can, a single article, in the whole range of our commerce, which undergoes any change, with which it would be so difficult to practise a fraud in claiming a drawback on its exportation, as with bagging. Let him name it, if there be one in his knowledge. But, says that gentleman, the tariff was a compromise! Truly it was a compromise. But between whom was this arrangement effected? The Southern States, whose capital and labor the parties to it were dividing, and whose enterprise and industry the same parties were appropriating to their own use, had no voice in the compact. Like other parties acting in concert, but to whom it would be out of order that I should compare them, they found it difficult to divide the spoils on reciprocal terms—spoils not won by valor; not the fruits of victory achieved in honorable warfare. Compromise was necessarily resorted to: the principles of justice, equality, or reciprocity—none of them were applicable to such a state of things.

This effect of this proposition must be considered in all its bearings, we are told by the same gentleman, [Mr. MALLARY.] Why, sir, the duty on cotton bagging has no bearing, except on the Southern States, and they want no time to regulate the effects of its repeal. I hope I have shown that Kentucky did not require it. But I will not affect to misunderstand the gentleman. His allusions are to the effect which the repeal of the most trifling duty may have on the great "American system"—a system, the operation of which, it was promised, would have more beneficial effects than have ever been anticipated from the discovery of the philosopher's stone—one which was to make the poor rich by giving constant employment and high wages—the farmer was to sink under his own wealth, arising from the home market and extravagant price of grain, wool, &c.; and by an accumulation in the price of all these, constituting two-thirds of the investments in manufactures, all manufactured goods were to be rendered cheaper. Well, sir, the tariff bill passed; and how have all these anticipations been realized? The operatives, the laborers out of employment, or suffering by the low wages, and the farmer's grain rotting in his barn, or sold at a sacrifice. A portion of the goods cheaper, it is true, but of no sort of importance in estimating the benefits or injury resulting from the system. It was from the beginning a scheme of cheating; and those who innocently participated are now sensible of the delusion, but they will not acknowledge it. An abandonment of principles, when once adopted and insisted on so extravagantly, however erroneous they may be discovered to be, is a severe trial—one which few are willing to encounter. But, whenever truth, reason, and justice shall again acquire an ascendancy on this subject, (the time may be distant—I fear it is,) the fallacy of these pernicious projects will be admitted, and the extent to which they have been carried will be attributed to infatuation.

Much has been said [continued Mr. M.] as to the excitement the tariff has occasioned in South Carolina. Sir, that is not a subject for discussion here. We are not accountable to this House, on any score. If we were, I would not shrink from a contest in support of any thing and every thing the people in their collective character have said on this subject, on any occasion. There are some acts of Government, which, so far from being justifi-

able, are not even excusable. Of this character is your tariff: and if it does produce excitement, let those who have produced it profit by what they admit is known to them. If, instead of this, they will pursue this principle, on their heads, not ours, be the consequences.

[Here the debate closed for this day.]

#### JUDICIARY BILL.

The House then resolved itself into a Committee of the Whole House, Mr. CAMBRELEN in the chair, on the Judiciary bill.

Mr. DANIEL, who had possession of the floor, said that, in compliance with the request of the gentleman from Alabama, [Mr. CLAY] who intimated a desire to bring before the House a bill of much importance to his constituents, and requiring the immediate action of the House, he [Mr. D.] would not proceed with his argument to-day, but, to give the gentleman an opportunity of taking up his bill, would move that the committee rise, and ask leave to sit again.

The committee accordingly rose, and obtained leave to sit again.

#### PUBLIC LANDS.

On motion of Mr. CLAY, the House then took up a bill from the Senate, entitled "An act for the relief of purchasers of public lands;" together with the amendments reported thereto by the Committee on Public Lands.

Mr. CLAY explained, and supported, at considerable length, the objects of the amendment to the bill.

Mr. VINTON proposed to amend the bill by striking out all after the word "of" at the end of the seventh line, and insert the following:

"And shall be entitled to all the benefits of the act entitled 'An act for the relief of the purchasers of the public lands that have reverted for non-payment of the purchase,' approved May 23, 1828, and the said act shall be and is hereby extended to them.

"Sec. 2. *Be it further enacted*, That every assignment of any land so reverted, or of any certificate of purchase therefor made since the same reverted to the United States, or that shall be made within six months after the passing of this act, shall be, and is hereby declared to be, null and void.

"Sec. 3. *Be it further enacted*, That, if any person or persons shall, before or after the time of the public sale of any of the lands of the United States, bargain, contract, or agree, or shall attempt to bargain, contract, or agree, with any other person or persons, that the last named person or persons shall not bid upon nor purchase the lands so offered for sale, or any parcel thereof, or shall, by intimidation, combination, or unfair management, hinder or prevent, or attempt to hinder or prevent, any person or persons from bidding upon or purchasing any tract or tracts of land so offered for sale, every such offender, his, her, or their aiders and abettors, being thereof duly convicted, shall, for every such offence, be fined not exceeding — dollars, or imprisoned not exceeding — years, or both, in the discretion of the court.

"Sec. 4. *Be it further enacted*, That, if any person or persons shall, before or at the time of the public sale of any of the lands of the United States, enter into any contract, bargain, agreement, or secret understanding with any other person or persons, proposing to purchase such land, to pay or to give to such purchasers for such land a sum of money or other article of property over and above the price at which the land may or shall be bid off by such purchaser, every such contract, bargain, agreement, or secret understanding, and every bond, obligation, or writing of any kind whatsoever, founded upon a growing out of the same, shall be utterly null and void. And any person or persons, being a party to such contract, bargain, agreement, or secret understanding, who shall or may pay to such purchaser any sum of money or other article of pro-

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party as aforesaid, over and above the purchase money of such land, may sue for and recover such excess from such purchaser, in any court having jurisdiction of the same. And if the party aggrieved have no legal evidence of such contract, bargain, agreement, or secret understanding, or of the payment of the excess aforesaid, he may, by bill in equity, compel such purchaser to make discovery thereof; and if in such case the complainant shall ask for relief, the court in which the bill is pending may proceed to final decree between the parties to the same: *Provided*, every such suit, either in law or equity, shall be commenced within six years next after the sale of said land by the United States."

Mr. LEWIS opposed the amendment. He considered it entirely nugatory, and said that every measure had been resorted to for the purpose of destroying the system of speculation which the gentleman from Ohio referred to, but without success. He supported the amendments to the bill as reported by the committee.

Mr. VINTON replied.

Mr. ISACKS spoke in favor of the bill as reported by the committee.

Mr. BAYLOR addressed the House briefly in support of the bill.

The question on the amendment offered by Mr. VINTON as a substitute for the amendment of the committee, being called for from different parts of the House,

Mr. MCCOY said that the proposition of the gentleman from Ohio [Mr. V.] certainly deserved some consideration. He was sorry to see the impatience manifested by gentlemen to have this question put without affording a reasonable time to consider the subject. For his own part [he said] he would not vote for the bill as reported by the Committee on Public Lands.

Mr. MALLARY said, the subject had been long enough before the House to give all the members time to consider it. The gentleman from Alabama had called our attention to it frequently. The debate, he thought, explained the objects of the bill sufficiently, and he hoped the question would now be taken upon it. We could not do a greater act of justice, policy, and humanity, than to pass the bill in its original shape.

Mr. BURGESS said, he must confess he did not understand the question, although he devoted as much attention to it as the gentleman from Vermont. He moved that the House adjourn; which was negatived.

The question on the proposition of Mr. VINTON being stated,

Mr. WHITTLESEY asked for the yeas and nays; which were ordered; but, before they were taken, the House adjourned.

FRIDAY, MARCH 12, 1830.

## PAY OF ARMY AND NAVY OFFICERS.

Mr. WICKLIFFE, from the Committee on Retrenchment, reported a bill to regulate the pay of the officers of the army and navy in certain cases; which, being twice read, Mr. W. moved to refer the bill to the Committee of the Whole House on the state of the Union.

Mr. WHITTLESEY thought there were strong grounds to fear that the Committee on Retrenchment would interfere with the duties of other committees. He would move to refer the bill to the Committee on Military Affairs; and if it was not properly referrible to that committee, he could not conceive what other business they had to perform. If business connected with the navy is not peculiarly the duty of the Committee on Naval Affairs, he could not say for what it was established. He thought that the business of this House ought to be conducted with more order and regularity than have the same subject before two committees at once.

Mr. WICKLIFFE said that the gentleman from Ohio

was not aware of the situation in which he placed the party to which he belonged. We see from correspondents at Washington, extracts from letters sometimes bearing the authority of members of Congress, which state that this Committee on Retrenchment have done nothing as yet, but to abolish the insignificant office of a poor, poor little draughtsman; but now the gentleman from Ohio states that this committee is doing too much, and is encroaching on the business of a standing committee of the House. If the gentleman will look at the rules of the House, he will find that the bill, as reported by the committee, comes within the scope of its action. If the Committee on Retrenchment has not power to act on this question, it has not power to act on any. The object of establishing this committee was, that it should look into the conduct of the Government, to ascertain what offices may be dispensed with, what expenditures may be retrenched, and what organization of the public offices may be introduced in order to produce greater efficiency and accountability. The committee, therefore, looking at the expenditures of the army and the navy, were struck with astonishment at the gradual annual increase of these expenditures. They looked to the payment of the officers of the army and navy as prescribed by the legislation of Congress; and on comparing it with the regulations adopted by the Executive Department, they found that, in some cases, the payment of a considerable portion of the officers of both departments depended on the Executive discretion, and exceeded what is allowed by Congress. This bill is intended to correct that abuse, and to bring back the mode of payment to conform to the specific legislation of Congress; and if the Committee on Military Affairs thinks that the pay of officers is not high enough, let them introduce a specific enactment to increase it. If the Committee on Naval Affairs thinks that the pay of the navy officers is not sufficient, let them also introduce a law to increase it. This bill proposes to bring back the manner of paying officers of the army and navy, to the provision of the act of 1806, passed in the time of Jefferson. That law has never been changed by Congress. By the law of 1806, officers not under actual service are only entitled to half pay, and this regulation so continued till 1819, when an order was issued by the then Secretary of the Navy "to allow all officers not on furlough their full pay and rations." We propose [said Mr. W.] to bring the law into full force, by repealing the Executive legislation which has been adopted. If this is not the appropriate business of the Committee on Retrenchment, the gentleman from Ohio ought to get up and move to rescind the order of the House establishing that committee. He rose [he said] to vindicate the committee from the charge of interfering with the duties of another committee. Their powers, he was of opinion, were concurrent. He hoped the House would consent to treat the Committee on Retrenchment with courtesy, and to permit the appropriate reference of this bill. Mr. W. again repeated the duties of the committee, and concluded his remarks.

Mr. WHITTLESEY deprecated the introduction of party allusions into the transaction of the business of the House. The gentleman from Kentucky had adverted to letter writers, and implied that the Retrenchment Committee had been chiefly urged to the performance of its duties by these letter writers. If they could only be so urged, he hoped that this correspondence would be continued, whether the authors were members of this House, or were in the gallery. Mr. W. said, he saw no letters, as the gentleman from Kentucky had done, censuring the Committee on Retrenchment. He did not know whether they said that the only result of the labors of the Retrenchment Committee was the abolition of the office of a draughtsman. Granting all this to be true, [said Mr. W.] he was informed that the Committee on Military Affairs had spent all its powers on the subject. Was it competent, then,

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[he asked] for one committee to take up a subject, respecting which another committee had discharged its duty? He supposed that the rules of the House were intended to produce harmony, and that when a subject is referred to one committee, no other committee has jurisdiction over it.

Mr. WICKLIFFE made a few remarks in reply; and, on his suggestion, the bill was read.

Mr. VANCE said, there was no clause in that bill, the object of which was provided for by the bill reported by the Committee on Military Affairs. He referred to that clause relating to officers engaged in the topographical corps.

The question, on referring the bill to the Committee of the Whole House on the state of the Union, was then put, and decided in the affirmative.—*Yeas, 97—nays, 49.*

SATURDAY, MARCH 13, 1830.

## THE TARIFF.

The following resolution, offered by Mr. ANDERSON, being under consideration:

“Resolved, That the Committee of Ways and Means be instructed to bring in a bill allowing a drawback of nine cents per gallon on all rum distilled in this country from foreign molasses, when such rum is exported to a foreign country.”

Together with the following amendment offered by Mr. POLK:

“And to allow also a drawback of four and one-half cents per square yard on foreign cotton bagging, exported either in the original packages, or around the cotton bale, to any foreign country.”

After Mr. MARTIN had concluded his remarks,

Mr. SPEIGHT, of North Carolina, rose, and observed that the friends of equal rights and liberty should feel under great obligations to the gentleman from Tennessee, [Mr. POLK] for bringing this subject to the consideration of the House. And, I need not tell the gentleman [said Mr. S.] that I am prepared to go with him, not only in remedying the evil which he complains of, but in regenerating the whole tariff system. I view it as an imposition which is intended to be practised on the sound judgment of the people of this country, and one which, while it is intended to enslave a small portion of the Union to profit and benefit another, requires for its support a usurpation of power wholly unknown to the constitution. And I take occasion to say further, that it is a policy foreign from the true interest of this country, and one which, if persisted in, will not only end in the ruin of the Southern or agricultural States, but will sooner or later demolish this empire, and sink it into bankruptcy.

Mr. S. said, he had not risen for the purpose of attempting to discuss the general principles of the “American system,” for if his abilities were sufficient to do justice to the importance of the subject, his health would not permit it; he, therefore, asked the indulgence of the House but for a moment, whilst he, as a Southern representative, and one whose constituents felt the injurious effect, not only of the duty on cotton bagging, but of the whole system, expressed his opinion in relation to the amendment of the gentleman from Tennessee.

If, [said Mr. S.] upon an examination of the tariff of 1828, it can be shown that no article which the Southern States imported has been taxed, but such as the manufacturing States can furnish us with as cheap as we can import it, there might, at the first glance of the subject, be some justification to plead for its passage. But if it should, on examination, appear that not only those, but such as they cannot furnish us with at all, have been taxed, the inquiry will naturally result, how under heaven has it come to pass, that, under a Government which pro-

fesses to secure to each portion of the country equal protection in enjoyment of life, liberty, and property, has a law been passed, which must act as an engine of oppression, and rob one portion of the Union, and take its just earnings out of their pockets and put them into others? Without intending or wishing to go into the general merits of the tariff, if I do not show, in a very few words, that the duty on cotton bagging is the effect of what I have stated, I am greatly mistaken. If the manufacturing States could furnish a supply of the article in question as cheap as the Southern States can import it, why, then, there might be some pretext for laying the duty; but it has been shown, in the course of this debate, that the very small portion of the country which manufacture hemp, can, for all the bagging they manufacture, find a market beyond the mountains; and the only effect this duty of four and a half cents per square yard has on the article at the South, is to take out of the pockets of the honest, hard working farmer nearly two hundred thousand dollars annually to squander on objects in the manufacturing States, and to support their extravagance. It has been shown by the gentleman from South Carolina, [Mr. MARTIN] in the strong view which he took of this subject, that, at the adoption of the present tariff, those who advocated the duty on cotton bagging were requested to show the advantage it could possibly be to the manufacturing States. This, sir, was not done, nor can it be now shown, only that it is necessary to make the system complete, and to effect the ruin of the South. So far as my knowledge extends, I have not, in all my life, seen one bolt of it consumed in my country; and I venture to say, if the truth could be ascertained, there has not, since the war, been one hundred bolts of it used in the whole Southern States. Sir, I undertake to say, that notwithstanding the high duty we have to pay on the article, we can import and sell it cheaper in our market than the domestic bagging can be purchased from the manufacturers. Let any gentleman make the calculation what it will cost to bring domestic bagging over the mountains into the Southern States, or, if the gentleman please, ship it to us, and he will readily see the truth of the position which I have stated. Yes, sir, with this strong evidence before the face of the manufacturers, we are made to pay the high duty, to enable New England to buy up Kentucky, and get her to vote for the tariff. The South, then, have a right to demand a repeal of the duty. And if a majority of this House have any magnanimity or sense of justice, the appeal must be irresistible; for no gentleman, however blinded he may be by self-interest, can help seeing the injustice and inequity of the duty.

The effect that it has on Southern States is highly injurious, and may be shown in a very few words. It amounts to this. The manufacturing States, in order to carry out the system of taxation complete, have imposed an unjust tax on a certain article of prime demand in the Southern States, and the tax is no advantage to the manufacturing States. It takes out of the pockets of the honest, hard working farmers of the South at least one hundred and fifty thousand dollars, annually, for the single article of cotton bagging. Sir, in order to prove the truth of the position I have advanced, let us suppose the Southern States to consume, annually, four millions of yards of cotton bagging, forty-three inches wide; a duty on that quantity of four cents and a half per square yard would amount to almost two hundred thousand dollars; but I have no doubt that the amount consumed exceeds that quantity. Now I ask, and I hope to be answered correctly, can any person desire more conclusive proof of the injustice and oppression of the tariff system, than is here afforded on a development of the duty on this one article? Here is a tax of near two hundred thousand dollars annually imposed on the South for the consumption of an article which they, of necessity, are compelled to have; and, not having the

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means to manufacture it at home, are compelled to seek it in a foreign market. And, what is most iniquitous of all, the tax does not afford a protection at all for the manufacturers of the article in the United States. I profess to be no admirer of the drawback system; I should have preferred a resolution to have abolished the duty at once. Drawbacks I conceive to be one of the many follies which we have borrowed from other countries. And, sir, my objections arise from a belief that there is concealed behind it much mischief, and often great frauds are practised on the Government. But I cannot see any good or substantial reason why the Southern States should not be allowed a drawback on cotton bagging exported from the United States, as well as the Northern States on salt used in saving fish, or, in other words, a bounty on fish exported. Now, sir, I take it, the object of drawbacks is to prevent the duty from being paid on articles which are imported, not with a view of consumption in the country, but of exporting them again; as, for instance, the people of New England urge a reason why they should have drawback on salt, that they do not consume a large quantity of it at home, but use it for the purpose of saving fish which are intended to be exported.

This, sir, was the cause of the drawback being allowed. And I have no doubt, upon the examination of the custom-house books, in New England, it would be found that scarcely any duty is paid at all on the article of alum salt. It is quite an easy matter so to manage the business as to present the appearance of exporting, when in fact not half the quantity that is imported is again exported. Suppose, sir, we were to ask for an account of the quantities of fish taken by the citizens of New England. I hesitate not to say, that upon an examination it would be found that all the salt which is pretended to be exported would amount to more than two pounds to each fish.

And again, sir, there are large quantities of these fish consumed in the United States, and a large quantity of the salt which is used in saving them is again brought back. But this is not the fact as regards the cotton bagging. It is imported into the United States, and immediately exported, and never again returns; so that there is not that strong probability of fraud being practised on the Government, by allowing the drawback on that article, as on salt used in saving fish. If it were in order to go into a general discussion of the American system, it could easily be shown that it is a system of fraud and deception, and, in its effects, fatally calculated to reduce any portion of the country to utter ruin. Sir, we were promised, when this system was adopted, a home market, which would consume our products, and give us better prices than we could obtain abroad. The farmer was always to find a ready market for his produce, and money was to be put in every man's pocket. But I ask gentlemen if this has been the effect of the system? Have they found it to come up to their expectations, or has it not rather, on the contrary, produced a different result? Sir, the fact is notorious, while the manufacturing States themselves have not realized the promised benefits by one hundred per centum, the Southern States are sinking into ruin under the system. The beautiful and flourishing prospects of agriculture, which but a few years back adorned the South, are made, under the American system, to present all the appearances of havoc, destruction, and ruin.

We had entertained strong hopes that, at the present session of Congress, the tariff would have been so modified as to have united all parties. The South, sir, have never advocated a total repeal of the measure. But we had hoped, after the party contest had subsided, that a measure got up to answer party purposes, and arousing party feelings, would have been so modified as to have put the South on an equality with the manufacturing States. I do not wish to be understood as laying the passage of the tariff to the charge of the late administration. The fact is

undeniable, that the measure was seized on by both sides for the purpose of answering their ends in certain portions of the Union. And it is a fact beyond contradiction, that certain individuals voted for the tariff, for the express purpose of furthering the cause of their favorite candidate for the Presidency. The South has, therefore, a right to demand of this Congress, and of this administration, a repeal of the obnoxious system, and it, in turn, is bound in good faith to give it. But, sir, if we are to judge from the former conduct of this House, what have we to hope for? A deaf ear has been turned to all our remonstrances. And whenever a measure has been brought forward, which proposed a reduction of the high duties, they have been indignantly treated. They have, in fact, been denied the usual courtesy which parliamentary usage has assigned to them. Even the State from which I come, one of the old thirteen members of the confederacy, and the first to declare themselves of right free and independent, has been refused to be heard in a remonstrance against the high and oppressive duty on salt. And to prevent a reference of her memorial to a committee who had prejudged the subject, and who had reported that it was inexpedient to make any alterations of the tariff, the memorial was laid on the table.

When the tyrannical acts of this Government become so oppressive on the citizens of any State as to move the humanity of the Legislature to interpose in their behalf, it should be a matter of serious concern to those who administer the Government. It is not an irrational inference, to suppose that the Legislatures of the States are composed of talents sufficient to judge of the powers of this Government, and we may fairly presume they will never speak but on extraordinary occasions; and when the Federal Government transcends its power, they should interpose. Sir, let me remind gentlemen to beware of the consequences that may arise from the indignity with which they seem disposed to treat the sovereign States. I ask the friends of the American system, what must be the indignation with which North Carolina will look on the proceedings of this House in relation to their remonstrance against the high and oppressive duty on salt? and what must be her feelings, when she comes to learn that, instead of its receiving a respectful reference, it has been indignantly laid on the table? I have no doubt she will view it, as I do, with contempt and indignation. Sir, in the schemes of speculation that is generally going on, North Carolina has remained a silent spectator, and has taken no part in, nor will she do it; but, however humble she may appear, I will inform the friends of the tariff, she is not entirely lost to a sense of her injured rights; and when all hope is lost, and the day of trial comes, she will not be hindmost in the ranks to resent, with just indignation, the insults which have been offered her. We are told of disunion. Sir, my State repudiates such an idea. But let me ask gentlemen what they suppose such treatment as they have received this session is calculated to lead to, when a majority of this House become so lost to every principle of justice and reason, as to refuse to hear the remonstrance of the minority? What hope have we of this republic? Can we expect a Government which is composed of delegated powers from the State sovereignties, to last, when it attempts, by almost every act of a general nature it passes, to usurp the reserved powers of its creator? Sir, I ask you if the people of North Carolina will submit to be taxed to support the manufactures of New England? This, sir, is what the Legislature of my State have remonstrated against. And, sir, I undertake to say, whatever may be the contrary opinion that a majority of this House may entertain from those expressed in the memorial, it should, coming from a respectable member of the Union, have been treated with respect. But, sir, waiving for the present reflections of this kind, let us view the proceedings in relation to the same subject, originated in this House.

What, sir, was the fate of the bill reported by the Committee of Ways and Means, proposing a modification of the high duties on certain articles? Without even permitting it to be printed, and receive the ordinary courtesy belonging to subjects of importance, it was on the first reading indignantly laid on the table. From such a course of legislation as this, what has the South to expect, when one portion of the Union becomes so powerful in legislation as to oppress the other, and so insensible to justice as to refuse to hear their remonstrances? There is but one alternative left, that alternative I need not mention; "sufficient for the day is the evil thereof." Sir, what are we to say to our constituents, when we return to our homes, groaning, as they are, under the most excessive and unjust system of taxation to be found on the records of any nation? They will approach us to know if we have redressed their grievances! What must be their feelings when we unfold to them the history of our legislation? What must be their feelings when we tell them that nothing has been done? Disappointed in their expectations, they will depart; and driven to desperation by the unfeeling acts of an unrelenting and overbearing majority opposed to their welfare and happiness, from the most unworthy motives, the worst of consequences may be dreaded. Sir, there is a state of feeling to which human nature can be driven, to which insulted feelings and wounded pride may be driven, that death is preferable to life. Such, in my opinion, is the effect this tariff will have on the South, if not speedily repealed. The history of this country affords a striking proof of the height of desperation to which an oppressed people may be driven. When, sir, the tyrants of Great Britain were planning the destruction and ruin of these colonies, a system of taxation, fraught with such principles of injustice and inequality, never entered their minds.

The famous stamp act and tea tax sinks into insignificance when compared with the American system. The contrast is this—the former was a tax imposed by tyrants, in which we were required to pay pence; the latter is one imposed by our brethren, our neighbors, and professedly republicans, in which, for every one hundred dollars worth of cotton, rice, or tobacco, we export, we are made to pay forty-five dollars. It matters not whether the tax be laid on imports or exports, it is all the same if the doctrine be true that exports and imports in a series of years are equal. We export to import; and any duty which Government may lay, is a tax on this exchange, and, if laid in this country, must, in the end, come out of the producer of the article exported. If the friends of the tariff are allowed to collect out of us a tax of forty-five per cent., they might as well take one-half of our cotton, rice, or tobacco, before we export it, as half the articles we import in exchange for it; for my own part, I can see no difference: and if the system of robbery and plunder is to be riveted on us and our posterity, I, for one, would much rather they would take the raw material at once. If, sir, it is to be the law of this land that for every dollar which the honest, hard working farmers I represent, spend for the necessities of life, they are to pay this Government forty-five cents, I hope in God the system will be so modified as to authorize them to take half of our cotton, &c. &c. at once. I would much prefer it to the present tariff. Every person who is desirous of knowing how he is affected by the tariff, may tell by setting down at the end of the year, and simply calculating how much he has expended during the past, for coffee, sugar, salt, iron, &c. &c. If he has expended ten dollars, he has paid four dollars and fifty cents. If he has expended twenty dollars, he has paid nine dollars. If he has expended thirty dollars, he has paid thirteen dollars and fifty cents. If he has expended forty dollars, he has paid eighteen dollars. If he has expended fifty dollars, he has paid twenty-two dollars and fifty cents. If he has expended one hundred dollars, he has paid forty-five dollars. If he has expended two hundred dollars, he

has paid ninety dollars. The duties on imports amount to forty-five per cent. ad valorem. When the importing merchant lands his goods, he pays under the tariff that amount on his goods. In the per cent. he lays, he of course includes it, and therefore the consumer has it to pay. And, after all, it may be safely said it is a duty on exports, because we pay for these articles with our produce, and at the end the farmer loses out of the price of his produce. Sir, it is not my object, nor wish, to go any further into the general merits of the subject; I know it is not strictly in order, and there are many considerations which at present forbid it. But, sir, I think it is not a difficult task to show the analogy existing between the conduct of old England towards the colonies previous to the war of the revolution, and that of New England towards the South in relation to the tariff. When the mother country engaged in the French war which preceded the revolution, the colonies, to a man, came forward in support of British rights; they sacrificed their lives and treasures in support of the cause of the mother country. After the war had terminated, some of the nobility visited this country, and saw the flourishing condition in which we were; they saw that, in point of wealth, and in a very few years, we should outstrip the mother country. When they returned home, and related these things to the ministry, it became a matter of serious concern; and it was soon resolved, that, in order to prevent the growth and population of the colonies, a system of taxation should be devised, which would enable the mother country to reimburse herself for losses sustained during the war.

Sir, let us now turn our attention to transactions of a more recent date, and come a little nearer home. After the late war with England, in which the South bore a conspicuous part, and which was a war more to protect New England seamen and commerce than our own, the South planted the standard of liberty, and rallied around it; the sacrifice which she made was more than double the gain she derived from the issue of it. After the war was ended, what was the first step taken? The New England manufacturers came forward, and insisted that by the war they had been driven to adopt the manufacturing system, and unless we gave some protection they were ruined. The liberality of the South was appealed to, and on this, as on all others, it was extended. We lent our aid, and gave them the protection they demanded. The South felt no hesitation in sacrificing a reasonable portion of their interest to accommodate the North. But, sir, this was not deemed sufficient; it was evident that the tariff of 1816 was not sufficient to tax the South to that degree which would enable the manufacturing States to compete with them; they saw that in a very few years the rising wealth of the South would so far outstrip them, as to sink them into insignificance and contempt; and hence the famous American system was devised, which was not only intended to raise the manufacturers in point of wealth, but sink the South into ruin and poverty. What, in 1816, was asked as a matter of favor, was in 1824 demanded as a matter of right. Then, and not until then, was it asserted that a system of taxation was morally and constitutionally right, which seized on the wealth of one portion of the Union, and took money out of their pockets and gave to another. Not until then was the doctrine urged, that, because Providence, in the impartial distribution of its favors, had cast the lot of some in a rich, fertile country, warmed by the genial rays of the sun, and others in a more barren and cold climate, the farmer had to be taxed to make up, in point of wealth, the deficiency of the latter. This, sir, I repeat, is the effect of the tariff; and if the principle holds good in one point, it will in all. And, upon the same principle of reasoning, you have the moral and constitutional right to tax the wealthy part of our community, to an extent that will bring the poor class on an equality with them. I shall not, on the present occasion, go into arguments to prove the as-

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constitutionality of taxing one portion of the Union for the support and advantage of the other, but I must ask the indulgence of the House a few moments, while I notice some of the reasons which are urged in support of it. We are told that this country is able to live on its own resources, independent of foreign markets, and that, by adopting the American system, a home market can be found for our own produce. Sir, to my mind, there is not to be found in support of any doctrine ever advanced on earth, an argument more destitute of truth and reason than this. In the first place, it is a gross absurdity to say that the American system affords a home market; if it does, and the manufacturers can furnish us articles as cheap as we can purchase them abroad, why are these high protecting duties demanded? and why is it that the manufacturers consider any reduction of duties rather a curse than a blessing? To come to the point, if they can furnish us cotton bagging as cheap as we can import it, why is the duty of four and a half cents per square yard laid on the article? Why not pass the resolution on the table, allow the drawback, and I will venture to say the South will purchase the article where it can be had on the best terms. Sir, it is equally absurd to say that this country can live on its own resources, as well as to exchange with foreign nations; and the doctrine proceeds from the same selfish disposition which unhappily actuates some individuals in our country. Because God has blessed them with opulence and wealth, they are disposed to live on their own means, and even without exalting the ordinary civilities incident to civil life. In those States which have a dense population, I pretend not to say but that it may be to their interest to carry on manufacturing; but to every person acquainted with the Southern States, it is apparent that the system cannot be adopted without incalculable sacrifice. Unacquainted with the arts of manufacturing, owning a rich and fertile soil, and being under a climate admirably adapted to the culture of cotton, tobacco, rice, and other great staples, it is to our interest to cultivate them, and exchange with other nations for the necessities of life; and I should like to be informed, upon what principles of moral reason it is, we are bound to abandon our native pursuits, to accommodate the manufacturing States. Though we ask them not, sir, for a total repeal of the tariff, we are willing to extend them protection, so far as to place them on an equality with us. I, for one, am willing to extend protection, so as to enable our country in war to defend herself—further I am not willing to go, and further the South will not go. That the present tariff is the reverse of this, needs no argument to prove. As members of the same great family, we have made appeals to the magnanimity of Congress; but our remonstrances are turned a deaf ear to. We are told that a majority must and ought to rule; and that, if we are dissatisfied, we must appeal to the judiciary, which is the tribunal to settle disputes between the General Government and the States. Sir, I confess, in ordinary matters between the States and individuals, the doctrine is tenable. But I deny, that, in those questions which affect the sovereignty and independence of the States, the majority are to rule, or the judiciary is to be the umpire to decide. No person on earth is more disposed to yield to the judicial decisions of the country than I am, in matters cognizable before them. But when questions of conflicting interest exist between the Federal Government and the States, I deny that the judiciary is the tribunal to decide. The people themselves are to decide this matter. And I undertake to say, if the grievances under which they labor are not speedily redressed, they will decide it. But, sir, one word more in relation to the judiciary. Suppose the Chief Magistrate of this country, and a majority of the Senate, to be in favor of the unlimited powers which some attempt to give this Government, and vacancies should occur in the judicial department thereof, it is not irrational to suppose (if the powers be considered, that the judiciary

are to decide all questions of sovereignty between the General Government and the States) that men, whose opinions lean to the ministerial side, would be selected, and placed in power. And, sir, with a President and both branches of the Government in favor of giving to it unlimited powers, what prospect have an injured minority of justice, when they appeal to the judiciary? This doctrine of the minority submitting to judicial decisions, is the doctrine of despotic Governments, who never fail to manage the matter so as to make that branch of the Government subservient to their will; and once let the States concede this power to be in the judiciary, and let the people calmly submit to it, (which God forbid!) and your Government, sir, which is called republican, and said to be limited in its powers, will usurp the powers of the State Governments, because it is unlimited in its control, and the liberty of this country finally destroyed by an undue exercise of its powers. It is not difficult to see the rapid strides which this Government is making after power; and the only way to check the evil, is to cut off the source from whence it derives this enormous quantity of money. The amount collected from imports is annually about twenty-three millions of dollars, of which the Southern States pay about sixteen millions. And, sir, from this unequal and unconstitutional system of taxation, we have prayed to be relieved, and from time to time have remonstrated. Our State Legislature has protested against this system. Meetings have been held, in which the injustice of the tariff policy has been set forth, for which we have been branded with the epithet of disunionists. The South cherish no such feelings; they are as firmly attached to the Union as any portion of the United States.

But, sir, let me ask gentlemen to pause, and solemnly pause, and reflect on the course they are pursuing. A respectable portion of the Union have remonstrated against the unjust system of taxation under which they are made to labor, and this House has, on all occasions, set at naught the petitions. Their remonstrances against an unconstitutional exercise of power towards them have been indignantly kicked out of doors. I ask gentlemen if they suppose the wounded pride and patriotism of the South will tamely submit to such treatment? Sir, we want no disunion, and the charge is a foul aspersion, and I indignantly throw it back. The wish of the South is to cherish unimpaired the principles of the constitution, venerate its sanctity, and hand it down to posterity unimpaired. But, sir, when we see that hallowed instrument made to subserve the most unworthy motives; when we see that instrument which was made to protect us, and secure to us our liberty, used as an engine to oppress, we have but little to hope for. For my own part, I have no hope that the present Congress will do any thing to relieve the grievances of the South; nor do I believe any thing will ever be done, until we take a bold and independent stand. Sir, I shall advise no harsh measures, but my own opinion is, from the cruel and unprecedented treatment the South has received, she would be justifiable in throwing her ports open, and declaring the tariff unconstitutional. And until some such measure as this is adopted, we are doomed to a state of vassalage. When the South act as one man, and assert their injured rights, they will be speedily redressed, and not until then.

Sir, gentlemen may say this amounts to treason or disunion. But I think not. It would be the exercise of a power reserved to the State sovereignties, and the only alternative which is left an oppressed people, driven to desperation by the usurped powers of the General Government. It would in my opinion be that step, which, if taken by any one of the States, would lead to a speedy repeal of the tariff. And I have no doubt, if this House should persist in the high-toned career which has characterized their proceedings this session, in relation to this subject, it will sooner or later inevitably lead to it. And I hope,



when this is the only alternative left us, there will not be found in the whole South a man to collect the duties for the General Government. Sir, I have devoutly prayed that this "cup might pass us." Should it not, and we are forced to drink it, the consequences be upon them, and not upon us.

Mr. CAMPBELL, of South Carolina, said, although I am convinced that the resolution on your table would, by its adoption, relieve an important branch of industry in New England from an unjust oppression, and thus tend to extend her commerce and increase her resources, yet, disconnected with the amendment, I could not hesitate to vote against it. By the adoption of that resolution, we would remove one of the greatest evils which the people of New England experience from the present system of commercial restrictions, and thus unite her politicians still more firmly in that unholy war, which is so relentlessly waged against the great and legitimate interests of this country. Take the resolution in connexion with the amendment, and my present impression is favorable to its adoption: for, although convinced that nothing short of a thorough revision of the revenue laws can either heal the wounds, or soothe the irritated feelings of the South, yet a drawback of four and a half cents per square yard on foreign cotton bagging must be severely felt by the manufacturers of the domestic article; and, by at once destroying the fallacious and extravagant expectations in which the people of the West have indulged, may produce a rational mode of thinking, and ultimately relieve our commerce from the shackles of the "American system."

As the operation of the proposed allowance of drawbacks is in direct opposition to a system of policy which has been loudly condemned by those whom I have the honor to represent, and will effect, indirectly, the same objects which would be directly produced by a reduction of duties, I trust that I will be indulged in a few brief remarks upon the subject of protecting duties.

It is not, sir, as the representative of a section of this country only, but as an American citizen—it is with the feelings of one who loves his country, and desires her institutions to flourish, that I address you. It is with the sincere belief that the laws passed by Congress for the protection of domestic manufactures, are not only unjust in their operations, but that they are in violation of the spirit of the constitution, and utterly destructive of the principles of equality upon which this Government is founded.

In what article, section, or amendment to the constitution, do gentlemen find a power given to impose duties, amounting almost to a prohibition of foreign importations, for the encouragement of domestic manufactures? If there is such a grant of power, it has escaped my observation; if there is no such power delegated, its exercise must be founded in usurpation; and we are bound by every consideration of honor, religion, and patriotism, to retrace our steps.

I know that there has been a mode of construction adopted on this floor, which, under the power "to regulate commerce," conveys to Congress the power to destroy commerce; I know that there has been a mode of construction adopted on this floor, which, under the expression in the constitution, "to provide for the common defence and general welfare," conveys to Congress power to pass whatever laws may, in the opinion of its members, be thought necessary. Gentlemen who thus construe the charter of our liberties, may act conscientiously in the support of the "American system." The mode of construction which they have adopted, has broken down every barrier opposed by the constitution to the exercise of unlimited power; and there is left no control over their votes, but their ideas of expediency. Under the pretext of the general good, they may trample upon the rights and liberties of their fellow-citizens; the oaths which they

have taken to "protect the constitution of the United States," is a nullity; for to them there is no constitution to protect. To them the theory and principles of this Government do not exist: they have overleaped the last barrier opposed to the encroachments of the majority upon the rights of the minority; and to them this floor has already become an arena for the struggle of interest. I know that constitutional objections had as well be urged to the marble pillars which support this dome, as to them; for they would be convinced as soon.

To those gentlemen who believe that the power of this Government have some limit, but who think that Congress has exercised a constitutional power in imposing on the commerce of the country the fetters of the "American system," I would address myself. I conjure them by every tie of patriotism, by every recollection of the past glory and happiness of this country, and by every hope for the permanency and continuance of this Union, calmly and dispassionately to review their opinions. Ask them to inquire if, in the pursuit of partial objects, they have not allowed themselves to be misled to the enactment of laws, which, in their operations, must bring ruin and desolation upon a portion of this country. I ask them to inquire whether, in exercising the power to levy duties on foreign importation, they have preserved the letter of the constitution, if they have not violated its spirit.

Sir, I appeal to the friends of the American system; to patriots I appeal to them! Do they believe the tendency of the existing tariff is to diffuse health and prosperity through every section of the Union? Are they not convinced that such is not its tendency? Are they not, on the contrary, convinced that its evils are general, its benefits partial; that, if it has opened new sources of industry in one portion of the United States, it has produced depression in another? If so, as patriots looking not to the advancement of particular interests only, but to the good of all, they are bound to alter it. I call upon them as republicans. I ask them if the tariff of 1828 is not anti-republican and aristocratic in its operation; if its tendency is not to enrich the wealthy, and impoverish the poor; to make many dependant on a few, even for that occupation which is necessary to their existence, and thus to destroy the purity and corrupt the sources of elections. If so, as republicans who believe that purity in our elections is essential to the preservation of that virtue in the Government upon which our institutions must mainly rest for support, they are bound to modify it.

That a single interest, and that, too, an inconsiderable one, should have engrossed the entire protection of this Government at the expense of all others—that a few monopolists, who neither from numbers, or any other consideration, are entitled to direct our councils, should rule the destinies of this nation, exhibits the most singular instance to be met with in the annals of human history, of an intelligent people allowing themselves to be unreasonably led to the sacrifice.

How is it, sir, that in a country where error and prejudice should flee before the illumination of unrestricted inquiry, a system so unequal in its operation, and so incongenial with our republican institutions, should have found a home? To me it is an enigma: I know of nothing connected with our history to which it can be attributed, unless it be to the exaggerated terrors inspired by the late war, that we might again be found without the means of defence. At the conclusion of that war, every circumstance, both internal and external, opened a boundless field to American enterprise: the planter of the South gathered a golden harvest as the reward of his industry; the farmer of the Middle and Eastern States received a liberal price in exchange for his wheat and other productions. In the East, the West, and South, the rich and varied productions of our inexhausted soil fed and clothed the population of a world. In short, our commerce and agri-

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culture enjoyed an unexampled and unequalled prosperity, our manufactures alone were depressed; those who had supplied our soldiers with blankets and clothing, to protect them against the rigors of a Canadian climate, were alone unable to join in the song of grateful joy, which sounded from one extremity of this Union to the other. A sympathy, founded in the noblest feelings of the human heart, was excited in their favor; the generous South itself extended the fostering hand of protection; it was no time for the discussion of constitutional questions, and, in 1816, the wedge, the fatal wedge, was entered, and it has been driven, and driven, until it has produced a schism between the different sections of this country, which God grant may not prove incurable. Even then some of our statesmen (whose names will ever shine conspicuous on the pages of American history) saw, through the mists of general delusion, the outlines of that mountain, which now threatens to burst upon us with all the force of a volcano. In vain did those faithful sentinels warn their countrymen of the danger which was approaching; the current of sympathy was too strong to be resisted, and the door was widely opened, through which the constitution has been assailed, and the inhabitants of one portion of this Union been made to pay an enormous tribute to those of another.

The Government of the United States being formed for the common benefit, and resting upon the broad basis of equal rights, it follows that any law which operates unequally is a violation of its principles. That the tariff of 1828 operates with great inequality, there is no doubt; if it does not, why do some regard it as a blessing, while others denounce it as the worst of evils? From whence arises the discontent of the people of the Southern States? Do not add insult to injury, by telling them that the evils of which they complain are imaginary; they will not believe you. Gentlemen may say that a tax upon imports is a tax exclusively upon the consumer; that consumption for the most part is proportioned to population, and therefore the burdens of the tariff are equalized. Sir, I admit that the burdens of the system are felt by all, but I deny that they are in an equal degree. There is not, in the science of political economy, a proposition more susceptible of demonstration, than that a tax upon importation operates indirectly as a tax upon exportations. Some of the States export to a much greater extent than others; and thus it is that the tariff operates unequally. A single example will illustrate the proposition. We will suppose that ten pounds of cotton would purchase one yard of woollen cloth, free from duty; add fifty per cent. on the value to the yard of cloth for duty, and it will require fifteen pounds of cotton to pay for it. I will submit it to the impartial consideration of gentlemen, whether that provision in the constitution, which directs that "no tax or duty shall be laid on articles exported from any State," is not violated by a duty which indirectly operates as a tax upon exportation. This objection, if it exists, is more particularly applicable to a duty on cotton bagging, than on any other article, for it is used for no other purpose than to confine cotton, in order that it may be exported. Under the tariff of 1828, the average duties amount to much more than fifty per cent.

Is it not monstrous, sir, that the people of any portion of this country should be compelled to pay more than one-half of their income for the support of Government—for the support of Government, did I say? Not so—but to build up, in this republican country, the worst of all aristocracies, an aristocracy of wealth.

This is surely enough, but it is not the worst evil we have to apprehend from that system which has been forced upon us by the clamorous importunities of interested monopolists. You must unchain our commerce; you must reduce duties which amount almost to prohibition on foreign importations, or drive us from foreign markets, and utterly destroy the value of those productions, embracing

the great staples of the South, which depend principally on foreign demand for a market. This objection I have frequently heard replied to, by the observation, that European manufacturers cannot do without our principal staple of export. If this remark is true in relation to cotton, it is false in relation to rice, flour, and other productions; but it is not true even of cotton. Where are the fertile plains of South America? The cotton of Egypt, even under the arbitrary government of a Turkish Pacha, (which must, in some measure, paralyse the industry of his subjects,) competes with ours in European markets. In the East Indies, where the cotton is indigenous, it requires nothing but the substitution of European skill and industry to drive our cotton, as it has our indigo, (with the slightest disadvantage against us,) from every foreign market. To effect this, it does not require the adoption of retaliatory measures on the part of other Governments. Commerce is an exchange of equivalents, and there is nothing which makes it the interest of nations, whose productions are excluded, to continue with us a losing trade; their merchants and manufacturers, not from hostility to us, but from a regard to their own preservation, must look for some market to purchase, where they can also sell. By refusing their productions, we destroy their ability to purchase from us, and we must reap the fruits of such a policy, in being excluded from all but our domestic market; a market which cannot, under any circumstances, consume one-half the cotton now produced in the Southern States.

Some contend, that if our tariff was originally impolitic, its passage has induced many to embark their fortunes in manufactures, and that we are bound, from considerations of good faith, to continue it in existence.

Sir, we do not live under a government of precedents, but under a written constitution, which was intended to limit our power; and if we discover that we have overleaped the bounds of that constitution, yes, more, if we discover that we have legislated for partial objects, or passed laws which drain the resources of the merchant and planter to the coffers of the manufacturer, we should repeal them, even if the certain consequence was the ruin of every manufacturer in the nation.

Other Governments are formed, for the most part, from history and experience; under them the only obstacles opposed to the encroachments of power and prerogative, on the liberties of the people, originate from immemorial usages, or such expressions of popular rights as have been at different times extorted from the unwilling hands of power. In Governments having no other checks, it is essential to the appearance of national liberty, that precedents should have the force of constitutions. Not so with ours; all the power which we can legitimately exercise, we derive from a written constitution; and the powers not given by it are expressly reserved to the "States or to the people." Here a doubtful power cannot be sanctioned by use, nor become, by precedent, a matter of right.

There is no subject in the range of national legislation, upon which my constituents feel so much alarm, or which they have so unanimously deprecated, as the power assumed by Congress to regulate individual industry. They not only regard it as the offspring of unauthorized construction, and an exercise of power not intended to be given by those who framed or by those who adopted the constitution, but they fear its exercise must lead to the greatest abuse. Fear, did I say? They know its direct tendency is to engender those local feelings, and sectional animosities, which every man who desires the Union to continue, must regard as the worst of evils. Why do the inhabitants of this country regard each other with prejudice, distrust, and suspicion? The answer is obvious. Congress has assumed the exercise of powers which has awakened individual cupidity, and local interests have contended for ascendancy, and usurped in the halls of legislation that

place which should be consecrated to patriotism and virtue. I know there is not a gentleman on this floor who would not repel the influence of sectional feeling, in legislating for the American people; but such are the deceits of the human heart, that such feelings may exercise an influence on our opinions, of which we are not aware. Let us endeavor to resist their influence. Let our motto be, "our country!" With this motto, we will march under the banner of the constitution and of equal rights, to great and enduring national prosperity; sectional feelings and animosities will be forgotten, and the inhabitants of the East, West, and South will again hail each other as brothers and friends, under the common title of American citizens.

Sir, I cannot contemplate without horror the consequences of a different course. Discontent to the existing duties is universal at the South. The people believe that they are burdened by an almost insupportable taxation; but even of this they would not complain, if the object was national. In every trial you have found them ready; they ever have been ready, at their country's call, to meet her invaders; therefore, accuse them not of a want of patriotism. But I tell you that discontent, I had almost said despair, is general at the South. A cloud has lowered on the prospects of the patriot and philanthropist, and many think, without a change of measures, the day is not distant when a regard to their own preservation will compel them to seek, under the protection of the State Governments, a refuge from the usurpations of the National Legislature. They have endured much—they will still bear much; but rely upon it, there is a spirit at the South, which will not wait until her cities are deserted, and her country made desolate. Neither will her sons turn their backs upon the homes of their ancestors, to seek in some more favored land a refuge from your exactions; they will defend their homes—they will resist your tyranny, "peaceably if they can, forcibly if they must."

I appeal to the gentlemen from the South, the newspapers of the day, and, lastly, to my noble but oppressed constituents, and ask if this description is exaggerated. If gentlemen wish this Union to continue, let them adopt the means of preserving it; if they are not prepared to surrender the last home of freedom upon earth, I beg them to consider upon what may be the consequences of their measures. Let avarice usurp in this hall the place of patriotism and virtue; let the majority acknowledge no rule of conduct but sectional interest, and the days of this Union are numbered! Will gentlemen wait until resistance to the laws of this Government commences, before they extend relief? It may prove a fatal delay! Let the States be once arrayed against each other; let the sword of civil war once be drawn, and where, where, sir, will the conflict end? It will be no transient cloud, passing over our political horizon, soon to leave our prospects bright as ever; it will be no petty insurrection; but the people of a large portion of this country believe that their rights as citizens have been outraged; and, should the crisis arise, (which God forbid,) when it may be necessary to defend those rights by force, the spirit of the South will have departed, her sons will have forgotten that when a people have not the courage to defend their rights they are no longer worthy to be free, if they do not, with one accord, rise in their defence, and protect, with their dearest blood, the glorious inheritance of their fathers.

In the struggle which resulted in the independence of this country, the soldiers of the revolution did not endure the hardships of a desolating war, to enable a portion of their descendants to oppress the rest. The sufferings which they then endured were intended to benefit their whole posterity, and to establish a Government, extending its benefits equally to all. When the soldier of New England laid down his life on the field of Bunker's hill, his last moments would have been embittered by the reflection

that his descendants were to become the oppressors of their fellow-citizens. When the soldier of the South died on the plains of Camden, little did he think that his sons were destined to pay a tribute to the descendants of those who by his side had braved the storm of battle.

After that war was terminated, each State constituted within itself a separate and independent sovereignty, and each was perfectly competent to continue so. Common interest, however, soon united them in a league, which experience soon proved to be inadequate to the great purposes of Government. Afterwards, the constitution of the United States, enlarging and more clearly defining the powers of the General Government, was formed and adopted.

Never, to all appearances, was there a Government formed under such auspicious circumstances. The history of all ages and all nations was open before its framers; they saw that ambition, avarice, and oppression had defaced almost every page of that history; that Governments the best founded had not been able to withstand the desolating influence of human passion; and that Time, in his resistless course, had swept away the proudest monuments of political wisdom. Its framers were composed of heroes, statesmen, and sages, who had devoted their lives to the service of their country; and fondly did they hope that the Government they had formed was so carefully guarded against abuse, that, when centuries should have rolled their courses in the tide of time, it would still remain a blessing to their posterity. Can it be possible, sir, that this glorious Government is destined to fall a sacrifice to the monopolizing spirit of a few visionary manufacturers? If I were a manufacturer myself, I would not hesitate to see every manufactory in this nation sink into the depths of the ocean before I would endanger the existence of the Union. If there is a gentleman on this floor who would hesitate between these alternatives, let him announce it! I know there cannot be one. But such is the fact! Let those who doubt, go to the South, and judge for themselves. They will there see a people almost in the agonies of despair, who would willingly die in defence of the Union, but who are determined not to submit to laws which they think are in violation of the constitution; and which, if continued, they believe must convert a prosperous country into a waste and desert.

It is immaterial, sir, whether this opinion is founded in reality or in misconception; the effect is the same. Opinion is the only tribunal to which they have; or to which they can appeal; and opinion has pronounced the act unconstitutional. Admit the federal court to be the tribunal appointed by the constitution, and what redress can it afford? That law is upon its face constitutional; and no court can pronounce it to be otherwise, even if, in the opinion of its judges, it violated every principle of the constitution. Congress has the right to lay duties for revenue; and no judicial tribunal can assume the legislative power of determining what amount of duty is for revenue, and what for protection. Change the title of your law; let it profess to be what it is; call it "an act for the protection of domestic manufactures and the destruction of foreign commerce;" and then, if an individual complains that he is oppressed by its operation, the federal court may afford him relief; but, until this is done, it is useless to direct the sufferer to that court.

Having made these few remarks upon the principles of the existing revenue laws, and to show their unequal bearings, I will proceed to make a few observations upon their general expediency.

This country, sir, certainly possesses every advantage for the raising of raw produce. The nations of Europe, on the contrary, with a population that cannot find employment in agriculture and commerce, possess every advantage to manufacture cheaply. If we can exchange our produce for double the amount of European manufac-

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tures that we can for American, is it not obviously our advantage to exchange with the European manufacturer?

To an unsophisticated mind, this question conveys with it an evident proposition. But the rulers of this nation have thought differently. In imitation of a system of monopoly, which originated in an age of comparative barbarism, (and which is now discarded by every liberal politician of that nation which has carried it to the greatest extent,) we have fettered the industry of our constituents, and closed against them the sources of that prosperity which has made them great and powerful. By limiting the field of enterprise, we have caused a reduction in the price of every production which depends on foreign demand for a market, and brought to the verge of a premature decline the commercial and agricultural interests of the country.

Nature has legislated for the people of this country; her laws are inscribed on your fertile valleys; she has declared, that, to be prosperous, they must be agricultural and commercial. We have endeavored to resist her mandates; we have attempted to transplant into this country a species of industry, which requires a starving population for its support; we have attempted, by legislative enactments, to convert the freemen of America into spinners and weavers. What, sir, has been the consequence? Let those who represent manufacturers answer, if they have not experienced the most disastrous consequences from the tariff of 1828. I am informed that almost every branch of industry, which was intended to be protected by that iniquitous law, has experienced a calamitous reaction. If this is true, and I have not heard it contradicted, does it not afford a sufficient commentary upon the policy of the protecting system?

I would inquire, what interest has the West in the tariff, which can compensate to her the disadvantages which it produces? Does she want protection for her iron? Her distance from the ocean secures it from foreign competition; upon her distilled spirits she may retain the existing duties, and no one will complain. For her hemp she does not need protection, such are her facilities of raising that production: the duty upon it must soon be nominal. The West has carried on a valuable trade with the South in live stock; and I will ask, if every advantage combined, which she derives from the tariff, is sufficient to compensate for the loss of this trade. The West wants population—then why should she support a system, which must prevent emigration, by concentrating population in the old States? Sir, with deference to the gentlemen who represent the West, I say, her best interests would be promoted by an amelioration of the tariff. If so, why does she not unite with the South in breaking the fetters of an iron policy, which is injurious to both?

If the New Englander complains that he can produce nothing for market on his cold and rocky soil, the bright and sunny fields of the South invite him to a more propitious clime; let him come, we will receive him as a brother, and make him a citizen. If he is without a home, the West and Southwest invite him to a land where, with moderate industry, he may become a freeholder, and have every domestic comfort smiling around him—but nature having denied to his section of country the blessings which she has so kindly showered upon the South, affords no reason why he should oppress us. This is not all; he oppresses us without enriching himself; for if the mass of the community have an interest in manufacturing, I am yet to learn it. Do manufactures afford a market for the surplus productions of the farmer? To a limited extent they do; but this market is confined to neighborhoods, and is not general. Has the poor man capital to invest in manufactures? No; but if interested at all, it is only as a laborer. Then what, in New England, is the effect of the tariff? Its effect is not only to build up the fortunes of the few at the expense of the many, but, by increas-

ing the price of articles which necessarily enter into the consumption of every family, to drain from the poor the means of their subsistence. Let us differ, sir, as much as we may, with regard to the policy of restricting commerce, or the constitutionality of taxing the Southern planter for the benefit of the Northern manufacturer, we must all concur in one opinion—the inhumanity of those laws, which bear with a more than proportional hardship upon the poor and industrious.

It is useless to expect manufactures in this country to afford an adequate market for our raw produce, or to become the source of national wealth, until they are able to compete, upon equal terms, with the manufactures of other countries. This they cannot do, until the price of labor here is proportionate to the price of labor in Europe.

That labor is not as cheap in this country as in others, is to be attributed not more to our free institutions, than to natural causes. The territory of the United States is imperfectly settled; her forests are still uncleared, and much of her most fertile soil untrudged. In the cheerful walks of agriculture, the husbandman may find a sufficient employment, and a bountiful reward for his industry; while this continues the case, he will not desert his smiling and variegated fields for the gloom of a manufactory, nor exchange the proud independence of a landholder for the situation of a hireling.

This state of things will not always continue. When our forests shall have yielded to the axe of the husbandman; when the wilderness of the West shall be spotted with fields and villages; when generations shall have passed away, and busy millions of freemen teem on the shores of the far distant Pacific, then, and not till then, will manufactures flourish. Whenever there is a population in this country which cannot find employment in agriculture and commerce, less inviting pursuits will be sought for, and manufactures will arise without the aid of protecting laws, and flourish without taxing other branches of industry for their support.

So far, sir, from believing that any effectual relief will be extended at present to the depressed interests of the country, I have risen under the painful conviction that even the drawback which we ask on cotton bagging will be denied us. Do not, sir, understand me to intimate that there is a disposition in the majority of Congress to oppress the South; I entertain no such apprehension. But the friends of restriction are convinced that if the union of interests which at present binds them together, could once be broken, their system would fall under its own weight; they are thoroughly convinced, that if a single ingredient were lost out of that singular mixture of "cotton bagging, woollens, iron, salt, mill duck, and molasses," those interested in the remnant would not have the power to force so noxious a dose on the American people.

Sir, it cannot be concealed that a majority of this House have adopted the determination to curb, as much as possible, the discussion of this subject—a determination which leaves us nothing to hope, until the great mass of the people in the East or West are convinced that the restrictive system does not diffuse a general prosperity, and is only calculated to enrich the wealthy. I think there is most to hope from the people of the West, who, from their situation, the cheapness of land, want of population, and scarcity of money, combined, cannot, surely, long continue in the belief that they are in a condition to manufacture advantageously.

How long the South will wait for this change, I cannot say; it shows a high moral feeling and attachment to the Union, that her citizens have waited this long; it shows that when convinced that their best interests have been sacrificed at the shrine of the most infatuated doctrines (I say it with deference) that ever disgraced the councils of a nation, they have been unwilling to resist the measures of the General Government. Their forbearance

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has not proceeded from fear, but patriotism, from a love of country, which, so long as there is virtue and intelligence in the people, gives me hope that this Union will continue. But, to ensure this, no single set of men should direct our councils, or by their rapacity plunder the rest. If they do, this Union will indeed form a "rope of sand." God grant that this may not prove the case; but that the barriers of the constitution, which were intended to restrain the encroachments of the majority upon the rights of the minority, may be sacredly observed. Then, sir, will the benefits of the American revolution extend its blessings to all future time: the tree of liberty which was then planted, will not only grow and flourish until it spreads its broad branches from the Atlantic to the Pacific Ocean, but such may be the influence of our example, that perhaps it is not too much to hope the day will come, when all the nations of the earth shall repose under its shade.

[At the conclusion of his remarks, Mr. C. offered an amendment to the amendment, proposing to reduce the existing duties on salt and iron thirty per cent.]

[Here the debate closed for this day.]

#### GOODS DESTROYED BY FIRE.

The House then resumed the consideration of the bill "to remit duties paid on goods destroyed by fire," which had been reported some time ago from the Committee of the Whole, with an amendment to strike out the enacting clause (to destroy the bill.)

A long debate ensued on the merits of the case, of which the following is a very brief outline:

Mr. REED, of Massachusetts, rose, and addressed the House in support of the bill, which he contended was justified by every principle of sound and honest policy. He quoted several precedents in the legislation of Congress, recognising the principle of the bill from the foundation of the Government. The intention of Government in imposing duties was [he said] that they should finally fall upon the consumers, although, in the first instance, they were paid by the importers. The goods in question were destroyed by fire; and the effect of retaining the duties paid on them would be, that the Government would recover the duties twice from the importers, for they would necessarily import again the same quantity which was destroyed. He then referred, in support of the principle of the bill, to laws allowing duties on stills destroyed to be refunded—to the bill retaining the duties on goods which were on board a ship captured during the war, while going into St. Mary's, Georgia, to the act remitting the duties on goods destroyed by fire at Savannah, &c. &c.

Mr. PEARCE opposed the bill. He said it would establish a bad precedent; and if the duties were remitted to the importer, they ought, on the same principle, to be remitted to the underwriter. He denied there was any analogy between this case and those cited by the gentleman from Massachusetts. He said the argument of the gentleman would lead to the conclusion that Government would guaranty all goods imported, which through neglect might be destroyed in the store, or which might be exported by coastwise navigation from the North to the South.

Mr. GOODENOW said, every principle of equity justified the passage of this bill, and that justice should be done without regard to its being quoted as a precedent hereafter.

Mr. CARSON expressed similar sentiments.

Mr. CAMBRELENG said, the effect of the passage of this bill would be to encourage the importing merchants to neglect their business. He attributed the fact of this claim being made, to the remissness of the importer, who ought—as every merchant who knows his business does—to have insured his property. This was a case [he said] of gross and palpable negligence; and if the House should

adopt the principle of the bill, we would have our tables crowded with memorials whenever a fire takes place in the United States. The merchants in the interior of the country had as good a right to claim a remission of duties on goods destroyed by fire as the importer.

Mr. GORHAM, in reply to the argument of Mr. C. that the importer ought to have insured his goods, stated, that part of them were imported only five days before the fire took place. The importer was consequently deprived of both a foreign and domestic market for the goods, which, if exported within a certain time, would have been entitled to drawback. He referred, in support of the principle of the bill, to several acts passed to remit duties to collectors of the public taxes, &c. who had been robbed; to the case of Captain Hall, who had been robbed at Marseilles, in France; and to the case of Richard Smith, who had been collector of taxes in Michigan. He referred also to the bills remitting duties on goods destroyed by fire in Portsmouth, Norfolk, Savannah, &c.

Mr. McDUFFIE, in opposition to the bill, pursued the same line of argument as Mr. CAMBRELENG. If the importers ought to be released from the duties on goods destroyed by fire, he asked, what distinction was between them and the consumers? Where would the principle be limited? If the principle of the bill were adopted, [he said] it must be partial in its operation, and partial justice was the greatest injustice. He referred to the report of the Committee of Ways and Means, of which Mr. Lowndes was chairman, made in 1807. It discountenanced the principle of this bill. He hoped that the bill would not pass.

Mr. SUTHERLAND spoke at length, in support of the bill.

Mr. CHILTON remarked that he was well satisfied the claim under consideration could not, under any principle of justice or safety, be allowed. He said, he witnessed with some sorrow the prodigal waste of time in urging questions upon the House evidently against its wish, and in opposition to that opinion which was already expressed in committee. He was appraised that much important business remained to be done, and that time was speedily passing away. To reject the bill, and to terminate the debate, he would move the previous question.

The call for the previous question was sustained, and the House agreed that the main question should be put, which set aside the amendment to strike out the enacting clause.

The question recurred on ordering the bill to be engrossed, and read a third time, and was decided in the negative by yeas and nays as follows:

YEAS.—Messrs. Anderson, Arnold, Bailey, Bates, Borges, Butman, Cahoon, Carson, Condit, Cooper, Crighton, jr., Crowninshield, John Davis, George Evans, Fack Ford, Goodenow, Gorham, Grennell, jr., Hawkins, Hicks, Hodges, Hughes, Kendall, Kennon, Miller, Pettis, Ramsey, Reed, A. Spencer, Stanbery, Stephens, Sutherland, Wilson, Yancey, Young.—36.

NAYS.—Messrs. Alexander, Alston, Angel, Archer, Armstrong, Barber, P. P. Barbour, Barnwell, Barringer, Baylor, Beckman, James Blair, John Blair, Bockee, Bost, Brodhead, Brown, Buchanan, Cambreleng, Chandler, Childs, Chilton, Claiborne, Clark, Conner, Conley, Cowles, Hector Craig, Robert Craig, Crawford, Crockett, Crocheron, Daniel, Davenport, Warren R. Davis, Deberry, Denny, DeWitt, Dickinson, Doddridge, Drayton, Duncan, Earli, jr., Ellsworth, Joshua Evans, Horace Everett, Forward, Foster, Fry, Gilmore, Gordon, Hall, Haley, Hammons, Harvey, Haynes, Hoffman, Howard, Hubbard, Hunt, Huntington, Ibric, jr., Irwin, Irvin, Isacks, John R. M. Johnson, Cave Johnson, Kincaid, Perkins King, Adam King, Lamar, Lea, Lecompte, Leffer, Loyal, Lumpkin, Lyon, Magee, Martindale, Thomas Maxwell, McCreery, McCoy, McDuffie, McIntire, Mitchell, Mond,

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Muhlenberg, Nuckolls, Overton, Pearce, Polk, Potter, Powers, Rencher, Roane, Russel, Scott, Shepperd, Shields, Semmes, Smith, Smyth, Speight, Richard Spencer, Sprigg, Standfer, Sterigree, Wm. L. Storrs, Strong, Swann, Swift, Taylor, Test, Thomson, Tracy, Trezvant, Tucker, Vance, Verplanck, Vinton, Wayne, Weeks, Whittlesey, C. P. White, E. D. White, Wickliffe, Wilde, Williams.—129.

So the bill was rejected.

MONDAY, MARCH 15, 1830.

### THE TARIFF.

The House then resumed the consideration of the resolution moved by Mr. ANDERSON on the 10th instant.

The question occurred on the following amendment offered to the same by Mr. POLK: "And to allow also a drawback of four and a half cents per square yard on foreign cotton bagging, exported either in the original packages, or around the cotton bale, to any foreign country."

Mr. CAMPBELL rose to offer a substitute for the resolution and amendment, but, it not being in order, he withdrew it.

Mr. GORHAM moved to amend the amendment by striking out the words "foreign cotton bagging, &c." and inserting the following:

"Cotton bagging made of hemp or flax, and used for securing bales of cotton when the cotton is exported from any State to any other State for consumption, or to any foreign port as merchandise.

"Also, to allow a drawback of three cents per pound upon all cordage and cables manufactured in the United States, and used in the rigging and equipment of ships and vessels in the ports of the United States; and four cents per pound when exported to foreign places as merchandise.

"Also, to provide that the wool brought into the United States from any foreign place, which shall not cost more than ten cents per pound at the place whence imported, may be imported free of duty.

"Also, to make suitable provision in said bill to guard against frauds, and to graduate the drawbacks, so directed to be paid, from time to time, in such manner, that the amount of drawback paid shall not (except as to cotton bagging) exceed the duties levied and intended to be counterbalanced."

Mr. GORHAM addressed the House for some time in support of his amendment, but had not concluded his remarks when the hour allotted for the consideration of resolutions expired.

### PUBLIC LANDS.

The House then resumed the consideration of the bill from the Senate "for the relief of purchasers of public lands," together with the amendments reported to the same from the Committee on Public Lands. The question being on the amendment offered by Mr. VINTON, he made some remarks in explanation of it; and in conclusion he observed, that in order to ascertain the sentiments of the House in relation to the amendment, he would withdraw the two last sections of it, which contained the penal enactments. If the two first sections were rejected, [he said] he would renew his motion to amend the bill by adding the third and fourth sections.

Mr. CLAY said, he would vote against the amendment. He expressed his hearty concurrence in the two last sections of it.

Mr. IRVIN said he would vote in favor of the bill as reported from the committee. He hoped the amendment of his colleague [Mr. VINTON] would not prevail.

The question on the amendment to the amendment was decided in the negative.

Mr. VINTON then renewed his motion to add the third and fourth sections of the amendment he proposed.

Mr. CLAY expressed himself as favorable to the objects of this amendment.

Mr. WICKLIFFE, Mr. ISACKS, Mr. LEWIS, and Mr. BAYLOR severally spoke in opposition to the amendment.

Mr. MCCOY, Mr. BURGESS, and Mr. VINTON supported it.

The blanks in that part of the amendment offered by Mr. VINTON, which specifies the term of imprisonment and the amount of penalty, were filled up; the first with "two years," the latter with "one thousand dollars."

The question was then put on agreeing to the two sections offered by Mr. VINTON, and decided in the affirmative.

Mr. DODDRIDGE moved to strike out the words "first August," and to insert in lieu thereof "fourth of July," in the first section of the bill; which was agreed to.

Mr. VINTON moved to amend the second section, by inserting after the words "possession of" in the eighth line, the following words: "And actually cultivated and improved by"—

This amendment was decided in the negative.

The amendments were then ordered to be engrossed, and with the bill to be read a third time.

[The bill subsequently passed, and was returned to the Senate; which body concurred in the amendments made in the House.]

TUESDAY, MARCH 16, 1830.

The House resumed the consideration of the resolution offered by Mr. ANDERSON, of Maine, on the 10th instant, of the amendment offered to the same by Mr. POLK, and of the amendment to the amendment offered by Mr. GORHAM on the 15th instant.

Mr. GORHAM continued his remarks of yesterday in support of his amendment, and in conclusion moved to postpone the consideration of the whole subject, and make it the special order of the day for Tuesday next. He said his object in making this motion was to give gentlemen an opportunity of examining fully the whole question, which he considered one of the greatest importance, and requiring the most deliberate investigation. He hoped that no gentleman would move to lay the subject on the table.

Mr. EVANS, of Maine, said he did not know that he should be opposed to the postponement of the resolution for a few days, if desired by gentlemen for the purpose of reflecting upon the subject. He was, however, anxious to submit his views upon it, feeling, as he did, a strong solicitude for the fate of the resolution proposed by his colleague, [Mr. ANDERSON] and should prefer an earlier opportunity to do so than that named by the gentleman from Massachusetts, [Mr. GORHAM]. He inquired if it would be in order for him now to discuss the general subject opened by the resolution and the proposed amendments.

The SPEAKER replied that it would not be in order.

Mr. E. then expressed a hope that the resolution and amendments would not be postponed.

Mr. CAMBRELENG said, the subject of drawbacks was one of great importance, and required deliberate consideration. He hoped, therefore, the motion of the gentleman from Massachusetts would be agreed to.

Mr. TUCKER said, there was a better disposition to be made of this subject than a postponement of it. He moved to refer it to a Committee of the Whole House.

Mr. CAMBRELENG suggested to the gentleman from South Carolina that he would have as good an opportunity of offering any amendments he might think proper, when the subject was taken up as a special order of the

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day, as when it would be discussed in a Committee of the Whole.

Mr. TUCKER said, there were other subjects to be considered besides those embraced in the amendments. He said he would persevere in his motion to refer the subject to a Committee of the Whole.

Mr. POLK trusted that the House would support the motion of the gentleman from Massachusetts. He made a similar suggestion to Mr. TUCKER at that made by Mr. CAMBRELENG.

In reply to an inquiry made by Mr. CLARK, of Kentucky, the SPEAKER said, if the resolution was made the special order of the day for Tuesday next, it could not be discussed beyond the usual hour devoted for considering resolutions.

Mr. IRWIN, of Pennsylvania, said, that, to prevent gentlemen from extending this discussion further, he would move to lay the resolution and amendments on the table.

On this motion the yeas and nays were ordered, and were as follows: yeas, 89—nays, 70.

WEDNESDAY, MARCH 17, 1830.

#### THE JUDICIARY BILL.

The Judiciary bill was taken up in Committee.

Mr. DANIEL addressed the committee in support of his amendment (and in reply to the arguments of the gentleman from Connecticut; [Mr. HUNTINGTON and Mr. ELLSWORTH] but, before he concluded, the committee rose.

#### REVOLUTIONARY PENSIONERS.

On the motion of Mr. BATES, the House then resolved itself into a Committee of the Whole House on the state of the Union, Mr. WICKLIFFE in the chair, on the "bill declaratory of the act to provide for persons engaged in the land and naval service of the United States in the revolutionary war."

Mr. CHILTON, in pursuance of the notice he gave when the bill was last before the House, offered a substitute for the whole bill. He said, if his substitute should fail, he would not oppose the bill, although he thought volunteers were as much entitled to the benefits of the pension system, as those who enlisted. His amendment embraced two principles; one to extend the benefits of the pension system to those who served in the State regiments and to volunteers; the other to extend it to those who served nine months, without regarding whether it was under one enlistment, as is now required.

Mr. BATES said that this bill was simply declaratory. It is intended to extend and to give full effect to the provisions of the law of 1818, to give the law a more liberal construction than that adopted by the War Department. He proposed to amend the original bill, by inserting in the first section of it the following words:

"If the whole amount of his property, exclusive of the house, building, and curtilage, by him occupied and improved, his household furniture, wearing apparel, the tools of his trade, and farming utensils, shall not exceed the sum of one thousand dollars, all debts from him justly due and owing being therefrom first deducted."

Mr. WILDE said, that while he was in favor of extending the bounties of Government to those who served their country during the revolutionary war, he thought the proposition of the gentleman from Massachusetts, if it could succeed at all, would meet with more favor from the House if offered in a distinct and separate form. He inquired whether the militia regiments were included in the provisions of the bill.

Mr. BATES replied that they were not included. He offered a resolution on the 8th of January last, for the purpose of ascertaining the sense of the House in this particular, but no notice had since been taken of it.

Mr. CHILTON said, the adoption of the amendment would produce much uncertainty at the department, and Mr. BATES replied.

The question on the amendment proposed by Mr. BATES, was decided in the affirmative: yeas, 67—nays, 49.

Mr. SILL moved to amend the bill by adding to the first section of it the following words:

"And no applicant for a pension, under the provisions of this act, or of those acts of which it is declaratory, shall be required to show what his circumstances and condition in life were, or what property he was possessed of, at any time prior to the passage of this act."

The amendment having been read, Mr. SILL rose, and observed that he offered the amendment under a firm conviction that, without it, the bill would be ineffectual in affording the relief for which it was intended. He would endeavor to state, in a few words, [he said] the reasons which induced him to propose the amendment, and the object it was intended to effect. To explain his views, it would be necessary to take a short review of the pension laws, the intent and meaning of which this bill is intended to declare.

The first general act for the relief of the soldiers of the revolution, [said Mr. S.] was passed on the 13th day of March, 1818. This act, as well as that of 1820, is predicated on the principles of services rendered by, and necessity existing in the circumstances of, the applicant; they are intended for the relief of those who rendered meritorious services in the war of the revolution, and became reduced to such circumstances as rendered the aid of their country necessary for their comfortable subsistence. The act of 1818 made provision for all the survivors of the army of the revolution, who had served for the period of one month, and, in the words of the act, "stood in need of the assistance of their country for support." This act was continued in force until the first day of May, 1820, when it was repealed, and its place supplied by the act of that date, under which applications for revolutionary pensions are now made.

It is possible that, under the operation of the first mentioned law, some cases of improper admissions on the pension roll might have occurred, and that this might have had some effect in producing its repeal. But, from looking into the reports of the proceedings of that day, I am confident that the principal causes of its repeal were the amount of the pension roll and the exhausted state of the public treasury. It was stated on that occasion that, at that time, the revenue of the country was not sufficient to meet the ordinary expenses of the Government, by an annual amount of more than three millions of dollars. This act is founded on the same principles as that of 1818, but appears to have been intended to restrict the operation of those principles, and limit the description of persons who shall be admitted to receive its benefits. It directs that the payment of all pensions granted by the act of 1818 shall be suspended, and that, before any further payments are made, the applicant shall comply with all the requirements of the act of 1820. By the terms of that law, the applicant is required to appear before some court of record, and exhibit an inventory of all his property, together with the circumstances and situation of himself and of each member of his family. A valuation of his property, founded on the testimony of disinterested persons, who have a knowledge of it, must be made by the judges of the court. The applicant is also required to declare, under oath, that he has not, since the act of 1818, conveyed away, or disposed of, any part of his property, with the intention of bringing himself under the provisions of that law. These proceedings are all filed of record in the court where the application is made, and a copy of them forwarded to the Secretary of War for his decision on the claim; and if, on examination, he shall be

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of opinion that the applicant is "in such indigent circumstances as to be unable to support himself without the assistance of his country," he shall be entitled to receive a pension.

Different constructions, as it respects the circumstances and condition in life of the applicant, have been put upon this law. By the first construction that was adopted, the amount of property that an applicant was allowed to retain and receive, a pension was limited to three hundred dollars; during a short period, the sum was enlarged to one thousand dollars; but, before any beneficial effect was produced, this construction was abandoned, and the principle again adopted that the possession of property to the amount of more than three hundred dollars, however unproductive that might be, was sufficient to exclude an applicant from the benefits of the law. The bill now under consideration provides a remedy for this evil; it allows the applicant to retain property to the amount of one thousand dollars, exclusive of his household furniture and farming utensils. This, in my opinion, is a reasonable construction of the law. It never could have been the intention of the law to require an applicant to become a pauper before he could receive its benefits. But the regulations adopted by the War Department, in the application of this law, are such as to operate in many cases with extreme hardship, and exclude many meritorious claimants, for whose benefit the law was intended.

One would suppose that the provisions of this law, even if no additional requirement had been made by the War Department, were sufficiently guarded and severe; and, had nothing more than what appears to have been contemplated in the law been required, a compliance with those terms, although laudatory to the pride of a soldier, might not have been impracticable. But the regulations adopted in the application of the law are such that a compliance with them is, in many cases, not only difficult, but wholly impossible. The admission or rejection of an applicant frequently depends, not on his services, not on his poverty, which are the only considerations contemplated by the law, but on the adventitious circumstances of his ability to comply with the regulations of the department.

These regulations appear to be predicated on the presumption that every application is fraudulent. And in order to rebut that presumption, the applicant is required to do that which cannot reasonably be supposed to be within his power. He may prove that he performed the most meritorious services in the war of the revolution; that he served year after year in the most severe campaigns, and endured all the hardships and privations which were incident to the service. He may prove that himself, with a helpless and dependant family, are reduced to a state of the most extreme poverty and wretchedness, and that they are actually dependant on the charity of others for the means of their subsistence. He may show that he is actually the tenant of an almshouse. One would suppose that, under the most severe construction of the law, this ought to be sufficient to entitle him to receive the bounty of his country. But, it is not so. He may make full proof of those facts, and yet his claim be rejected; for by the regulations to which he is required to conform, he must also show the property, whether in money, lands, chattels, or claims, that he was possessed of on the eighteenth day of March, 1818, the time when the first pension law was passed. He must then trace out and exhibit all the changes, mutations, and dispositions of this property, and of every part and portion of it, from that period until the time of his application. If he has paid away any money, he must show to whom it was paid, and for what consideration. If he has paid any debts, he must show the origin of those debts, and for what they were contracted. In fine, he must make out a particular and detailed account of all his pecuniary transactions from the time of the passage of the law to the date of his application, which may amount to a

period of ten or twelve years. And all this, too, must be verified, not only by his own oath, but by the testimony of every individual with whom he may have had any pecuniary transactions during the whole period of time.

It must, I think, be admitted, that, at the time these regulations were adopted, a compliance with them would, in many cases, be a matter of extreme difficulty. The applicant was then required to show all the changes and mutations in his property from the eighteenth day of March, 1818, to the first day of May, 1820, a period of more than two years. But it is manifest that, by the lapse of time, the difficulty of a compliance is constantly increasing. It might be possible to trace out and establish, by testimony, all those circumstances during a period of two years, when it might be wholly impracticable after the lapse of ten or twelve years.

How great and entire a change in the circumstances of individuals, does the period of ten or twelve years often witness. What numbers, during that period of time, are reduced from a state of competence to that of absolute penury and want; and yet how small a portion of that number could, if required, give such a statement of their circumstances as is required of the applicant for a pension! How few could render such an account of every pecuniary transaction as is required of the aged and infirm soldier, and be able to support every transaction by the testimony of witnesses! The artful and designing man, who divests himself of his property with a view to such an event, might make his arrangements so as to effect his purpose, while, to the honest and undesigning, it would be attended with much more difficulty. And thus does it often happen. The soldier of the revolution possesses an honest and manly pride, which revolts at the idea of asking, in the character of a mendicant, that to which he believes himself to be entitled as a matter of right. It is with him an act of the last necessity. He relies upon his own resources, and depends upon his own exertions, till the increasing infirmities of age, or some unexpected calamity, reduce him to a state of utter helplessness and want. Compelled at length, by hard necessity, he applies for the relief the pension laws afford. In answer to his application, he receives a copy of the regulations of the War Department, and is informed that a compliance with them is an indispensable prerequisite to his obtaining a pension. He examines the regulations: he has kept no account of his transactions with a view to such an event: those with whom he may have had pecuniary transactions are, many of them, beyond his reach: he finds it impossible to comply with what is required, and, perhaps, after repeated and unsuccessful attempts, abandons his application in despair, and resigns himself to all the miseries of want, or avails himself of such relief as the hand of charity may afford. These statements are not made from reasoning or conjecture. They are the result of actual observation. The sphere of my observation is not very extensive, but I have actually known many instances similar to those I have attempted to describe. Now my object, by this amendment, is to obviate the hardships which this strict construction occasions. I am sensible that caution may be necessary to guard against attempts at imposition; and I have no objection to any degree of strictness in the inquiry into the circumstances and situation of an applicant; at least, it may be proper in the execution of the existing laws, although I think the laws ought to be more liberal and extensive in their provisions. But I do think it unmeasurable and hard to require of an aged veteran of the revolution that which, in many cases, is not only impracticable for him, but would be for almost any other individual in society. It must be obvious that the provisions of this bill, without the proposed amendment, would not remedy this evil. It would enlarge the number and description of those who would be entitled to admission on the pension roll, and so far its effects would be highly be-



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ineffical; but still every applicant would be subject to the same rules as are now established, and to all the inconveniences which are thus occasioned. This amendment is intended to remove these evils.

I have observed that the regulations to which I have alluded, appear to be founded on the presumption that every application for a pension was fraudulent; and against whom, I would ask, is this presumption made? Against the soldier of the revolution; against the followers of Washington—the men who fought the battles of our independence: they are made against the men to whom, under Divine Providence, we are indebted not only for every thing dear and valuable in our civil institutions, but for our very existence as a nation. They are made against the men who, in the darkest period of our revolutionary struggle, maintained the most unshaken fidelity to their country and its liberties. Men whom no threats could intimidate to desert, no bribes could induce to betray their country. And are these men, who devoted the prime and vigor of their days to the service of their country, when, in the decline of life, borne down with hardships and with age, they come forward to ask the small pittance allowed them, to be presumed to be guilty of an imposition on the Government, and required to do away that presumption by means which are entirely impracticable, or stand convicted of the charge, and turned away without relief? Why, if every surviving soldier of the revolution, whether rich or poor, should, for the few remaining years of his existence, receive a pension from this Government, it would be but a small part of the debt that is due them. And shall so much strictness, so much rigor, be exercised towards those who, oppressed by poverty and want, ask for that relief which is intended for them? Is it worthy a great and powerful nation to be so sparing of its ample means in relieving the wants of those to whose services and sufferings it is so much indebted?

I trust it will not be so considered. I hope that the amendment may prevail, and that the bill may pass. It will do much towards affording relief to those who devoted their best days to the service of their country, and are now lingering out a life of poverty and want. It will cheer and comfort the few remaining days of many an aged veteran of the revolution. Let us pass the bill, and let us do it quickly. Whatever is proposed to be done for their relief, ought to be done without further delay. Small is the number that now remain as objects of the gratitude and justice of their country; and death, the great leveller of all, is constantly making that number less.

The question on Mr. CHILTON'S substitute was decided in the negative.

The committee then rose, and reported the bill as amended to the House.

THURSDAY, MARCH 18, 1830.

## DISTRIBUTION OF PUBLIC LANDS.

Mr. HUNT, from the committee appointed on the 19th January last "to inquire into the expediency of appropriating the nett proceeds of the sales of the public lands among the several States and Territories for the purpose of education, in proportion to the representation of each in the House of Representatives," made a report, accompanied by the following bill:

*Be it enacted, &c.* That, from and after the first day of July, 1831, the nett proceeds of all sales of public lands, paid into the Treasury of the United States, shall be, and hereby are, appropriated to the use of the several States within this Union, and the Territories of the United States, for the purpose of education.

*Sec. 2. And be it further enacted,* That, the said nett proceeds shall, on the first day of July, annually, thereafter, be apportioned among and paid to the several States and Territories, according to their respective numbers,

which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and including Indians not taxed, three-fifths of all other persons.

*Sec. 3. And be it further enacted,* That the numbers aforesaid shall be determined by the enumeration made in pursuance of the constitution; and also by an enumeration to be taken in the year 1835, and in every subsequent term of ten years, in the States of Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, and Missouri, and in such new States as shall be formed out of the Territories of the United States.

The bill was twice read, and committed.

Mr. MARTIN then presented the project of the minority of the committee. The bill which he offered was considered by that minority as the best which could be adopted, if any was to be adopted; but, at the same time, they entered their protest against the proposition altogether.

## RETRENCHMENT.

Mr. McDUFFIE moved the following resolution:

*Resolved,* That the Committee on Retrenchment be instructed to report a bill, providing that whenever the first session of Congress shall continue for a longer period than one hundred and twenty days, the pay of the members shall be reduced to two dollars per day from and after the termination of the said one hundred and twenty days; and that whenever the second session of Congress shall continue for a longer period than ninety days, the pay of the members shall be reduced to two dollars per day from and after the termination of said ninety days.

After moving the resolution, Mr. McDUFFIE proposed to modify it so as to make it an inquiry into the expediency, &c.

Mr. WICKLIFFE adverted to a bill under the consideration of the Committee on Retrenchment in relation to this subject, on which a difference of opinion had existed, which prevented it from being reported. He, therefore, wished that the gentleman would not modify the resolution, but that he would leave it in the shape of an instruction, so that the sense of the House might be distinctly ascertained on the subject. He stated that no retrenchment more efficient in its character could be introduced than that proposed by the resolution.

Mr. McDUFFIE thanked the gentleman for the information he had given him, withdrew his proposition to modify, and moved that the consideration of the resolution be postponed till Monday. Agreed to.

## REVOLUTIONARY PENSIONERS.

The House then took up the report of the committee on the bill declaratory of the act to provide for persons engaged in the land and naval service during the revolutionary war, which was reported with amendments.

[The following is the bill as it was reported from the Committee of the Whole House.]

"That in all cases, in which application has been or shall be made to the Secretary of War, by any person, to be placed on the pension list of the United States, under the several acts to provide for certain persons engaged in the land and naval service of the United States in the revolutionary war," and the granting of such application shall depend upon "the circumstances and condition of life," as is provided in and by the same acts, of him who so applies, the applicant shall be deemed and taken to be unable to support himself without the assistance of his country, if the whole amount of his property, exclusive of the house, building, and cartilage, by him occupied and improved, his household furniture, wearing apparel, the tools of his trade, and farming utensils, shall not exceed the sum of one thousand dollars, all debts from him justly due and owing being therefrom first deducted. And no applicant for a pension under the provisions of this act, or of those acts of which it is declaratory, shall

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be required to show what his circumstances and condition in life were, or what property he was possessed of, at any time prior to the passage of this act.

"Sec. 2. *And be it further enacted*, That, whenever the granting of said application shall depend upon the term of service, as is provided in and by the first section of the first act of the several acts aforesaid, such applicant shall be deemed and taken to have served "for the term of nine months, or longer," as the case may be, within the meaning and intent of the said last mentioned act; if his continuous service in the war of the revolution, on the continental establishment, was nine months, or longer, notwithstanding his enlistment may have been for a shorter term than nine months, and notwithstanding he may, at any time, and during any portion of his said term, have been taken and detained in captivity.

"Sec. 3. *And be it further enacted*, That the regular troops of the several States of the United States, the enlistment and raising whereof was recommended or approved by the old Congress, shall be deemed and taken, within the meaning and intent of the acts aforesaid, to have been on the continental establishment; but nothing herein contained shall be so construed as to include in said class of State troops the militia of the several States."

Mr. CRAIG, of Virginia, moved to amend the amendment made to the bill in the Committee of the Whole, yesterday, by striking out the following words: "the house, building, and cartilage, by him occupied and improved," so that the bill would provide for persons worth one thousand dollars, "exclusive of their household furniture, &c." Mr. C. said he offered the amendment under the conviction that it was not the intention of gentlemen to pension those whose circumstances were comfortable, and who were able to support themselves.

On this motion a long debate took place, in which Mr. BURGESS, Mr. BATES, Mr. WICKLIFFE, Mr. CARSON, Mr. HUBBARD, Mr. CLARK, Mr. P. P. BARBOUR, Mr. POLK, Mr. BARRINGER, Mr. EVERETT, of Massachusetts, and Mr. McDUFFIE, took part.

[The following were the remarks of Mr. HUBBARD.]

Mr. HUBBARD, of New Hampshire, said, it was not his purpose, at this time, to go into a very full consideration of this subject; but he would detain the House for a few moments, while he stated the reasons which would induce him to vote against the amendment proposed by the gentleman from Virginia, [Mr. CRAIG] and support the bill and amendments adopted in the Committee of the Whole. I have [said Mr. H.] ever been opposed to the contracted policy of the present pension system: I have ever been at war with what I have supposed to be the principle upon which that system is founded. The existing pension laws have been based on individual poverty and indigence, and not on actual services rendered, and on actual sacrifices made, in the cause of our country, during the period of our revolution.

In passing these laws, the Government have gone upon the principle that they were bestowing a gratuity, rather than discharging an obligation; and viewing these laws in this light, I never could give them my entire approbation.

It has been my uniform and firm belief that the services and the sacrifices of those who fought the battles of our country during our revolutionary struggle, laid a just foundation for a claim on the country; and that the provisions of our pension laws should be equally extended to all such, as a liquidation of their claim. It was the service of the faithful soldier that entitles him to a pension; and, whether rich or poor, he was equally the object of his country's justice.

The present laws are of a most invidious character; and the practical operations of them are most unjust. There are those in my own State, who were engaged in the same service during most of the war; who fought side by side under the operation of your pension laws: one is taken

while another is left, one is poor while the other is not rich; one receives the bounty of his country, and from the other that bounty is withheld: and why is this difference? why this invidious, this mortifying distinction? Merely, sir, because one by his own prudence has been able to save a few hundred dollars for the comfortable support of himself and his family: merely, sir, because one by his own industry has been able to keep himself from the list of town paupers: merely, sir, because he has not been the object of public and private charity; while the other has, by a course of misfortune, or by a want of ordinary prudence, experienced the embarrassments and privations of poverty. And yet it has happened, that, in extending the bounty provided by the pension laws to those embraced within the last description, you have made their situation, in point of property, far more desirable than the situation of those who are excluded from a pension by the practical application of the same laws.

Such is the partial, unjust, and invidious operation of the present pension system.

I shall most cheerfully give my aid and my support to the bill and to the amendments recommended by the Committee of the Whole, for the reason that they are calculated to extend the benefits of the pension system; and that, if they shall be adopted, the cases of many meritorious soldiers will be embraced within their provisions. When a few more years shall have passed away, all those who are now, or who may, by the most liberal provisions of your laws, hereafter be placed on your pension list, will be numbered with the congregation of the dead; and then there will exist no necessity to make the annual appropriations for the fulfilment of the existing pension acts, which seem to be so peculiarly obnoxious to the gentleman of Kentucky, [Mr. WICKLIFFE.] That gentleman says he is opposed to the bill and the amendments, for the reason that they will tend to swell the pension list; for this reason, and for this reason alone, they meet with my entire approbation, and shall receive my most hearty support. I perfectly accord with the remarks which have fallen from the gentleman from North Carolina, [Mr. CARSON.] To the whole of that faithful band of patriots, who performed the requisite term of service, in the war of the revolution, I would extend the benefits of the pension laws—I would do that as a matter of justice—could I have my will, I would not stop short; and, at all times, I shall feel disposed to give my best aid in the support of every measure which shall have for its object the extending the benefits of the pension system; which shall in effect place the greatest number of our revolutionary soldiers on the pension list. It would be but an act of justice to include every individual who has performed the requisite term of service. It would be but an honest discharge of our obligations to this meritorious class of our citizens.

The gentleman from Kentucky [Mr. WICKLIFFE] has further stated, that, if the amendment of the committee should be adopted by the House, it would of consequence greatly increase the amount of the appropriations for this object. It might be so; but that consideration should not deter us, if the measure is right: it cannot deter me from doing this act, which I deem but an act of perfect justice.

The number of revolutionary pensioners falls short of twelve thousand, and the number of invalid pensioners falls short of four thousand; and whether the number would or would not be increased, by passing the bill with the amendments now under consideration, I will not stop to inquire; for I cannot but consider this as a debt due to this faithful band of patriots, founded on services performed, and on sacrifices made, for this country during the war of our revolution; and it is alike due to all, no matter what may be his condition or circumstances in life. These being my views, and under the influence of these considerations, I cannot favor the amendment of the gentleman from Virginia; but shall most freely lend my aid to the

most liberal extent and to the most liberal application of the pension system, until every faithful soldier of the revolution shall participate in the justice of the country; and if I cannot succeed, at this time, in accomplishing the extent of my wishes, I will do whatever my hands shall find to do, in furtherance of the object.

The first pension act was passed in 1818, and it offered encouragement to the remnant of that band of patriots who braved the storm of our revolution, to ask and to receive aid from their common country; and under this act many did ask, and many received; but in a short period an additional act was passed, which suspended the payment of every pensioner until he should make and forward to the department a schedule of his property, which should furnish the evidence that he was in such indigent circumstances as not to be able to support himself without the aid of public or of private charity; and only in such event, according to the construction which had been given to the act of 1818, could he be restored to the list. Under the act of 1820, many, very many faithful and meritorious soldiers were dropped from the list. And although subsequent explanations would have warranted the department in reinstating many of the applicants, yet such was also the construction given by authority to the act of 1820, that those who had been dropped could not be reinstated, which suggested the absolute necessity of the act of 1823; and under this last statute such rules and regulations have been established at the department, as in effect to exclude almost every applicant who is not numbered on the list of town or country paupers.

Sir, it has become indispensably necessary that some explanatory law should be enacted; and believing, as I do, that the bill with the amendments, recommended by the Committee of the Whole, will do more justice than has as yet been rendered, I shall give them my support.

The amendment to the amendment was agreed to.

Mr. CLARK, of Kentucky, inquired of the Chair whether it would be in order to move to strike out the sum of one thousand dollars, and insert sixteen hundred instead of it.

The SPEAKER said it would not be in order to make a motion in the House to insert a higher sum than that which had been agreed to in the committee.

Mr. McDUFFIE then moved to amend the amendment just made, by adding to it the following proviso:

"Provided also, that all applicants who shall be worth less than two hundred dollars shall receive the full amount of the pensions herein provided; and that, for every hundred dollars more than three hundred which any applicant shall be worth, six dollars shall be deducted from the annual amount of the pension to which such applicant shall be entitled."

At the suggestion of Mr. CRAIG, of Virginia, Mr. McDUFFIE modified his proposition, by changing the sum to three hundred dollars.

Mr. BUCHANAN said, he would oppose this amendment, for the obvious reason that it would tend to produce fraud and perjury, since it held out an encouragement, to every applicant for a pension, to reduce his property as low as three hundred dollars. It would give him six dollars per every hundred he reduced the value of his property.

Mr. McDUFFIE said, he was astonished that a gentleman of so much sagacity as Mr. B. did not discover that the same objection lay against the bill itself.

Mr. BUCHANAN replied, the only difference was, that the temptation to commit perjury was, according to his [Mr. McD.'s] proposition, sevenfold greater.

Mr. ELLSWORTH opposed the amendment. It was [he said] too much refined for any practical purposes.

Mr. BURGESS also opposed it.

The question was then put, and taken by yeas and nays, and decided in the negative—124 to 56.

Mr. WICKLIFFE offered the following amendment, to be added to the first amendment of the Committee of the Whole:

"Provided also, that the provisions of the bill of 1813 shall be construed to extend to the officers and soldiers who served under General George Rogers Clarke in his expedition against the posts at St. Vincennes and Kaskaskias, and the officers and soldiers who served nine months at any one time in the State or continental service during the war of the revolution, in the quarter or wagonmaster's department, though they were not of the line of the army."

The question on Mr. WICKLIFFE's proposition was decided in the negative.

Mr. MARTIN then moved to amend the bill by inserting, at the end of the amendment of the committee to the first section of the bill, the following words:

"And all such as were engaged in service under the command of Francis Marion, Thomas Sumter, and Andrew Pickens, of South Carolina, whether during their command as colonels or brigadier generals."

He subsequently modified his proposition, by adding to it the following words, at the instance of Mr. WATKINS:

"And all such as were in service for the time stated in this act, under Colonels John Twiggs, Elijah Claude, and James Jackson, in the State of Georgia."

Mr. CHILTON moved an adjournment, which was refused.

The amendment proposed by Mr. MARTIN, as modified, was rejected.

The question being stated on the amendment offered yesterday in committee, by Mr. SILL, and agreed to,

Mr. HOWARD suggested that it was in conflict with the provisions of the act of 1820, prescribing the oath to be taken by persons claiming pensions.

To obviate this difficulty, verbal modifications were proposed by Mr. DAVIS, of Massachusetts, and Mr. BURGESS.

Mr. P. P. BARBOUR submitted the following—to strike out the third section of the bill, and to insert these words:

"Provided, that the oath prescribed by the act of 1820, entitled 'An act in addition to an act entitled an act to provide for certain persons engaged in the land and naval service of the United States in the revolutionary war, passed the eighteenth day of March, one thousand eight hundred and eighteen,' shall be so far varied as to apply to the date of the passage of this act, instead of the time in said act specified."

Mr. SILL offered the following proviso, which he thought would meet the views of the gentleman:

"But nothing in this act shall be so construed as to dispense with the oath required by the act of 1820."

Mr. P. P. BARBOUR, approving of this proviso, withdrew the amendment he offered; and

The question on thus amending the amendment was decided in the affirmative.

The amendment to the amendment was then agreed to.

The amendments of the committee having been gone through,

Mr. CHILTON then moved to amend the whole bill as amended, by striking out all after the enacting clause, and inserting the following as a substitute:

"That the provisions of the pension laws of the United States, which are now in force, shall be, and the same are hereby, so extended as to embrace, upon the same principles, and under the same rules and regulations as to testimony, such troops as fought in the State lines, or belonged to the volunteer corps, having served at one or more periods, for the term of nine months, and to the draughted militia of the several States."

Mr. CARSON moved an adjournment, which was refused.

Mr. CHILTON then proceeded to explain his amend-

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ment for a short time, but the impatience of members (it being then past five o'clock) induced him to renew the motion to adjourn. But the House refused to adjourn. Yeas, 82—nays, 102.

Mr. CHILTON then asked for the yeas and nays on the question upon the substitute be offered.

Mr. DWIGHT said, he thought it was but reciprocating the courtesy extended by Mr. C. to the House in not trespassing on their attention, when he discovered their reluctance to hear him, that they should indulge him, [Mr. C.] by agreeing to have the question taken by yeas and nays.

Mr. MILLER then called for the previous question, which was seconded. Yeas, 95—nays, 72.

The yeas and nays were ordered on the previous question.

Another motion to adjourn was made, which was unsuccessful.

The yeas and nays were then taken on the previous question, and it was decided in the affirmative—92 to 85.

On the main question, "Shall the bill and amendments be ordered to be engrossed for a third reading," the yeas and nays were ordered, and were as follows:

YEAS.—Messrs. Anderson, Arnold, Bailey, Noyes Barber, Barringer, Bates, Baylor, Beckman, Bockee, Boon, Borst, Brodhead, Brown, Buchanan, Burges, Cahoon, Campbell, Chandler, Clark, Coleman, Condict, Conner, Coulter, Cowles, Hector Craig, Robert Craig, Crane, Crawford, Creighton, Crowninshield, Daniel, Davenport, John Davis, Deberry, Denny, De Witt, Dickinson, Doddridge, Dudley, Duncan, Dwight, Earll, Ellsworth, Geo. Evans, Joshua Evans, Edward Everett, Horace Everett, Finch, Ford, Forward, Fry, Grennell, Halacy, Hammons, Hawkins, Hempbill, Hinds, Hoffman, Howard, Hubbard, Hughes, Hunt, Huntington, Ibric, Ingersoll, Thomas Irwin, William W. Irvin, Jennings, R. M. Johnson, Kendall, Kincaid, King, Lecompte, Lent, Letcher, Lyon, Magee, Mallary, Martindale, Thomas Maxwell, Lewis Maxwell, McCreery, McIntire, Mercer, Miller, Mitchell, Monell, Mullenberg, Norton, Pearce, Pettis, Powers, Ramsey, Reed, Richardson, Russell, Scott, Shields, Semmes, Sill, Samuel A. Smith, Ambrose Spencer, Richard Spencer, Sterigere, Stephens, W. L. Storrs, Strong, Sutherland, Swann, Swift, Taylor, Test, J. Thomson, Tracy, Verplanck, Washington, Weeks, Whittlesey, C. P. White, Edward D. White, Wingate, Yancey, Young.—123.

NAYS.—Messrs. Alexander, Alston, Angel, Armstrong, Philip P. Barbour, Barnwell, Bell, James Blair, John Blair, Chilton, Claiborne, Clay, Crockett, Crocheron, W. R. Davis, Desla, Drayton, Foster, Hall, Haynes, Isaacs, Cave Johnson, Lamar, Lea, Lewis, Loyal, Lumpkin, Martin, McCoy, McDuffie, Nuckolls, Overton, Polk, Rencher, Roane, A. H. Shepperd, Alexander Smyth, Speight, Stanbery, Standifer, Wiley Thompson, Trezvant, Tucker, Vance, Vinton, Wayne, Wickliffe, Williams.—48.

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The following resolution, offered yesterday by Mr. SWIFT, was taken up for consideration.

"Resolved, That the Secretary of War be requested to cause to be selected a suitable site for building fortifications on some point or island on Lake Champlain, near the line which divides the United States from Lower Canada; and also to cause correct surveys, plans, and estimates to be made for building fortifications on such site, and to make report thereof to this House at the next session of Congress."

Mr. SWIFT made a few remarks explanatory of his motives for offering the resolution—the necessity of which existed for some defensive work on Lake Champlain, from its present exposed condition, for the protection of the commerce of the lake, and for military purposes in case of war, &c. &c.

Mr. DRAYTON had no objection to the object of the resolution, but thought it would be better for the present merely to institute an inquiry into the expediency of the object; and he therefore moved to amend the resolution so as to make it read as follows:

Resolved, That the Secretary of War be requested to inquire into the expediency of causing to be selected a suitable site for building fortifications on some point or island on Lake Champlain, near the line which divides the United States from Lower Canada; and of causing correct surveys, plans, and estimates to be made for building fortifications on such site, and to make report to this House at the next session of Congress of what has been done under this resolution.

Mr. WICKLIFFE moved to refer the resolution to the Committee on Military Affairs, with instructions to report thereon to the House. He was opposed to the proposition as it stood. It might be considered as the beginning of a new system of fortifications for the interior frontier; and he asked if the nation was prepared to go into such a system. The resolution was the commencement of a system of fortifications for the northern boundary. It was just as proper to fortify the northwestern frontier, and round to the southwestern. He thought it unnecessary. The best defence was the strong arms and the stout hearts of the people; but, if the subject was to be inquired into at all, it had better go to the committee, and let them report a proper resolution.

Mr. MALLARY opposed the reference. The proposition was very simple, and required little expense. The frontier in question was peculiarly situated, and required some measures for its defence. He pointed out the peculiar circumstances, growing out of its exposed condition, and its importance, both as to the extensive commerce on the lake, and its importance during a war with the adjoining country, which rendered it highly proper to have a fortified position on the lake. There was, at least, nothing unreasonable or unjust in the proposition; no appropriation was asked now, and he was surprised at the opposition to it. Gentlemen might talk of strong arms and stout hearts, but they were often inefficient without the aid of other means, and would be insufficient to protect the commerce of the lake from depredation. He hoped the motion would not prevail.

The question on committing the resolution being put, there appeared to be no quorum in the House, the votes being 52 to 52.

Mr. SWIFT said, the resolution did not direct any fortification to be erected, but merely required surveys to be made, for the future guidance and decision of Congress, if it should see fit to order a fortification. The inquiry had been sent to the Military Committee heretofore, and they asked to be discharged from it, because they were without sufficient information on the subject. It was to supply this information that he proposed his present resolution. He dwelt on the expediency of a defensive work on the lake, and said, if gentlemen would recollect what took place in that quarter during the late war, they would see the necessity of it.

The hour here elapsed for the consideration of resolutions.

## REVOLUTIONARY PENSIONERS.

The engrossed bill explanatory of the revolutionary pension laws, (establishing a construction of those laws more liberal than they receive from the Secretary of War,) was read a third time, and the question stated on the passage of the bill.

Mr. WILLIAMS, of North Carolina, rose, and said, after the very full discussion of the bill yesterday, and the decided majority which appeared in its favor, it would be inexcusable in him now to consume the time of the House with an argument on the merits of the bill. But this was

as proper a time as any to try the sense of the House on the question of providing for the militia of the revolutionary war, as well as the regular soldiers of the revolution. He should, therefore, move to recommit the bill, with instructions to incorporate such a provision in it. If either of these classes of troops were to be provided for alone, Mr. W. avowed that he had no hesitation in saying he would give the preference to the militia, because they entered the service from different and higher motives, and were of very different materials. He would, however, abstain from any debate, and content himself with simply making his motion, which he hoped would not be cut off by the previous question, as was the case yesterday; and on his motion he called for the yeas and nays.

Mr. BATES opposed the motion. The only effect of it would be to defeat this bill, for every bill which had embraced the provisions proposed, had sunk. If the House was in favor of such a proviso, it could be introduced hereafter in a separate bill; but he protested against endangering the bill by this provision.

Mr. BELL reprehended warmly the mode pursued by the majority, in cutting off debate and amendment, and forcing the bill through.

He asserted and maintained at considerable length the merits of the militia of the revolution, and their claims to reward, if any part of the revolutionary soldiers were provided for; condemned the plan so manifestly pursued, of getting the pension system extended gradually by detachments, from a fear that it would not go down all at once; and avowed and explained his objections to the original pension act of 1818, on account of its unjust and invidious discriminations between the different classes which served in the revolutionary war, and excluding the most meritorious, &c.

Mr. TAYLOR, of New York, said, at an early period of this session he had the honor to introduce a resolution, which was passed by the House, instructing the Committee on Military Pensions to inquire into the expediency of reporting a bill, that in all applications for pensions under the act "to provide for certain persons engaged in the land and naval service of the United States in the revolutionary war," the fact of making application should be conclusive evidence that the circumstances of the applicant were so reduced that he needed assistance from his country for support.

The original act, said Mr. T., providing relief for the suffering remnant of our revolutionary warriors, was passed in 1818. Since that period, the tide of time has carried on its bosom to the ocean of eternity the venerable Bloomfield, the father of that act, and thousands of his companions in arms, to whom it was intended to afford assistance in their declining years. The surviving remnant stand in the midst of posterity, and look to Congress for justice. The stout hearts and strong arms, whose valor won our independence, and laid the broad foundation of all our power, and wealth, and prosperity, have a right to demand that in our high estate we should not be unmindful of their sacrifices and sufferings. They have a right to expect that they, too, will be cheered in the evening of their days by the beams of our national glory. To us they look as the depository of that power which alone is competent to remove the odious discrimination heretofore existing between those whose services were equal. Justice requires that soldiers who shared alike one common danger, should enjoy alike the same reward. If it depended on my vote, the disgusting and vexatious forms of inventories, valuations, and oaths of poverty should be abolished. I consider the law requiring them a disgrace to our statute book. It found its way there not only against my consent, but without the support of a majority of the whole number of the House of Representatives which passed it. The votes were, for the bill, eighty, against it, seventy-two—thirty-five members being absent. In my judgment, the only inquiry should be was the applicant a faithful soldier of the army of indepen-

dence for the period of time established by law? If the fact was found in his favor, he should be entitled to receive payment whenever he chose to claim his portion of the debt. Such is the spirit, and such was the intention of the act of 1818. It authorized no court to subject the aged warrior to an inquisitorial examination in regard to his property. It required from the judge no other certificate than that the applicant's service was for a requisite time. Had been intended by the framers of that law to limit its provisions to paupers, a tribunal would have been created to ascertain who were such, and report to the Secretary of War. No such thing was proposed or suggested. From the amendments moved, and speeches made, while the bill was under discussion in Congress, it is manifest that it was designed to embrace all whose declining years were reduced circumstances required assistance, to enable them to live in the degree of comfort suited to the character and merits of soldiers, whose intrepidity and endurance—whose heroic daring and patient toil had won the highest prize for which man ever fought. Great as are the blessings which America, Europe, and even Africa, have already enjoyed in consequence of their achievements, nothing short of prophetic vision can foretell the glorious results of their unexampled deeds, which futurity shall unfold, for ameliorating the condition of mankind. It was for these men, the impress of whose exalted virtues was stamped on the age dignified by their actions, that the law of 1818 was passed. From one of them,\* residing in my own district, and personally known to me from my youth, is a worthy and honorable man, I have recently received a letter, from which I beg leave to read an extract.

"Forty-six years ago this day, I received an honorable discharge from the service of my country. I tried to serve it faithfully between three and four years, and I should be loath to believe that I was a hard bargain for Congress. I have been industrious since that time. In more than twenty years I have not drank ardent spirits. I have always been temperate. What little property I have, has been procured by hard labor, and in no other way. I feel the effects of age, yet I must labor hard, or I cannot, with my little farm, make the two ends of the year meet. I have stood a sentinel at the door of the beloved Washington habitation many an hour. Many a day has been spent a harder duty than that of watching for so good a man. Congress must know what kind of cash old soldiers were put off in. President Jackson says in the message you sent me, that the United States will soon be out of debt. The Government is rich; old soldiers are poor; but, thank God, not all of them beggars: I will not beg of the United States. A revolutionary soldier should scorn it. It is as unnatural as it would be to see a worthy father begging of a son. There are hundreds still living like me, or more worthy. They have been industrious and temperate when working for themselves, and while achieving the independence of our country. We ask for justice. Pay us what we have by hard money, and the interest of it, and my old bones need not ache so often from hard labor. I had hoped President Jackson would have recommended something better than an extension of the benefits of the pension law to those who are unable to maintain themselves in comfort. Have not these relics of the war of independence some stronger claims upon their country than 'gratitude and bounty'? For one, I say give us justice, before President Jackson or any other man talks of 'bounty.'"

I present this worthy soldier as a sample of those whom I understood to be embraced in its provisions, when we passed the act of 1818. If none were intended to be included but paupers, it ought to have been entitled An act to relieve cities and towns from the support of old soldiers. But such was not its only object; while it included those,

Daniel Couch, Esq. of Milton.

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it did not exclude small farmers, mechanics, and laborers. The amount of the annuity itself is conclusive evidence that it was not designed to grant full support to the old soldier and his family. If so, it would have been greatly enlarged. But it was thought it would enable him, with what other means he might chance to possess, to eke out a comfortable subsistence, and enjoy in age the quiet and repose so well earned by his youthful exertion. It was not expected those in affluence would avail themselves of the pecuniary assistance it proffered to others; but when it was objected on the floor of this House, that the rich might take advantage of it, the venerable Bloomfield replied, it is better some few should receive assistance, who can live comfortably without it, than subject all to degrading conditions. None can receive it unless they serve for the specified time.

Such, Mr. Speaker, according to my understanding, was the object of the original act. Let us now inquire how that object was carried into effect by its administrators; and I am greatly mistaken if, in the sequel, it will not appear that the Executive department, to which the duty of executing it was confided, not only gave to it a most rigid construction, and established severe and unreasonable regulations, tending to excite many for whose benefit it was passed, but actually rejected numerous classes of applicants, clearly embraced by both its letter and spirit.

To substantiate a claim under the act of 1818, as passed by Congress, it was necessary to prove service until the end of the war, or for the term of nine months, or longer, at any period of the war. Enlistment for nine months was not required. But the Department of War required not only proof of continued service for nine months, but, setting up its authority above the law, and against the law, required proof of enlistment for nine months, as well as service. This usurpation of legislative power by the Executive department, excluded unjustly—first, all who enlisted for six or eight months, and, before the expiration thereof, re-enlisted for either period, making a continuous service varying from twelve to sixteen months. Secondly, all who, at the expiration of the time for which they enlisted, were induced by the earnest appeals of their officers, to continue in service a longer time, until recruits arrived to supply their places, although the aggregate time exceeded nine months. In the exigencies of the revolutionary war, it not infrequently happened that the very existence of the army depended on the patriotic and voluntary service of the soldiers, after they were entitled to their discharge. Thirdly, all whose enlistment being short of nine months, were taken prisoners and confined in dungeons and prison ships, so long as to complete more than nine months. The wrongs of these three classes are still unredressed. Many of them have gone to their graves, and are beyond our power to do them right. The living, who have borne up under our injustice, are older and feeble by twelve years than they were when we passed the law providing for them a relief, which, up to this day, the Department of War refuses to extend to them. They will die unredressed, unless we do them justice.

I have said that the severe and unreasonable regulations established at the department, exclude many meritorious claims. Bear with me, I pray you, while I state a case or two in illustration of this remark. Whenever it occurs, owing to the loss or destruction of the rolls, that there is no record evidence in the department, proving the enlistment and service, it must be supported by the oath of the party and two disinterested witnesses. It often happens that only one can be found. The others are dead, or removed, the soldier knows not where. Half a century makes frightful ravages among the rank and file of any army. That one witness, however, is above reproach, unimpeached and unimpeachable, in a life of threescore years and ten—disinterested in the question—accurate in his description of time, place, and circumstances—a man

on whose testimony a jury would convict of murder, and a court sentenced to execution; yet the oath of the old soldier, corroborated by the testimony of such a witness, is held insufficient, and he is spurned from the door of the department like a perjured knave.

Again: It often occurred, after a well fought field, that the hospital of the army, if, indeed, it was fortunate enough to have any thing deserving the name, was crowded with the wounded to such a degree that removal and careful nursing afforded the only hope of recovery. The heart of a father, yearning for tidings of his only son, directs his steps to the camp. He has heard of the battle and of the laurels won, and he knows that laurels grow on a blood-stained soil. He finds his son has not disgraced the name of his sire, who, on the plains of Abraham, fought by the side of the gallant and intrepid General Wolf. But he finds him dangerously wounded, and, rejoicing to find him even thus, obtains for him a furlough for two or three months, by which time it is hoped he may recover, and again join his corps. Meanwhile his regiment changes its position. It is ordered from Monmouth to Yorktown. The wounded soldier languishes longer than was expected. Application for a renewal of his furlough cannot be made. The term expires, and he is marked as a deserter. The war closes; distance, and poverty, and removals intervene to prevent further attention to the matter. At length he recovers, and in old age applies for the measure of relief to which he considers himself entitled. Then, for the first, he discovers the deep disgrace affixed to his name. After many weary journeys, he is fortunate enough to procure evidence, admitted by the officers of the department to establish the truth of these facts to their satisfaction as men; but yet he is denied his pension, on the ground that no evidence can be received to contradict the record. He is there marked as a deserter, and as a deserter he must die. The infamy must cling to his name, and descend to his posterity.

Sir, I will not weary you and this House by calling up the disgusting detail of the many examples of injustice which have come to my knowledge, owing to the severe and unreasonable regulations of the department. Those I have stated will serve to show the spirit in which the act has been executed. Would they were pictures of fancy instead of grave realities. But they are not. The files of this House, the petitions on your table, show they are not.

I now proceed briefly to notice another rule of construction, which has unjustly excluded a large class of meritorious soldiers from the assistance intended to be provided for them by Congress. When the act of 1818 was passed, it was understood to embrace the regular troops of all the States, who served continuously for nine months, the raising whereof was in pursuance of resolutions of the continental Congress. But the ingenuity of the department soon discovered there was a class of troops enlisted for periods varying from nine months to three years, under the recommendation of the old Congress, who served and suffered with the continentals, and, in all respects, performed continental duty, but who were not, by name, placed on the continental establishment. This discovery was followed by a rejection of all these claims. Even the few names of this class which had been admitted, under the first and more reasonable construction, were erased from the rolls. The hardship of their case will be apparent, if we consider that the only plain and generally understood distinction was that which existed between continentals on the one hand and militia on the other, between enlisted soldiers and draughted or detached militia. The officers might know, for they had an interest in knowing, whether they were technically on the continental establishment, but to the soldier it was immaterial, and therefore indifferent. The advancement of the cause, the term and nature of the service, and the character of his officers, were the only considerations of moment to him. Moreover,

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it often happened that officers in one campaign were technically continental, and, in the next, not technically continental, although enlisting regular troops to do continental duty, pursuant to resolutions of the continental Congress.

This was the case with Colonel Willet, of New York, and I know not how many of his subaltern officers. Why, then, should his soldiers be excluded? To my mind there is no satisfactory reason for the discrimination. The third section of this bill abolishes it, and admits them to the same privileges which are enjoyed by their companions.

Perhaps it may be said that the regulations of the department, under the act of 1818, were acquiesced in by Congress, and ought not now to be condemned. Call to mind, sir, the circumstances under which that acquiescence took place. The heavy importations of 1815 and 1816 replenished the treasury to overflowing; but they were followed by great commercial distress and financial embarrassment. The act of 1818 had scarcely gone into operation when the treasury experienced an alarming diminution of revenue. The pressure began to be felt in 1819. The next year it became so severe that we were obliged to borrow three millions of dollars, to meet the ordinary appropriations for the support of Government; and the year following we were compelled to make a loan of five millions of dollars for the same purpose. The pensioners were more numerous than had been anticipated, and they were found to reside chiefly in the Northern States. Their demands on the treasury were unexpectedly large, and were considered onerous. Retrenchment became the order of the day. One million per annum was saved by reducing the army from ten to six thousand, and another million by the disgraceful act of 1820, entitled "An act in addition to an act entitled an act to provide for certain persons engaged in the land and naval service of the United States in the revolutionary war," but being, in fact, a repeal of that act, in regard to many persons for whose benefit it was intended. That act prohibited any pensioner, under the act of 1818, receiving his pension, until he exhibited, on oath, an inventory of all he possessed; and authorized the Secretary of War to strike from the list of pensioners any person who, in his opinion, was not in such indigent circumstances as to be unable to support himself without the assistance of his country.

Every thing was confided to the discretion of the Secretary of War, and he exerted it in a spirit of severity suited to the pressure of the times. None but paupers were left on the rolls; all were stricken off who could live without public or private charity. Thus the boasted act of 1818, that noble act of national justice and gratitude, was converted into a law to relieve cities and towns from the support of certain indigent soldiers. That act also received a construction which wrought great injustice to many old soldiers; a person once stricken from the rolls, was considered forever debarred. Although his little property had been sold to pay his honest debts, and he had become the tenant of an almshouse, the Secretary of War turned a deaf ear to his petition. This injustice continued until March, 1823, when it was corrected by Congress, on condition, however, that the pensions should thereafter commence, not from the time of application, but of completing the testimony.

Thus matters remained, until the late Secretary of War, General Porter, came into office. He revised the rules established by his predecessors; and being of opinion that an old soldier, whose private income did not exceed eight dollars a month, perhaps with an aged wife and a helpless family, did need assistance, he decided accordingly, and amended the rules. The House of Representatives, at the last session, confirmed his decision, by a vote of great unanimity; and yet it was among the first acts of this administration to denounce that decision, and to re-establish the old rule, under the pretext that General Porter's

amendment was an act of legislation. If the amendment was legislation, what was the establishment of the original rule? I leave it to others to reconcile the President's annunciation of General Porter's decision with the recommendation in his message "to review the pension law for the purpose of extending its benefits to every revolutionary soldier who aided in establishing our liberty, and who is unable to maintain himself in comfort."

The gentleman from North Carolina [Mr. WILKINSON] wishes to amend this bill so as to provide pensions for militia, and for this purpose he moves its recommittal. If the gentleman is really a friend of the old soldier, I think he cannot fail to be convinced of the inexpediency of pressing his motion. In the first place, this bill, in its title and enactments, proposes no new legislation; it professes nothing more than to restore the pension law to their original meaning. It is declaratory of the true intent of the act of 1818, and of the construction which ought rightfully to be given to it. New provisions, therefore, are inapplicable to this bill. Secondly, the Committee on Military Pensions have, in another form, reported in favor of the militia, and their report is under the consideration of the Committee of the Whole on the state of the Union. When that report comes up, the principles which relief should be extended to them can be discussed and settled. Thirdly, the bill which passed this House at session, embracing the militia, failed in the Senate, and is understood, because it was apprehended it would seriously embarrass the operations of the treasury. If we conform this bill to that, we have no reason to anticipate for it a different fate. If we cannot do all the good we desire, let us endeavor to do all we find practicable. By tempting too much, we shall endanger the whole.

The gentleman from Tennessee [Mr. BAXTER] thought proper to institute a comparison between the merits of the continental soldiers and the militia; and he gave the preference decidedly to the latter. Far be it from me to arrogate ought from the merits of the militia. They were brave and patriotic, and accomplished all that militia could be expected to effect. I am willing to reward them, as will manifest that willingness when the report in their favor comes up for consideration. Some of the most brilliant achievements of the war were theirs, and are worthy of all praise; but why was it necessary for the gentleman from Tennessee, in eulogizing the militia, to degrade the regular army? Why did he apply to them the odious epithet "mercenary"? Were they mercenaries? Did they exchange the employments of civil life for the privations and sufferings of a camp from mere mercenary motives? How were they paid? In worthless rags. How were they fed? With rations inferior in quality, and insufficient in quantity. History informs us that "in January and February, 1778, the army at Valley Forge was, more than once, absolutely without food. Even while their condition was less desperate in this respect, their stock of provisions was so scanty, that there was seldom at any one of the stores a quantity sufficient for the use of the troops for one week."

Again: In the year 1780, Gen. Washington thus wrote to Gen. Schuyler: "Since the date of my last, we have had the virtue and patience of the army put to the severest trial. Sometimes it has been five or six days together without bread; at other times many days without meat, and, once or twice, two or three days without either. At one time, the soldiers ate every kind of horse food but hay."

How were they clothed? Let General Washington's letter to Governor Livingston, in 1778, answer: "The difficulties and distresses are such, as wound the feelings of humanity. Our sick, naked! Our well, naked! Our unfortunate men in captivity, naked!" "The want of coats for summer, and clothes for winter, crowded the hospitals with sick, from whence an unusual number were daily conducted to the grave."

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"The returns of the 1st of February, 1778, exhibited the astonishing number of three thousand nine hundred and eighty-nine men in camp, unfit for duty, for want of clothes; of this number, scarcely a man had a pair of shoes. Even among those returned capable of doing duty, very many were so badly clad, that exposure to the colds of the season must have destroyed them. Although the total of the army exceeded seventeen thousand men, the effective rank and file amounted to only five thousand and twelve."

The committee of Congress, which about this time examined the condition of the army, wrote as follows:

"Notwithstanding the diligence of the physicians and surgeons, of whom we hear no complaint, the sick and dead list has increased one-third in the last week's returns, which was one-third greater than the week preceding, and, from the present inclement weather, will probably increase in a much greater proportion. Nothing can equal their sufferings, except the patience and fortitude with which the faithful part of the army endure them."

"The want of wagons and horses, for the ordinary as well as the extraordinary occasions of the army, presses upon us, if possible, with equal force. Almost every species of camp transportation is performed by men, who, without a murmur, patiently yoke themselves to little carriages of their own making, or load their wood and provisions on their back."

The regular army of the revolution, mercenaries! Oh no; purer and holier motives warmed their bosoms and nerved their arms.

The opinion of General Washington, in regard to the relative importance of regulars and militia, is well known. In a letter to Congress, of September, 1776, he thus wrote: "To place any dependence upon militia, is assuredly resting upon a broken staff. Men just dragged from the tender scenes of domestic life, unaccustomed to the din of arms, totally unacquainted with every kind of military skill, which, being followed by a want of confidence in themselves when opposed to troops regularly trained, disciplined, and appointed, superior in knowledge and superior in arms, makes them timid, and ready to fly from their own shadows. Besides, the sudden change in their manner of living, particularly in their lodging, brings on sickness in many, impatience in all, and such an unconquerable desire of returning to their respective homes, that it not only produces shameful and scandalous desertions among themselves, but infuses the like spirit in others. Again, men accustomed to unbounded freedom and no control, cannot brook the restraint which is indispensably necessary to the good order and government of an army; without which licentiousness and every kind of disorder triumphantly reign. To bring men to a proper degree of subordination is not the work of a day, a month, or a year; and unhappily for us, and the cause we are engaged in, the little discipline I have been laboring to establish in the army under my immediate command, is in a manner done away by having such a mixture of troops as have been called together within these few months." After stating other objections against a reliance on the militia, which I will not detain the House with reading, General Washington proceeds: "These, sir, Congress may be assured, are but a small part of the inconveniences which might be enumerated and attributed to militia; but there is one that merits particular attention, and that is the expense. Certain I am, that it would be cheaper to keep fifty or a hundred thousand men in constant pay, than to depend on half the number, and supply the other half occasionally by militia. The time the latter is in pay, before and after they are in camp, assembling and marching, the waste of ammunition, the consumption of stores, which, in spite of every resolution and requisition of Congress, they must be furnished with or sent home, added to other incidental expenses consequent upon their coming and conduct in camp, surpass all ideas; and destroy every kind of

regularity and economy which you could establish among fixed and settled troops, and will in my opinion prove, if the scheme is adhered to, the ruin of our cause." Again: "Experience, which is the best criterion to work by, so fully, clearly, and decisively reprobates the practice of trusting to militia, that no man who regards order, regularity, and economy, or who has any regard for his own honor, character, or peace of mind, will risk them upon militia."

Again: "Militia might possibly do it (that is, check the progress of the enemy) for a little while; but in a little while also, the militia of those States which were frequently called upon, would not turn out at all, or would turn out with so much reluctance and sloth as to amount to the same thing. Instance New Jersey! Witness Pennsylvania! Could any thing but the river Delaware have saved Philadelphia? Could any thing be more destructive of the recruiting business than giving ten dollars bounty for six weeks' service in the militia, who come in, you cannot tell how; go, you cannot tell when; and set, you cannot tell where: who consume your provisions, exhaust your stores, and leave you at last in a critical moment."

The sagacious author of the life of General Washington, in commenting on the condition of public affairs at the close of the year 1777, writes thus: "The problem whether a nation can be defended against a permanent force, by temporary armies, by occasional calls of the husbandman from his plough to the field, was already solved; and, in its demonstration, the independence of America had nearly perished in its cradle. All thoughts were now directed to the creation of an army for the ensuing campaign, as the only solid basis on which the hopes of the patriot could rest."

Was there any thing in the experience of the last war to disprove the conclusions of Washington and Marshall? Nothing. I see around me many experienced officers who can confirm their every word—who have in this House confirmed their every word on more occasions than one. The legislation of Congress during the last war confirms it. When it was found that a bounty of eight, sixteen, and forty dollars in cash, and one hundred and sixty acres of land, were insufficient to fill the ranks of the army, we raised it to one hundred and twenty-four dollars in cash, and three hundred and twenty acres in land; and if the war had continued, we should have been compelled to resort, and would have resorted, to the much abused system of conscription. The bill which it became my duty to report in 1814, as chairman of the Committee on the Militia, authorizing the President to compel the militia to serve six months after their arrival at the place of rendezvous, encountered sharp opposition as well from the friends as the enemies of the war. By a leading member of the former, who himself was a general of militia, it was proposed in committee, and urged with great zeal, to reduce the term from three to two months, instead of enlarging it from three to six.

I have dwelt on this part of the subject longer than I intended, and perhaps longer than was necessary: a sufficient apology will, I trust, be found in the degrading epithet applied to the army by the gentleman from Tennessee.

I pray gentlemen, before they make up their minds to vote against this bill, to consider the situation of those for whom it provides assistance. Their age—most of them have passed the period ordinarily allotted to human life. Few are under threescore years and ten, and many are over fourscore years. Their infirmities—bending under the weight of years, and hardships, and sufferings, they are ill able to endure the toil of daily labor. Their necessities—the bill embraces none in affluence: none who are removed more than one degree above absolute want: the owners of a house and a little land which they themselves are unable to work, and the produce of which is insufficient to pay the wages of hired hands. Shall we withhold from them the compensation due to their meritorious ser-



vices, until their creditors have turned them out of doors, and reduced them to beggary? In all the prosperity of our beloved country, shall they alone go unrewarded; who, amidst the perils of hunger and thirst, and nakedness and the sword, established its broad foundation, and cemented it with their precious blood? I shall not begrudge—the constituents of no honorable member on this floor will begrudge, the appropriations of treasure which this bill may require. Would that the suffering remnant who may partake of its benefits were greater. I regret their numbers are so few. God grant that those who survive may long live, and enjoy in comfort the reward of their virtue and valor.

Mr. SPEIGHT moved to amend the amendment by the addition, that no person should be placed on the pension roll, if his property shall exceed five hundred dollars independently of his debts.

Mr. WILLIAMS did not wish his amendment to be encumbered with any other proposition. He wished to obtain the sense of the House on the simple and distinct question which he had submitted.

Mr. CARSON objected to Mr. SPEIGHT's motion, that it had been tried and rejected yesterday—that it was useless to offer it again, and he wished to see Mr. WILLIAMS's amendment tried by itself.

On submitting this amendment, Mr. S. said that he rose for the purpose of offering an amendment to the instructions of his colleague, (Mr. WILLIAMS.) He had no disposition to enter into the general discussion of the question before the House; for he was well aware of the situation in which any gentleman was placed who might venture to express his opinion in opposition to a pension bill, however partial it might be in its operation. It would seem, from the disposition manifested by some gentlemen who have participated in the debate, that all those who venture to express objections to this bill are to be regarded as unfeeling and ungrateful towards those who fought for the liberty of the country. He would inform gentlemen he felt as much regard for the welfare of them as any man. But he was opposed to this bill, because it made an invidious distinction; it contemplated provisions only for those who belonged to the regular line; and it was known that the Northern States were the theatre of war with the British, while, in the South, a partisan warfare was carried on, which eventuated in promoting the cause of liberty as much as that in the North. By the passage of this bill, no provision would be made for the troops in the South of the gallant Marion, Sumpter, and Caswell; and, in his opinion, they were equally entitled to the fostering hand of the Government as the regulars. He appealed to the magnanimity and the gratitude of the House, to say if the militia were to be passed by unnoticed. He knew many of them who were old and bowed down by infirmities, and their situation called on this House for aid as much as any portion of the revolutionary patriots. By this bill you make provision for those of the regular line; and if they, as I have no doubt was the fact with many of them, who never saw an enemy and never fired a gun, are to be provided for, while the poor militiamen, who left their homes, had their wives and children butchered, their houses burnt, and every thing destroyed, are to be unnoticed, he was opposed to the bill and all such partial legislation.

The amendment he had proposed fixed the maximum of property at five hundred dollars. In his opinion, that was high enough; and any who was worth that amount of property, after his debts were deducted, was able, without the aid of the Government, to support himself. Though, in conclusion, he would say, he could not so much as say what might be the sum fixed on, he hoped the bill would be committed with the instructions to extend the pension law to the militia.

The debate now assumed a general and comprehensive scope.

Mr. WILDE addressed the House at large, in support of Mr. WILLIAMS's amendment, and in support of the claims of the militia.

Mr. LECOMPTÉ spoke earnestly in favor of the bill, and the principle of providing liberally for the remnant of the revolutionary army.

Mr. CROCKETT, of Tennessee, said, he felt himself called on to submit a few remarks on the bill under consideration. Sir, [said Mr. C.] I voted against the bill yesterday, which is called an explanatory law of the act of 1818, for the relief of the old revolutionary soldiers. Sir, I consider the provisions of the bill, as it is amended, a partial one, and such a one as I cannot nor will not support. I have always been the firm friend of the old soldiers, and hope ever to remain their friend while I am entitled to raise my voice in this House.

Sir, what are the provisions of the bill? You give any and every man a pension, who has no more than one thousand dollars, exclusive of his household furniture, horse, and land. Sir, in my country, we think a man pretty well off who owns that sum after paying all his debts, and owning such property as is described. Sir, I do not consider that a man in such a situation ought to be entitled to the bounty of his Government. Sir, in my country, for the sum of one thousand dollars, a man can purchase two good negro men and one hundred acres of the best land in the country. That, sir, would support a man, without calling on the Government for a pension. I came here [said Mr. C.] to do justice to every man, and under all circumstances; and, if I cannot do this, I will not vote for a partial law like this.

Sir, this bill provides for none but those of the continental line, and excludes all the volunteers and militia who fought in the old war, no matter how meritorious they were. Sir, some of those very men, who fought bravely, and who are tottering through life, almost ready to drop into the grave, have been knocking at the door of Congress for years; and what are we doing, sir? Passing a law to exclude them, and to provide for men that do not need the bounty of the Government. Sir, tack them altogether, and I will go as far for them as any gentleman in Congress. What was said by the gentleman from New York? [Mr. TAYLOR.] He has drawn the distinction between the regulars and the militia and volunteers, and has decided in favor of the regulars receiving the bounty of the Government, to the exclusion of the others. Sir, I must be leave to differ in opinion with that gentleman. If I were to draw a distinction, I would give the preference to the militiaman and the volunteer. The regular sold himself to the Government for a bounty of land and money, which he received long since; and the others went and fought for the love of their country; they left their homes and their wives and children, and fought bravely through the war, and received the little pittance of common wages. Sir, is it just, is it honest, to exclude those men? No, sir. I am bound to decide entirely in their favor, if we give any a preference. But, sir, it is my wish to provide for all. I hear gentlemen say that we will bankrupt the nation. Well, sir, let it be so—I go for all or none. I see millions after millions of money voted away—for what, sir? For the petty little object of supporting your festivities, breakwaters, or light-houses.

Sir, in my district I know some of those deserving old men, who cannot long trouble this Government with their voices, asking aid, in their old age, to make them comfortable. A few days more, and they bid adieu to this world. I do insist that they never ought to be forgotten or neglected, while there is one of them to claim our gratitude. They have achieved the glory and honor of our country by their bravery. The privileges which we are now enjoying on this floor, were purchased by their toil and blood. Sir, let me tell gentlemen that I had the honor, in our last struggle, to shoulder my gun, and march

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in to the field. There I discovered who fought bravest, the regulars or the volunteers and militia. Sir, when the regular troops were living bountifully, the militia were in a state of starvation. I have witnessed this, and, therefore, I am enabled to judge from that circumstance how they fared in the first war. Sir, there are but few of those poor old veterans in my section of country, though I imagine it is very different in the North. I have been informed, and believe it, that they never die in the Eastern States. Sir, from what I can learn, I should expect that they live always there.

I discover that some gentlemen wish to get the funds of this Government distributed, and they care not for what. Sir, I came here to do justice; and I will do justice, or I will do nothing. In my district, I know one case, where a poor old revolutionary soldier, who served as a volunteer for some time, then enlisted as a sailor, and served three years on the ocean, who is unprovided for. Sir, it is lamentable to view his situation, and hear him tell of his sufferings. It is out of his power, at this time, to find any of his old brother sailors who served with him. Sir, his situation is this: one good neighbor has supported the poor old man, and another his old lady, and maintain them just as an act of charity. I presented the poor old man's claim to this House, and what is the result? He is rejected, and for the reason that he cannot obtain proof, only by his own oath. Sir, I do not believe he would make a misrepresentation for any consideration. This is one case; and I have no doubt but there are many other such cases. For God's sake, if you do extend charity to one class, do so to all. I voted against the old officers' bill, last session, because you would not attach the soldiers to them, who fought with them side by side. Now, sir, if you cut off the volunteers and militia, I will vote against this bill. I will not go for them piecemeal; I take all or none, as I have before stated. To draw a distinction between men who have performed the same services, is what I never will agree to do. If you do not adopt the amendment of the gentleman from North Carolina, and attach the militia and volunteers, as proposed by Mr. CHILTON, of Kentucky, I will enter my protest against the bill, and believe that I have acted honestly. Sir, I will detain the House no longer.

Mr. CHILTON took the same side, and strenuously advocated the amendment of Mr. WILLIAMS.

Mr. RICHARDSON, remarking that this was one of the days set apart for private bills, thought it right to make an effort to prevent the day being consumed by this debate; and he therefore moved the previous question—but the motion was lost.

Mr. CARSON spoke against the recommitment of the bill, and in favor of its passage in its present shape.

Mr. WILLIAMS had refrained from going into any reasons when he offered the amendment, hoping it would be decided without debate, as every man's mind was doubtless made up on the question; but as he had been disappointed in this hope, he now proceeded to submit at large his reasons in favor of his amendment.

Mr. WAYNE followed on the same side, and addressed the House at considerable length, in support of the claims of the militia of the revolution to equal favor, at least, at the hands of the Government.

Mr. HALL handed to the Chair the following extract from a letter which he had received from the chief of the Pension Office, which he desired to be read for the information of the House.

"It appears that the following appropriations have been made for paying pensioners under the act of March 18, 1818. The law of the 20th April, 1828, appropri-

ated	\$ 300,000
15th February, 1819,	1,780,500
14th April, 1820,	2,766,440
3d March, 1821,	1,200,000

The law of the 15th March, 1822,	1,451,245 64
3d March, 1823,	1,538,815
10th March, 1824,	1,281,716 39
21st February, 1825,	1,248,452 26
18th January, 1826,	1,352,790
29th January, 1827,	1,260,185

Aggregate, \$14,190,144 29  
 "The precise number of applications has not been kept at the commencement of the operation of the law; but the amount is known to exceed thirty-one thousand.

"The number of men in the continental army, at the close of the revolutionary war, was thirteen thousand four hundred and seventy-six. The army was larger in 1776 than at any other period of the war: it contained forty-six thousand eight hundred and ninety-one men."

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"The amount of appropriations up to this time, including the appropriation of this session, if rightly added, is sixteen millions five hundred and fifty-eight thousand three hundred and twenty-four dollars and twenty-nine cents."

The question being put on Mr. SPEIGHT'S motion, it was negatived without a decision.

The amendment offered by Mr. WILLIAMS was then also decided in the negative by the following vote: yeas, 74—nays, 107.

Mr. POLK then spoke some time against the passage of the bill. When he concluded,

Mr. DODDRIDGE called for the previous question, which was seconded, 84 to 74; and the main question was ordered, the effect of which was to set aside all amendments and intermediate motions. So that

The question was put on the passage of the bill, and decided in the affirmative, as follows:

YEAS—Messrs. Anderson, Arnold, Bailey, Barber, Barringer, Bartley, Bates, Baylor, Beckman, Bockee, Borst, Brodhead, Brown, Burges, Butman, Cahoon, Campbell, Chandler, Childs, Clark, Coleman, Condict, Conner, Cooper, Coulter, Cowles, H. Craig, R. Craig, Crane, Crawford, Creighton, Crowninshield, Daniel, Davenport, J. Davis, Deberry, Denny, De Witt, Dickinson, Doddridge, Dudley, Dwight, Earl, Ellsworth, G. Evans, E. Everett, H. Everett, Finch, Forward, Gilmore, Green, Grennell, Halsey, Hammons, Harvey, Hawkins, Hinds, Hodges, Howard, Hubbard, Hughes, Hunt, Huntington, Ihrie, Ingersoll, T. Irwin, W. W. Irvin, R. M. Johnson, Kendall, Kincaid, P. King, A. King, Lecompte, Lent, Letcher, Lyon, Magee, Mallary, Martindale, Thomas Maxwell, Lewis Maxwell, McCrery, Mercer, Miller, Mitchell, Monell, Muhlenberg, Norton, Pearce, Pettis, Powers, Ramsey, Reed, Richardson, Russel, Scott, Shields, Semmes, Sill, S. A. Smith, A. Spencer, R. Spencer, Sterigere, Stephens, W. L. Storrs, Strong, Sutherland, Swann, Swift, Taylor, Test, John Thomson, Verplanck, Washington, Weeks, Whiteley, C. P. White, E. D. White, Wilde, Wingate, Young.—122.

NAYS—Messrs. Alexander, Alston, Angel, Archer, Armstrong, P. P. Barbour, Barnwell, Bell, James Blair, John Blair, Boon, Carson, Chilton, Claiborne, Clay, Coke, Crockett, Crocheron, W. R. Davis, Desha, Drayton, Gaither, Goodenow, Hall, Haynes, Isaacs, Jennings, C. Johnson, Lamar, Lea, Lewis, Loyall, Lumpkin, McCoy, McDuffie, Nuckolls, Overton, Polk, Potter, Rencher, Roane, W. B. Shepard, A. H. Shepperd, A. Smyth, Speight, Stanberry, Standifer, Wiley Thompson, Trezvant, Tucker, Vance, Vinton, Wayne, Wickliffe, Williams, Yancey.—56.

SATURDAY, MARCH 20, 1830.

The resolution offered by Mr. SWIFT, and the amendment to the same offered by Mr. DRAYTON, were again

taken up for consideration. The question being on referring both to the Committee on Military Affairs.

Mr. HUNT was opposed to referring this resolution to the Committee on Military Affairs. That committee had already been discharged from the consideration of it, and it would be useless to refer it to them again. He considered the fortifications to which the resolution pointed as necessary to be erected on the line mentioned, although he admitted with the gentleman from Kentucky, [Mr. WICKLIFFE] that fortifications were useless in woods, or in a champain country, where the contending parties met on equal terms. But he said in this case circumstances were different. Lake Champlain extends from Lower Canada one hundred miles and upwards into our country, and a few miles north of the boundary line. The British have erected fortifications. The object of the resolution was to have an examination made for a suitable place south of the line to build a fortification. He was informed that it could be done for a little expense, and he would undertake to say that there was no place on our northern or southern boundaries more important either for offensive or defensive operations, than this place on our northern boundary line. Mr. H. referred to the expenses which were incurred during the late war for defending the frontier, where a large army was constantly required. Had a fortification been built here, these expenses would not have been necessary, and the army might have been employed to advantage in some other part of the country. The Legislature of Vermont deemed some security as necessary here; and as the expense will be but trifling, he hoped the resolution would be adopted.

Mr. HOFFMAN thought that in reference to this subject we were acting too early, and that, if even that were not the case, it would require a joint resolution of both Houses to effect this object. How can we proceed a step in this inquiry [said Mr. H.] until the boundary line between Canada and the United States is determined? The boundary line may be varied by the decision at least ten miles; and while such is the case, he thought a survey would be useless. He hoped the resolution would be laid on the table; and, unless he heard something from gentlemen to alter the opinions he entertained, he should make a motion to that effect. We have already [he said] expended much for a similar project, and it is uncertain whether the object of it has been useless or not.

Mr. SPENCER, of New York, said, that about the year 1816, subsequent to the termination of the last war, Government directed a fortification to be erected on Lake Champlain, at Rouse's Point: propositions were made to effect this at an expense of probably half a million of dollars. After having incurred this expense, Mr. Ellicot, one of the professors at West Point, was directed to ascertain the latitude of Rouse's Point, and it turned out that the fortification was about to be built one mile north of the line, whereby the whole amount expended was lost, and the materials of the building, if exposed to sale, would be worth little or nothing. Mr. S. said he had a higher objection to the proposition. He supposed that they on the other side of the line required fortifications, and not we. The idea that the weaker power should attack us, and that we require a fortification for our defence, he thought preposterous. The State of Vermont was alone and unaided, capable of defending herself; if not, New York could pour forth an overwhelming force.

Mr. S. said, he had to reproach himself for having remained in the House silent, while very large appropriation bills had been passed for erecting fortifications. He asked why we should erect fortifications which will require fifty thousand men to defend them. He believed that this country would never be invaded; and believing this, he was not in favor of studding it with fortifications. He reproached himself for permitting such appropriation bills to pass, without entering his protest against them.

We boast of our navy, [said Mr. S.] and it is our policy to have a navy. We can protect our coast by our navy, without squandering the resources of the country in erecting fortifications. He condemned such a policy, and he would not vote away a cent to advance it. He apprehended that the secret of applying for money to erect fortifications, was not so much the necessity for them, as the benefit to be derived from the expenditure of the money in the part of the country where they are to be built. Mr. S. said he did not impute any such motives to the gentleman from Vermont, who offered the resolution; but let such projects come from any quarter, he would not give his assent to what he believed a lavish and useless expenditure, delaying the extinguishment of our national debt. He said he was not prepared, nor did he intend, to debate the policy of the course which had been pursued; but, if a fit occasion presented itself, he would discuss, and he hoped to be able to show, the absurdity of the course which had been pursued of building fortifications, merely to go to decay and to become dilapidated.

Mr. PINCH said, if his colleague had been acquainted with the exigencies of the late war, as he was, he would have been convinced of the necessity of having fortifications on the northern frontier. During that war, not a month passed that the towns of that part of the country were not stripped of their inhabitants. Government was consequently compelled to expend four times the amount of money in defending the country on the borders of Lake Champlain that would be required for building a fortification. The naval defence was not sufficient. The enemy came up our rivers, and burned or devastated the towns. The expense of the fortification would not be great, as the materials of the former fortification still remain at our disposal. The War Department is of opinion that the measure is necessary; they have recommended it, and it is at their suggestion the resolution has been offered. Former experience has taught us the necessity of having some defensive position on the frontier, in case a like attack should ever be made against us. He hoped the resolution would be adopted.

Mr. DAYTON opposed the reference of the resolution to the Committee on Military Affairs, as they had been discharged from the consideration of the subject already. He wished that no further proceedings should take place with respect to this resolution. It appears that an appropriation will be required for making the survey if the resolution offered by the gentleman from Vermont be adopted. At this time [Mr. D. said] it would be impossible to make the desired surveys, as the land there is covered with water. And it would be impossible to comply with that part of the resolution requiring a suitable site to be selected for building a fortification, until the boundary line is settled. He had no doubt, however, that the War Department would be enabled to make satisfactory returns by the next session of Congress. Mr. D. did not agree with the gentleman from New York, [Mr. SPENCER] that the country bordering on Lake Champlain does not require fortifications for its defence in time of war, for, in the event of another war, as in the last, the enemy could march into the very bowels of the country. In his opinion of the Government they are required; and when the boundary line shall have been settled, then the projects of gentlemen can be more easily carried into effect. [Mr. D. concluded, but the debate was discontinued, as the hour allotted for considering resolutions had elapsed.]

MONDAY, MARCH 22, 1836.

#### REVOLUTIONARY PENSIONERS.

Mr. BURGESS moved to take up the bill for the relief of the revolutionary pensioners, to exempt them from arrest on civil action, &c. it being the special order of the day. The motion was carried in the affirmative.

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Case of Judge Peck.—Buffalo and New Orleans Road.

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The House proceeded to the consideration of the bill, which is as follows:

*Be it enacted, &c.* That no person who was, during any part of the revolutionary war, engaged in either the land or naval service of the United States, and who has already, or may hereafter receive, in consideration of such service, pecuniary aid from his country, by pension or otherwise, in any way other than his pay, subsistence, clothing, and bounty, shall at any time hereafter, be liable to be arrested, holden to bail, or imprisoned, on civil process issued under any authority of the United States, for or on account of any demand: the consideration of which originated before such aid was granted to such persons.

*Sec. 2. And be it further enacted,* That whenever any person, having been in service and receiving aid so as aforesaid, shall have been arrested, holden to bail, or imprisoned for any demand, such as aforesaid, under process issued from any authority other than that of the United States, and the creditor or creditors at whose suit such process shall have issued, shall, while the same is pending, or after final judgment thereon, receive of such person, in consideration thereof, or any release therefrom, any sum or sums of money arising from any such aid granted to him, so as aforesaid, or any promise to pay therefrom, or any order or draft to receive the sum at any future time, such creditor shall forfeit and pay twice the amount thereof, one moiety to the use of such person, and the other to whomsoever shall sue for and recover the same; and such suit and recovery may be had before any tribunal of competent jurisdiction.

*Sec. 3. And be it further enacted,* That no creditor of any such person receiving aid, so as aforesaid, shall, by letter of attorney, order, draft, or otherwise, from him, be entitled to receive any dividend or payment due to such person at any office or place where, by law, the same may be payable to him; and no person whoever, as agent or attorney, shall at any time receive any such payment, unless he first makes oath that he had no interest therein, and that he will pay over the amount thereof to the person to whom the same was so as aforesaid granted.

Mr. P. P. BARBOUR rose, and addressed the House at considerable length in opposition to the bill—deeming its provisions objectionable in principle, particularly the retroactive portion of them.

Mr. BURGESS was proceeding to reply; when

Mr. BARBOUR said, if the second section were expunged, it would remove his objections to the bill.

Mr. BURGESS suggested that this object would be attained by striking out the word "consideration," and to the end of the first section.

Mr. HOFFMAN, of New York, opposed the bill as impolitic and unjust, and of no benefit to the individuals which it proposed to benefit.

Mr. RAMSEY, of Pennsylvania, also contended that it would be prejudicial to the interest of the persons themselves, as they would not be able to hold any office in the collection of revenue, &c., as they could not be sued for delinquency—and that it would deprive them of credit, &c.

Mr. GOODENOW, after some remarks in support of the bill, moved to amend it by inserting after the word "bounty" in the first section, the words "and who shall continue to receive such aid," which was agreed to.

Mr. BURGESS then rose, and replied at large to the objections which had been urged to the bill, and defended its justice, expediency, and humanity.

Mr. DRAYTON, considering the closing part of the second section as having an *ex post facto* operation, moved to strike out all after the word "time," and inserting other words, which he sent to the Chair.

The question was then put on ordering the bill to be engrossed for a third reading, and decided in the affirmative by the casting vote of the SPEAKER—the vote being 60 for and 60 against it.

## BUFFALO AND NEW ORLEANS ROAD.

The House resolved itself into a Committee of the Whole, and took up the bill to lay out and establish a national road from Buffalo, in New York, by Washington city, to New Orleans.

Mr. HEMPHILL rose, and entered into a general defence of the proposed measure, maintaining its constitutionality—being a work emphatically national—its high importance to the Union, &c. He had not concluded his remarks, when he gave way for a motion for the committee to rise.

TUESDAY, MARCH 23, 1830.

## CASE OF JUDGE PECK.

Mr. BUCHANAN, from the Committee on the Judiciary, to which was referred the memorial of Luke E. Lawless, of Missouri, complaining of the conduct of James H. Peck, Judge of the District Court of the United States for the District of Missouri, made a report thereon, concluding with the opinion that the said judge ought to be impeached.

Mr. BUCHANAN, in presenting the above report, stated that the committee had decided it fairest towards the party accused, not to report to the House their reasons at length for arriving at the conclusion that he ought to be impeached. In this respect, they thought it advisable to follow the precedent which had been established in the case of the impeachment of Judge Chase. Mr. B. moved to print the report and documents.

Mr. CLAY moved to amend the motion to print, by adding the words, "And also the memorial of Luke E. Lawless, and the address of the judge to the committee."

Mr. HAYNES moved to suspend the rule of the House which prohibits debate on motions to print, so far as concerns the subject under consideration. Negatived.

The amendment proposed by Mr. CLAY was rejected, and the report and documents were ordered to be printed.

Mr. BATES, from the Committee on Military Pensions, and by order of that committee, moved that the Committee of the Whole House on the state of the Union be discharged from the further consideration of the resolution reported from the Committee on Military Pensions, on the 8th of January last, to extend the pension laws of the United States, so as to include within its provisions every soldier who aided in establishing our liberties, and who is unable to maintain himself in comfort; and that the said resolution be made the special order of the day for Monday next, the 29th instant.

Mr. B. said, gentlemen who were in favor of the amendment of Mr. WILLIAMS, on Friday last, to provide for the militia, would, by this resolution, be prevented with an opportunity of effecting their wishes; and, on the motion which he made, he asked the yeas and nays. They were ordered accordingly, and were as follows:

For the motion; 129.—Against it; 47.

Mr. SWIFT moved a reconsideration of the vote taken yesterday, by which the resolution relative to fortifications on Lake Champlain, offered by him on the 18th instant, was referred to the Secretary of War—the question having been misapprehended at the time it was put—many members supposing it was on his original resolution, whereas it was on the amendment.

The motion was agreed to; but the expiration of the hour arrested further proceedings to-day.

## BUFFALO AND NEW ORLEANS ROAD.

The House then resolved itself into a Committee of the Whole House on the state of the Union, Mr. HAYNES in the chair, and resumed the consideration of the bill "for making a road from Buffalo, through Washington city, to New Orleans."

Mr. HEMPHILL concluded his remarks in support of the bill. They were to the following effect:

Mr. H. began by saying that he would, at this early

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stage, endeavor to explain the reasons why the bill before the committee ought to pass into a law. It embraces, [said Mr. H.] as I conceive, a subject of the highest interest. The usefulness which the contemplated road will bestow on the country, is of itself exceedingly important; and besides, this legislative enactment will hold out full assurance that national improvements are intended to be prosecuted by the General Government. In this light, the magnitude of the question, now ready for discussion, cannot be overrated.

In the commencement, I will be permitted to remark, that it is not the design of the friends of national improvements to interfere with the annual extinguishment of the public debt, as now provided for by law. The regular operation of existing laws will soon clear the nation of debt. The exertions of statesmen towards the accomplishment of this object are no longer required. But as to the momentous question of improving the country, for its own prosperity and glory, it ranks first, and is truly worthy of the best efforts of the nation. It is equally interesting to the present age and to posterity; and nothing less than complete success will ever terminate its repeated debates on this floor. I will dwell no longer at present in general remarks.

Some gentlemen entertain the opinion that these great objects ought to be accomplished by the several States. I never could accord with this opinion. The States are to take care of their own local interests within their own limits; it is not their duty to legislate with a view to national purposes. Neither could they, without the consent of Congress, confederate to make extensive roads, passing through many States, for great and national purposes. In this immense country, it is impossible to foresee all the channels through which our inland commerce may take its direction. No exact plan can be devised; it would be rash to designate all the places where roads, canals, and bridges should be made fifteen or twenty years hence. It will be judicious to select a few objects at a time, and to progress with the rising condition of the country. Congress will always be the best capable of selecting the grand and leading objects which will accommodate themselves to the good of the Union at large; and for these purposes, Congress, according to my conception of the case, ought to retain in her own hands her own means. This brings me to the consideration of an opinion which has gained some standing, and has even attracted the attention of the President; I mean the propriety of distributing the surplus revenue among the several States. The President has expressed his doubts in relation to its constitutionality; and I think that, on a further consideration of this subject, he would be enabled to speak more positively as to the constitutional barrier.

I assume it as a principle which, on a fair examination, cannot be shaken, that whenever money is in the treasury, it is immaterial from whence it has arisen; the constitution puts no mark upon it; it may be pledged by previous laws, for constitutional purposes, but in no event can it be withdrawn from the treasury, unless it is to effect some expressed or implied provisions in the constitution. A power in the General Government over internal improvements has never been claimed, except on such objects as Congress may, from time to time, deem national. Lands have been ceded to States for specific objects of national improvements. The bill which was rejected by Mr. Madison in 1817, retained the control over the objects on which the expenditures were to be made in each State.

But if Congress should distribute money generally among the States for internal improvements, it may be expended on local and minor objects, over which Congress themselves have no power. The States, in expending the money, will not look to national objects, but to their own internal concerns, and perhaps to a rivalry with their adjoining neighbors.

Mr. Jefferson and Mr. Madison, in their messages, ap-

proved entirely of the expediency of exercising this power by the General Government.

Mr. Monroe has expressed his opinion on the subject in the most satisfactory manner. I beg leave to read this part of the document, called his views on internal improvements. [Here Mr. H. read the following:]

"It cannot be doubted that improvements for great national purposes, would be better made by the General Government than by the Governments of the several States. Our experience, prior to the adoption of the constitution, demonstrated that, by the exercise by the individual States of most of the powers granted to the United States, a contracted rivalry of interests, and misapplied jealousy of each other, had an important influence on all their measures to the great injury of the whole. This was particularly exemplified by the regulations which they severally made of their commerce with foreign nations and with each. It was this utter incapacity in the State Governments, proceeding from these and other causes, to act as a nation, and to perform all the duties which the nation owed to itself, under any system which left the General Government dependant on the States, which produced the transfer of these powers to the United States by the establishment of the present constitution.

"The reasoning which was applicable to the grant of any of the powers now vested in Congress, is likewise applicable at least to a certain extent, to that in question. It is natural that the States individually, in making improvements, should look to their particular and local interests. The members composing their respective legislatures, represent the people of each State only, and might not feel themselves at liberty to look to objects in these respects beyond that limit.

"If the resources of the Union were to be brought in to operation, under the direction of the State assemblies, or in concert with them, it may be apprehended that every measure would become the object of negotiation, of bargain, and barter, much to the disadvantage of the system, as well as discredit to both Governments. But Congress would look to the whole, and make improvements to promote the welfare of the whole. It is the peculiar felicity of the proposed amendment; that, while it will enable the United States to accomplish every national object, the improvements made with that view will eminently promote the welfare of the individual States, who may also add such others as their own particular interest may require."

In addition to this enlightened view of the subject, I may be permitted to submit a few remarks: and the first is, that when the plan of distribution is once adopted, it can never be recalled; it will grow into a species of right, and a majority of the representatives from the several States will never vote to restore the funds to the General Government. A thousand reasons will be assigned to oppose its restoration, whenever the General Government shall stand in need of it. Among others, it would be said (and with great justice) that the faith of the United States had been pledged, and, on this reliance, schemes of internal improvements had been partially executed; and to withdraw the funds, would be to sacrifice the expenditures already made. This oppression would vary in the different States according to the condition of their works—it would create conflicts and confusions of interest that would be alarming. The funds which belong to the Union, would be entangled in local and minor undertakings. But while the General Government retains its own resources, she will always be prepared to meet the great and complicated concerns of the nation, whether in peace or in war. She can select the objects of improvements, on such a scale as not only to be able to complete them, but also to be in a state of readiness for any sudden emergency.

This road, leading from the seat of the General Government to Buffalo and to New Orleans, two frontiers which

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will be imminently exposed in the event of a war, cannot be otherwise than of the highest importance. The badness of the road from hence to Buffalo, during the last war, protracted intelligence, and prevented a quick concentration of troops and of the munitions of war to the parts required. If there had been good roads, the military disasters at the commencement of the war never would have occurred. The badness of the roads swelled the expenses of the country to a prodigious degree. A single cannon transported from the foundries on the seaboard to the frontiers of the lakes, costs about two thousand dollars, and every article necessary in war bore the same wasteful and extravagant proportion. The waste which the necessity of the times, and state of the roads, exposed us to, would more than make the road contemplated in the bill. Our country is large, and the frontiers and exposed points being at great distances from each other, render the necessity of good roads (in a time of war) all essential. The military power of a nation, in all ages, consists not more in a numerous population and great resources, than its capacity to concentrate its forces with rapidity to the exposed points on the frontier liable to be assailed. Good communications increase the military arm in a due proportion to the population and resources of a nation or country. On a single day, sooner or later in the arrival of troops or intelligence, may altogether depend the fate of the most important places in the country.

This road to Buffalo presents advantages peculiarly national in their character. It opens a country abounding in iron, fuel, and water power; and, in the event of our foundries and armories on the seaboard being destroyed by an enemy, it would afford the means of establishing others in the interior, secure from attack, where cannon, shot, small arms, &c. might be manufactured, which, by means of this road, and other means of transportation, could be taken to any point wherever the nation should require. It would also open to the seaboard, as well as to the lakes, an extensive and fertile country, increasing in population and in the production of provisions of every description, and which could be made available at either extremity of the road.

The proposed road would derive additional importance, in a military view, from the character of the population of the country through which it will pass. In the mountain regions, it is said that there is scarcely an individual who is not well acquainted with firearms, and expert in horsemanship; the whole population in the mountain regions (as well as in the plain country) are distinguished for their physical energies, which will always render them among the best materials for military purposes. In time of peace, cannon and munitions of war might be conveyed by sea and the New York canal to the frontiers on the lakes. But, in time of war, the maritime power of the enemy would render this communication too uncertain, and in the winter time the canal would be frozen. (Here Mr. HENRIEL read the report of Doctor Howard, one of the United States' engineers.)

"The importance of such a road as that now proposed, in a military point of view, is so strongly marked, that it will not be necessary to dwell on them in detail, but merely to point them out. It will afford a ready communication to the northern frontier, from the central part of Pennsylvania, from Maryland, and from the eastern part of the State of Virginia, giving facilities for the transportation not only of men, but also of many of the supplies and munitions of war, which are the productions of these three States. During the last war, the route by the Painted Post was found so necessary for this purpose, that it was extensively used; and, notwithstanding the badness of the roads, supplies of all kinds were carried on it, at an expense which it is satisfactorily estimated would have been sufficient (in a single campaign) to have defrayed the cost of the work.

"In the present situation of things, the citizens of the western part of New York are almost as effectually separated from their neighbors of Pennsylvania, as if an impassable barrier were interposed between them."

The highway proposed in the bill will open lucrative communications between these interesting sections of our country. The location of the road from Washington to Buffalo, is left to the discretion of the commissioners, as the committee could not, satisfactorily to themselves, designate the route.

The committee have deemed it sufficient to have the road located, graduated, and bridged, and to form the bed of the road, as an earthen turnpike, except in such cases where it will be indispensable to use gravel. On examination of the estimates of the engineers for making turnpike roads on the several routes from Washington to New Orleans, they state so much for location, so much for graduation and bridges, and so much for turnpiking with stone. The committee, by deducting the latter, and taking the best pains they could upon the subject, came to the conclusion that fifteen hundred dollars per mile would make an excellent common road, graduated at an elevation of three degrees in the mile.

From this city to Buffalo, a considerable distance is turnpiked; and, whenever that is the case, it is not to be affected by this bill. The whole road to be made will be, as near as the committee could judge, about fifteen hundred miles, which will cost two million two hundred and fifty thousand dollars, to be drawn in instalments of not more in one year than about five hundred thousand dollars; which sum the country will scarcely feel, and it will be distributed along the whole line among architects, the owners of the adjacent lands for materials, and to the poor and industrious laborers.

The great national advantages of a road from the seat of Government to New Orleans, will scarcely, I should suppose, be denied by any one. Soon after the acquisition of Louisiana, Mr. Jefferson, as I have understood, had a reconnaissance of a road to New Orleans taken at his private expense. It has been deemed of such magnitude by the General Government, that three general routes have been surveyed, under the act of 30th April, 1824; many of the reasons assigned in favor of the Buffalo part of the road will equally apply to this part. Its importance in time of war cannot be overrated; the difficulty of transporting men and arms to this exposed point (during the last war) is well known to us all. I will not descend to particulars: I appeal to the recollection of this honorable committee.

The routes surveyed are an eastern, a middle, and a western route. The committee, after a careful examination of the report of the engineers of 8th April, 1826, selected the western route. The Committee on Roads and Canals, at the last session of Congress, did the same; and I am persuaded the Committee of the Whole House will be of opinion that it is, upon the whole, the most eligible route—each have their advantages and disadvantages. The report says, "that the eastern and middle routes will accommodate directly more States than the western; but, by anticipating the increase of the population on the western route, that the three, in this respect, ought to be placed on the same footing. In comparing the western route with the eastern route, we find that on the eastern route the soil is inferior, the bridges and causeways will be greater, the advantages to internal commerce will be less, and that this route would not be so useful in war; that the carrying of the mail and the expense of travelling would be greater, and, on the whole, it will be more costly. Its advantages over the western route are, that the graduation will be less, that it would, in a greater degree, facilitate correspondence between our inland importing and exporting marts, and also diffuse political information between the General Government

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and the capitals of the South, as this route would pass through many of them. In comparing the western with the middle route, we find the materials for a road about the same. The soil on the western route is the best; the causeways will be less, and the graduation greater. The bridges on the western route will be in length only three miles and nine hundred and fifty-three yards. On the middle route, the length of the bridges will be six miles and one thousand two hundred and thirty-nine yards. The distance of the middle route is eleven hundred and forty miles. On one course of the western route, the distance is exactly the same; but on Snicker's Gap route, it is eleven hundred and sixty-three miles. The expense of labor is rather less on the western route. For carrying the mail, the report gives preference to the middle route, but at the same time remarks, that, as to time, it does not suffice that it should be travelled over in the shortest time, and at the least possible expense; but it must also accommodate laterally to its direction the greatest extent possible of territory. In this point of view, it is said, if the western route is not as central as the others, in relation to the States it traverses, it has the advantage of being more central in relation to the States taken together, and comprehended between the Atlantic on the east, and the Ohio and the Mississippi on the west.

But, in relation to such a road as this will be, extending from the seat of Government to two exposed and extreme frontiers of the country, and which is calculated to remain a great highway for ages, a little difference in expense or distance ought not to be viewed as of much importance.

There are considerations which give a decided preference to the western route. The first is its superior advantages in time of war. The Southern States will have their own borders to defend, and this they will be always capable of doing. They are contiguous to each other, a condensed population, and nearer to the seat of Government, and to the military and naval establishments. They will seldom, if ever, be called across the mountains. The States on the Gulf of Mexico, being in the vicinity of the West Indies, will be exposed to imminent danger; and their own forces being inconsiderable, they must look for assistance from remote inland States. Tennessee and Kentucky, having no frontiers to defend, and being more interested than the South in the regions of the gulf, would be their natural allies, and always ready to aid the States of Louisiana and Alabama, and to defend the naval establishments at Pensacola. This road, in case of an emergency, would afford to the Western States the most signal advantages. They could then march their troops to the field of battle. The western route will connect different sections of the country, which are separated by natural obstacles. This is one of the great advantages of internal improvements. It will form a communication between the West and the Atlantic Ocean, and augment internal trade; the people of the West could bring their produce to it and along it, in either direction, to the most convenient avenue to a market.

There is another consideration; it is miraculous to see, as we now do, the rising country in the West—the inauguration of no man could have foreseen it. The enterprise of the West has greatly enlarged the importance and power of the nation; and, as the Western States have no lands to form a public fund, it cannot be expected that they will make many leading roads for a long time, by a direct taxation on the people: the net proceeds from the sale of the public lands will always be inadequate for the roads which their rapidly increasing population will require. This road would highly benefit a portion of the West; but, if it should run to the east of the mountains, the people of the West would reap no advantage from it.

I will close this part of the subject, by reading an extract from the report of the Postmaster General, in 1824. It is as follows:

"That the route on which the mail is carried from the seat of Government to New Orleans, is estimated at one thousand three hundred and eighty miles, and requires a travel of twenty-four days in the winter and spring seasons of the year. The mail on this route is sometimes entirely obstructed by high waters; and, when this is not the case, it is frequently much injured by the mail horses swimming creeks and through swamps, by which newspapers are frequently destroyed, and letters obliterated."

In this report, it is further remarked that "the route by the way of Warrenton, Abington, and Knoxville, affords great facilities for the construction of a mail road. Through Virginia and Tennessee, the materials are abundant for the formation of a turnpike; and through the States of Alabama and Mississippi, it is believed, from information which has been obtained, that in no part of the Union can an artificial road of the same length be constructed at less expense; on this part of the route the face of the country is level, and the soil well adapted for the formation of a solid road. If a substantial road were made in this direction to New Orleans, the mail could be transported to that place, from this city, in eleven days; if the roads were to pass through the capitals of Virginia, North Carolina, and Georgia, it could be conveyed in less than twelve days. The department now pays at the rate of fifty-six dollars and seventy-six cents a mile for the transportation of the mail, three times in each week, to New Orleans, when, on a good turnpike road, it could be conveyed in a stage, as often, and in less than half the time, at the same expense, with the utmost security, and with a considerable increase of the receipts of the department."

The committee have introduced this bill, without any reference to the consent of the States, deeming it to be entirely immaterial. Mr. Madison, in his rejection of the bill, to set apart, &c. says, "That if the power is not vested in Congress, the assent of the States cannot confer it." In the first session of the fifteenth Congress, this House, by a vote of ninety to seventy-five, asserted the power to make post roads, military roads, and other roads, without the consent of the States. By the act of the 30th April, 1802, by which Ohio was admitted into the Union, certain conditions were annexed, for the free acceptance or rejection of the convention, among which was the application of a part of the net proceeds of the lands lying within the State to the laying out and making of public roads leading from the navigable waters emptying into the Atlantic, to the Ohio, to the said State, and through the same—such roads to be laid out, under the authority of Congress, with the consent of the several States through which such roads shall pass. In compliance with this act, the law of the 29th March, 1806, for the construction of the Cumberland road, requested the President to obtain the consent of the States through which the road was to pass. At this early period, it does not appear that the subject had been much reflected on. Mr. Monroe's views, presented to Congress on the 4th of May, 1822, contain this passage—"The States, individually, cannot transfer the power to the United States, nor can the United States receive it. The constitution forms an equal, and the sole relation, between the General Government and the several States, and it recognises no changes in it which should not in like manner apply to all." In addition, I will read an extract from the report of the Committee on Roads and Canals, in the first session of the eighteenth Congress. (Here Mr. HENRILL read the following:)

"The General Government cannot acquire exclusive jurisdiction, except over all places purchased by the consent of the Legislature of the State in which the same may be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings. The States can, in no other instance, give jurisdiction to the United States. The General Government derives its whole power from the constitution, and it can neither be increased nor di-

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minished, in the slightest particular, by any other means than by an amendment of the constitution.

"The General Government and the States are to act in their own proper spheres on the powers they respectively possess; they cannot exchange power, or, by any consent or combination of power, give or take jurisdiction from each other."

Congress became so well convinced of the inutility of obtaining the consent of the States, that, by the act of the 3d March, 1825, for the continuation of the Cumberland road to Zanesville, and to lay out a road from thence, by the seats of the Governments of the States of Ohio, Indiana, and Illinois, to the seat of Government in the State of Missouri, they omitted the clause entirely. Indeed, every one, on the slightest reflection, will see that power cannot be acquired in this way, and to exercise it in this modified form might lead to delays and inconveniences: some States may assent and others decline, and the consent may be given on conditions concerning which disputes might afterwards arise.

I am fully convinced that, where either Government possesses jurisdiction, it had better act on its own authority: where there is a concurrent jurisdiction, there can never be a necessity for both to act; for, if one acts, both can enjoy the benefit of it. I am speaking of internal improvements; in such cases there can be no danger of any confliction, for it is unnatural to suppose that one would desire to expend money on an object which the other had commenced, and was willing to accomplish of its own accord. I will here be allowed, Mr. Chairman, to make a few general observations on the subject of internal improvements; and I will begin with calling to the recollection of the committee extracts from the messages of several of the Presidents.

Mr. Jefferson, in anticipation of a surplus revenue, made suggestions as to its application. He asked, "Shall it lay unproductive in the vaults? Shall the revenue be reduced? or shall it not rather be appropriated to the improvement of roads and canals, rivers, education, and other great foundations of prosperity and union, under the powers which Congress may already possess, or by such amendments of the constitution as may be approved of by the States? While uncertain of the course of things, the time may be advantageously employed in obtaining the powers necessary for a system of improvements, should that be thought best."

Mr. Madison, in his message of 1815, refers to this subject, and says, that, "among the means of advancing the public interests, the occasion is a proper one for recalling the attention of Congress to the great importance of establishing, throughout our country, the roads and canals which can best be executed under the national authority. No objects within the circle of political economy so richly repay the expenses bestowed on them; there are none the utility of which is more universally ascertained and acknowledged; none that do more honor to the Governments, whose wise and enlarged patriotism duly appreciate them; nor is there any country which presents a field where nature invites more the art of man, to complete her own work, for his accommodation and benefit. These considerations are strengthened, moreover, by the political effects of these facilities for intercommunication, in bringing and binding more closely together the various parts of an extended confederacy. Whilst the States, individually, and with a laudable enterprise and emulation, avail themselves of their local advantages by new roads, by navigable canals, and by improving the streams susceptible of navigation, the General Government is the more urged to similar undertakings, requiring a national jurisdiction and national means, by the prospect of thus systematically completing so inestimable a work; and it is a happy reflection, that any defect of the constitutional authority can be supplied in a mode which the constitu-

tion itself has providently pointed out." Again, in his message of the 3d March, 1817, he says, "I am not unaware of the great importance of roads and canals, and the improved navigation of water streams, and that a power in the National Legislature to provide for them might be exercised with signal advantage to the general prosperity."

Mr. Monroe, in his message of 1817, observed, that, "When we consider the vast extent of territory within the United States, the great amount and value of its productions, the connexion of its parts, and other circumstances on which their prosperity and happiness depend, we cannot fail to entertain a high sense of the advantages to be derived from the facility which may be afforded in the intercourse between them, by means of good roads and canals. Never did a country of such vast extent offer equal inducements to improvements of this kind, nor ever were consequences of such magnitude involved in them," &c.

In relation to the preservation of the Union, the subject presents itself in the strongest possible light. The character of the face of the country, the variety of soils and climates, necessarily give powerful impulses to sectional interests and feelings; and, in the absence of great and national improvements, these different interests will be entirely regulated by the mountains, waters, soil, and climate; and the stronger these interests grow in their natural channels, unconnected and independent of each other, the more will the affections for the General Government diminish.

A people, speaking one common language, and being in substance the same people, can have no inducements to separate, while their interests can be interchanged to the advantage of the whole. But this highly interesting, political, and commercial state of society can only be attained and secured by internal improvements of a national character. There is no other choice. All the wisdom and experience of man can contrive nothing else. It is to internal improvements, and to those only, that the people are to look for these high and permanent blessings.

A thorough and judicious execution of internal improvements would enliven the whole country. The advantages of such public works are so universally acknowledged, that it would be time mispent to go into any reasoning on the subject. The results have been the same in all ages and nations. It is enough to say that it will promote the landed interest to its highest tide of prosperity, and that it will always be the leading interest of this country. Where there is no carrying trade to a great extent, commerce, cannot lead; it must follow the prosperity of the land: and whenever that flourishes, commerce, manufactures, and the various vocations of society, will participate in the general good. Congress can do no act which will so effectually remove the necessity of a high tariff. The raw materials will be more abundant, and consequently cheaper. They can be transported to the manufactory, and the manufactured articles from thence to the market places, at a less expense. No policy ever was, or ever can be, presented to the national councils, which would be more purely American. It benefits the whole, and oppresses none.

There is no country more susceptible of improvements than our own. It comprehends so many degrees of latitude on the ocean, and also of longitude in the interior, abounding with mountains, lakes, and rivers, and embracing almost every climate and variety of soil. I will not fatigue the committee by any enumeration of the capacities of the country for improvements. I will barely allude to one, which, I think, ought never to be lost sight of—I mean the Atlantic canal, from the extreme North to St. Mary's, and one to connect the waters of the Atlantic with the Gulf of Mexico, and from thence to New Orleans. This once effected, would connect itself with all the landings and valuable streams, from the Mississippi to the ex-



trene North, and by the Erie and Champlain canals with the lakes and the St. Lawrence.

The spirit of improvement has advanced in this country, and is still advancing. In the local and limited sphere of most of the States, the opinion in favor of this policy has gained the ascendancy.

It is in the General Government, which alone can plan and execute for the welfare of the whole, where the greatest gloom exists; it is here, where old-fashioned prejudices and impediments of every description seem to combine.

The history of public undertakings discloses the fact, that, although in the beginning, discouragements and frowns always await them, still, in the end, thanks can never be too bountifully bestowed.

The first important turnpike road made in America was opposed with the most active violence.

The State of New York had to wage a warfare against the prejudices of the times. Their grand projects were believed, by many, to be romantic, impracticable, and far beyond the resources of a single State.

The execution of improvements met with similar resistance in England. When a turnpike road was projected from London to the interior of the country, the landlords near the town became alarmed, as they feared that, by bringing the heart of the country so near to the London market, it would cause a fall in their rents; but, to their surprise, they discovered that rents rose along the whole distance of the road. Still, it is a remarkable fact, that England, as a nation so enterprising, and so celebrated for her anxiety to promote her own interest, should not have prosecuted internal improvement for ages after her means were ample. She had read of the water communications in China; she was familiar with the fame of the Romans, in the construction of their stupendous aqueducts, and their costly and magnificent roads; she had witnessed extensive improvements on the Continent, and was acquainted with the utility of the canals in Holland—still, she was not awakened until a hundred years after the existence of the canal of the two seas in France, when an enterprising individual, in a private undertaking, roused the nation, and infused among the people a spirit in favor of internal improvements, which became irresistible, and pervades the kingdom to the present day. Fine roads superseded the common roads. Canals are so numerous, that they approach within fifteen miles of almost every spot in England. Breakwaters are erected at their dangerous harbors. Streams are every where improved, and superbly bridged. They are now engaged in the grand experiment of the railroad system. The Darlington and Stockton railroad shed such light on the subject, that it called into action the enterprise of the large cities of Manchester and Liverpool. A railroad, with four tracks, is now nearly completed between these two towns; and, to avoid the inconvenience of a long train of coal wagons in the streets, a tunnel is made under the large city of Liverpool. It would be difficult for any nation to surpass English enterprise. To accommodate the lower part of London, on both sides of the river, a tunnel (under the Thames) is now nearly executed.

I fear I may be rather tedious; examples, however, are sometimes advantageous, and the theme itself is not barren of agreeable interest. Reflections on this very subject afforded consolation to the late Emperor of France, when a prisoner on the rock of St. Helena. This extraordinary man, among his other feats, was, in the cause of internal improvements, the mighty champion of the age. In speaking of the treatment of the allied powers towards him, he said: "At least they cannot take from me, hereafter, the great public works which I have executed, the roads which I have made, and the sea which I have united. They cannot place their feet to improve, where mine have not been before them. Thank God, of these they cannot deprive me."

His public works were, indeed, extensive and splendid. In a period, from 1800 to 1813, in which he had to contend with all the nations of Europe, and was deprived of commerce on the ocean, he executed improvements on the most expanded scale. He made a thorough repair of twenty-five thousand miles of turnpike roads, which had gone to ruin in the preceding years of political anarchy. He projected eighty bridges of large dimensions, forty of which were finished, and the remainder partially executed. He planned thirty distinct canals, seven of which were completed. Among the unfinished, were several very important ones; such as the canal de St. Guenion, to connect the river Somme with the Scheldt; the canal de St. Ourey, to supply the whole city of Paris with water; the canal of the Meuse and the Rhine, to connect the Baltic with the channel; and the canal of the Rhone and the Rhine, to connect Marseilles, on the Mediterranean, with Amsterdam, on the German Ocean. He improved the navigation of fifteen rivers, and reclaimed extensive marshes. At Antwerp and Cherbourg, he constructed great basins for ships of war or commerce; and he also improved extensively eighteen or twenty other ports. He almost re-made the roads in Italy; and the excavations at Pompeii were prosecuted under his auspices, until it exhibited one of the most interesting curiosities in the universe. He compelled the Alps to bow to his genius, which, from the creation, had looked down on the rest of the world. Over the most frightful and precipitous parts of these and the adjacent mountains, he constructed four hundred miles of good turnpike roads. This is a new outline of the grand works which he executed in the short period of thirteen years.

If the surplus revenue, after the extinguishment of the public debt, does not disappoint our expectations, this country, in the space of twenty years, may be made to rank with any on the globe. We have labor and skill enough—we have no wars, or prospect of wars—we seem invited to the execution of public works, to give to the country that artificial finish, which our interest and political considerations require.

To effect this great end, Mr. Jefferson, Mr. Madison, and Mr. Monroe proposed a change in the constitution, to invest Congress with an explicit and complete power. The latter has more especially described the extent of his meaning. It is to give the General Government power to execute a system of internal improvements, and to erect toll gates on national roads, with an authority to punish individuals who shall do any injury to the public works.

Let us examine, for a moment, the practical operation of the system thus proposed by these gentlemen. Will the exercise of the power to make a road produce any bad effects? Private property can be taken for public use, on paying a just compensation. Will a State be prejudiced by a good road passing through it, which will increase its population and wealth, and cause busy villages to rise up, and industry to be excited on the whole lot? Will it make any difference to the owner of land, whether he is paid by a State or by the United States? Will the heads or hearts of the appraisers be changed by the circumstance of their acting as citizens of the United States? Will the travellers care whether the gates are erected by a State or the General Government? Individuals who commit any injury to the works, as in the case of those who obstruct the mail, would be liable to federal jurisdiction. This, however, formed no objection in the mind of Mr. Monroe; and even this can be removed by investing this power in the State courts, as has been practiced in several cases. A fugitive from justice is to be examined before a State judge or magistrate. By a law passed in 1798, "All judges and justices of the courts of the several States, having authority by the laws of the United States to take cognizance of offences against the constitution and laws thereof, shall, respectively, have the like power and

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authority to hold to security of the peace, and for good behavior, in cases arising under the constitution and laws of the United States, as may or can be lawfully exercised by any judge or justice of the peace of the respective States, in cases cognizable before them." By an act of the 8th of March, 1806, the respective county courts, within or next adjoining the revenue districts, shall be, and are hereby, authorized to take cognizance of all complaints and prosecutions for fines, penalties, and forfeitures arising under the revenue laws. And by the act of the 21st April, 1808, the aforesaid act was continued without limitation, and extended to additional districts. Again, on the 10th of April, 1816, in the act chartering the Bank of the United States, it is declared that nothing therein contained shall be construed to deprive the courts of the individual States of jurisdiction, under the laws of the several States, over any offence declared punishable by this act. The State Legislatures can aid in the protection of a United States' law; and they have generally passed laws to punish for counterfeiting the notes of the United States' Bank. I think there will be no difficulty on this subject, when we bring our minds to reflect upon it. These offences are rarely committed. I do not, for the last thirty years, recollect an instance on the Philadelphia and Lancaster turnpike, or any forfeiture for the evasion of the tolls. If gates are put on the whole of this contemplated road, I do not suppose that more than three or four cases would occur in a year, and perhaps none; and, as I have already said, the State courts can be invested with a jurisdiction over them. This road would not be finished these five or six years; and before then, the country, I presume, will come to some practicable result as to the mode of repairing national roads. The repairs, in my opinion, ought to be made out of the money of those who use the roads. It cannot be expected that the General Government will annually appropriate money to repair roads. The best policy will be, to construct or to aid in the construction of roads, and afterwards let them maintain themselves, which they will always be capable of doing.

The constitutional question, I think, in the language of Mr. Madison, ought to be precluded: yet other gentlemen may not agree with me in this opinion; and, as this is the last time that ever I expect to speak at large on this subject, I wish to comprise the whole case in my observations.

I will premise that the power is one which Mr. Jefferson, Mr. Madison, and Mr. Monroe thought ought to belong to the General Government. They did not view it as obnoxious in its character, and dangerous to liberty; but as the means of binding the Union together, and of promoting the best prosperity of the country. The case is stripped of every odious feature, and resolves itself into a naked question of constitutional law. The only difference between the illustrious gentlemen, whose names I have so repeatedly mentioned, is, that the friends of national improvements believe that Congress possesses the power already. These three Presidents were so ardent on the subject, that they recommended a change in the constitution. We say that no change is necessary—that the constitution is a sacred instrument, and should never be touched without fear and trembling. For my own part, I think I never will vote to amend it, except to elect the President for a single term. Neither of the Presidents alluded to were ever suspected of being unfriendly to State rights, or inclined to invest the General Government with unreasonable power.

Although this subject has been discussed so often, I do not recollect that a passage in the Federalist relating to it has ever been read. In No. 14, the objection drawn against the constitution, from the extent of country, was answered. In this answer, speaking of the effects of the constitution, it is said: "Let it be remembered, in the third place, that the intercourse throughout the Union will be

daily facilitated by new improvements. Roads will every where be shortened and kept in better order; accommodations for travellers will be multiplied and ameliorated. An interior navigation on our Eastern side will be opened throughout, or nearly throughout the whole extent of the thirteen States. The communication between the Western and Atlantic districts, and the different parts of each, will be rendered more and more easy, by those numerous canals with which the beneficence of nature has intersected our country, and which art finds it so little difficult to connect and complete." It is evident that the writer contemplated this to be effected by the General Government. He was speaking of the effects of the Union, and he never could have anticipated that the grand canal alluded to would ever be made by the States. The States could make no compact with each other, for this purpose, without the consent of Congress. The power was taken from them, and it naturally went to the General Government, until it should be receded in the mode prescribed. Can it be expected that the States will enter into compacts to make roads, calculated more for national than local purposes, and then come to Congress for their consent? If we place our reliance on the States, the road in question will not be made for a thousand years to come. In the discussion of constitutional questions, we must consider ourselves as citizens of the United States, as well as of the particular State to which we belong. The rights of each should be cherished with equal zeal.

The constitution has invested Congress with certain enumerated powers, and I have always concurred in the opinion that the common defence and general welfare of the United States is to be obtained by the due exercise of these powers; otherwise, there would be no limits.

But the framers of the constitution foresaw that Congress would frequently have to legislate on implication, in relation to those powers; and to remove all doubts as to the right, they gave this general power by an express grant—a power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers; and other powers vested by this constitution in the Government of the United States, or in any department or officer thereof. From the nature of this power, no boundaries could be given. It is left on the broad ground of genuine construction. It is no longer an implied power; it is a construction of the constitution, under an express authority to do so; it is not restricted as to objects, nor is it confined to times of war or peace. Most of the express powers were acted upon in the early days of the Government, and the principal acts of legislation since have been founded on constructive powers. The promotion of the public welfare, as expressed in the constitution, may be considered as an intimation for a liberal construction, where the object leads to the good and prosperity of the country.

It has always seemed strange to me that this constructive power should be acquiesced in so generally, and yet denied for the purpose of improving the country.

We are never a week in session, without acting upon these constructive powers. Our statute books are full of instances. There are the laws relating to fugitives, who are held to service or labor, in any of the States. The laws relating to the carrying of the mail, the military academy, penons, navy hospitals, and trading-houses among the Indians, are all creatures of constructive powers. So are the laws relating to our fortifications, light-houses, and revenue cutters. In the same class, may be placed the practice of clearing rivers, removing sand-bars, improving harbors, and erecting breakwaters. In the same class, also, may be considered the laws concerning vaccination, the cultivation of the vine, and grants of land for education. I cannot remember but a small part of them. We do not confine ourselves at home. We have gone abroad, and have granted money to the inhabitants of St. Domingo and

Caracas; and we conveyed General Lafayette to his native home, in a national ship of the line. By mere implication through the treaty-making power, territories have been acquired, which are larger than European empires, and, under the same constructive powers, the inhabitants have been received into the American family, and made citizens. Even in our every day affairs, we see the same thing; we do not enjoy our library, maps, or stationery, by any express power.

We are not only in the practice of making laws, which are the mere offspring of constructive power, but we enforce those laws by the highest penalties, and inflict the sanguinary punishment of death.

The gentlemen who oppose the power, fall, as I think, into a capital error. They suppose that a jurisdiction over the ground occupied by the road, would be acquired by the General Government; this is not the case. Any crime committed on it would remain, as before, cognizable in the State courts. Congress would only have a protecting power over its own law, as in every other case. Whenever Congress has a constitutional power to make a law, it has the power to prevent the object of the law from being defeated. Congress pass laws to inflict punishments for obstructing the mail; still a larceny committed in the mail coach, or in a United States' court-house, would only be of State cognizance. We are familiar with these protecting laws; the sea, for a certain distance, belongs to the adjacent States, as a part of their domain; but such parts of the sea and the mouths of rivers are covered with revenue cutters, possessing high and arbitrary powers, such as boarding a vessel by force, and nailing down the hatches; yet these acts, which are merely to protect a United States' law, have never been considered as any infringement of State rights. President Monroe, in his views, agrees that Congress can appropriate money to make a road, but this, he thinks, would exhaust their power. They cannot put a toll gate upon it, and inflict penalties for any injury done, as this would give jurisdiction.

Here consists the grand fallacy, this ideal fancy of jurisdiction. What jurisdiction, I will ask, attends such a law, that does not follow every act passed by Congress, a mere power of protecting constitutional legislation? Congress cannot pass a single law which may not increase the business of the United States' courts; but it is no new species of jurisdiction—it is a mere right to interpret the main part of the act, and of the provisions designed to enforce it. If the law itself is constitutional, it is too much to say that it cannot be protected by the usual penalties.

Is it possible that Congress can Macadamize a road, and build splendid bridges, and that the first act of disorderly men who may pass along, can, with impunity, defeat the whole, by tearing up the stones and demolishing the bridges?

I confess that I cannot understand the doctrine, which goes to say that money in the treasury may be appropriated to a particular object, when we would have no right to send a tax gatherer to collect money for the same object.

The power to lay and collect taxes is co-extensive with the power to appropriate. But it is said that the mere appropriation imposes no burden on the people. This is an evident mistake. The money in the treasury belongs to the people as well as the money in their pockets, and Congress cannot touch a cent of either, unless it is to carry into effect some expressed or implied provision of the constitution. I feel a clear and full confidence that there is not the slightest foundation for the distinction; and I am persuaded that every candid mind, on reflection, however dazzled at first, will abandon it. I hold it to be universally true, that whenever Congress can make an appropriation, it can prevent the law from being defeated by the usual penalties, when necessary.

The people wish the exercise of this power; they welcome the engineers and surveyors; they rejoice to see

them; and the only want of harmony that exists, is a contest as to the route of the road. In all the cases of surveys, with a view to internal improvements, no interruption has been interposed in a single instance. On the floor of Congress, the subject has undergone generous and animated debates; and the power has always been sustained from the date of the Cumberland road, in 1806, to the present time; and roads have been frequently made to and in the new States, which could not be done if the power did not exist. Congress has no power, nor can have any, that is not derived from the constitution.

In 1818, a resolution passed this House, asserting the power to construct post roads, military roads, and other roads, and to improve watercourses. And a resolution passed, directing the Secretary of War and the Secretary of the Treasury to report plans for internal improvements. The Secretary of War did report on the subject at the next session, and the Secretary of the Treasury would also have reported, if he had not been prevented by indisposition.

Congress has solemnly acted on this power on two occasions. First, in the passage of a law in both Houses, to set apart the bonus and dividends of the Bank of the United States as a fund for internal improvements. And, again, in the passage of a law in both Houses, for the erection of toll gates on the Cumberland road. It is the genius of all our institutions, that the will of the majority is to prevail. An instability in construing the constitution by Congress, would produce as bad effects as if the same should occur in the Supreme Court of the United States.

If the construction put on the constitution is a glaring mistake, or the offspring of party violence, and dangerous to liberty, let it be disregarded. But when it leads to the prosperity of the country, and the arguments in its favor are respectable, we are justifiable in adhering to the precedent as the evidence of a genuine construction. I will, however, examine this part of the subject, while I am up, a little more minutely.

Congress possesses power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes; to establish post offices and post roads; to declare war, and to raise and support armies. The word regulate, as employed in the constitution, necessarily means to embrace any act that will benefit commerce among the several States. Nothing can be of higher importance to this nation than its internal trade; and the greatest embarrassment it can ever labor under, is the distance of the places between which it is carried on; and this can only be subdued by good roads and canals. They will regulate and lessen the cost of transportation; it will regulate and make the prices of similar articles more uniform in the different parts of the country. What other law or regulation could you make, that would be of the same advantage to inland trade? To regulate commerce with foreign nations, consuls are appointed to assist merchants abroad—and we have erected light-houses, piers, buoys, and beacons. To regulate commerce with the Indian tribes, roads have been made in the Indian territory, and trading-houses have been established.

What is the object of these light-houses, and light-ships, and all this class of powers constantly exercised by Congress? Is it not to lessen the price of transportation, by removing dangers, and rendering the navigation more safe and secure?

In these laws, no mention is made of a single article of merchandise—nothing is said about duties, or about buying or selling, or of drawbacks or debentures—the sole object is to lessen the price of transportation. And when we find the power to regulate commerce among the States, given by the same sentence, and expressed in the same words, why can we not apply the same principle to the regulations of commerce among the States? Why can we not lessen the price of transportation? Can any one make

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a sensible distinction? We do not stop with mere statutory provisions—the agency of the mind and hands are employed; stone and mortar are used; and the allodial soil is frequently called into requisition. Do you not purchase sites, and build custom-houses?

Before the adoption of the constitution, the several States could have regulated the commerce between themselves by the means of roads and canals, or in any other way; but the constitution has restricted the States from entering into treaties or contracts, and now they have no direct means of regulating commerce among themselves. It seems to follow, as a necessary consequence, that the whole power which previously existed on this subject among the States, as entire sovereignties, is carried to the general head, where it can be exercised to so much greater advantage.

Can it be supposed that the framers of the constitution, looking forward to the future glory of the nation, and being acquainted with the benefit of roads and canals to internal trade in other countries, could have intended to prostrate all power over this subject in a national point of view? The framers of the constitution were too wise to attempt to particularize any of the incidental powers. They well knew the impracticability of it. To mention one might be considered as the exclusion of others; and they left them all to the sound discretion of Congress. They may or may not have thought of light-houses; but, if they did, it was safest to say nothing about them; and if such an amendment had been moved, I presume it would have been rejected. It was their study, in those cases, to be general, and not particular. The objects which clothe Congress with power must be national, and reaching to their considerations beyond State sovereignty.

I will detain the committee a little longer, with their indulgence, on the subject of post roads. It is said that this clause of the constitution gives the power only to select a road in being, and not the right to create or make a road. We do not resort to a dictionary on these occasions; but it is of importance to know the acceptation of the word in State papers, in legislative acts, and in other parts of the same instrument. From these sources we shall discover that the word establish means to create, and not merely to designate a thing in being. In the first treaty we had with France, it is stated to be the desire of the parties to establish suitable regulations between the two countries. A similar expression is used in our treaty with England. I have not taken much pains to search for the word in legislative acts; but the committee will recollect the phraseology in many of our acts of Congress. There is an act to establish navy hospitals. Here land is to be purchased, work done, and a building erected. There is another to establish trading-houses to trade with the Indians. The word is used in the same sense in the articles of confederation. It speaks of the regulations to be established by Congress. The word is used in no other sense in any part of the constitution. It begins with the words, ordain and establish this constitution. It speaks of such courts as shall be established from time to time, and that the ratification of nine States shall be sufficient for the establishment of this constitution. It gives Congress a power to establish a uniform rule of naturalization, and it is evidently used in the same sense in the very clause now in question, to establish post offices and post roads. As to offices, it means to create; why change the words from those used in the articles of confederation, if it was not to enlarge the power? In that instrument nothing is said concerning roads. The words, to establish post roads, must mean to make them, when necessary; or they are valueless. If Congress are obliged to use the State roads, they can have no interest in the route. The mail is not to be opened between the two offices, and the mail contractors would take care to select the best route for themselves.

The power to be exercised in this case is not implied—

it is expressly given; as the word establish must mean to make a road wherever required; otherwise, any State could shut up their roads, and prevent the United States from carrying the mail. When a fortification is made, will any one deny that a road can be made to it? And if Congress can make a road for a mile, they can make one for a thousand miles, whenever the same necessity exists. Suppose an insurrection should break out, and a State through which it would be necessary to pass should so far favor the insurgents as to close her roads in that direction, could not Congress open them? Or, in the case of a war with a foreign nation, if it should become necessary to construct new roads to carry on the war, could not Congress make them? I mean constitutionally. And whatever can be done agreeably to the provisions of the constitution, in a state of war, can be done in peace, as preparatory to other wars. Whatever can be accomplished at one moment, can be effected at all moments. The constitution does not accommodate itself to times or circumstances; it remains fixed and unchangeable.

The objection to the power of Congress, I trust, will soon entirely disappear. There has been a mist over the subject—a kind of political charm, leading many into the strongest inconsistency. For instance, if the owner of a few barren acres should rob the mail, by mere implication, you can consign the proprietor of the soil to the disgraceful punishment of death under the gallows; but as to the bit of land he leaves behind, however necessary for the carrying of that very mail, and for war and inland trade besides, you cannot exercise over it the most imperfect of all rights, the mere right of a way, and to put a toll gate on it to raise a little money to keep it in repair.

A harmonious union of the various interests of the country can have no tendency to a consolidation of political power. The highways will be open to all; and I sincerely believe that the preservation of the Union depends less on the sword than in a kind feeling, which is only to be nourished by beneficial intercommunications. For my own part, I have no fears; I think the Government will last for a great many ages; but, at the same time, we should guard as much against a dismemberment as a consolidation. The doctrine of State rights will always be the popular side of the question; but great care is to be taken lest the General Government should be too much impoverished. What dread is to be apprehended from the General Government? What can it effect against the wishes of the States? Nothing. The arm of the General Government cannot move in opposition to the will of the States. Twenty-four States, organized and possessed of the power to raise money and to equip troops, and being composed of the same people that form the Union, what have they to fear? Nothing. The sovereign power in this country is in the people; and while they remain true to themselves, and preserve the purity of the elective franchise, all the earth cannot take their liberties from them.

The cause I am advocating did not originate in the cabinet at Washington; it sprang from the people, and hither-to has been borne on their voice, and on that alone. The expediency of exercising the power under the General Government has been frequently recommended; but these recommendations have been accompanied with doubts or insuperable difficulties. There has been no cheering countenance throughout from any President. Still the cause is in full life—it has not been repressed. It is a cause of as high importance, and equal in purity to any that has ever been debated in the national councils. It is a noble and virtuous cause; it does not seek to gratify aspiring ambition, nor to exhibit any useless show of pomp and splendor; its sole aim is good of country.

It is a cause that is not allied to any political party, old or new; it has been espoused by political partisans of every description; and it gives me pleasure to know that the late most amiable Mr. Lowndes, of South Carolina, was the

friend of national improvements. He discerned the power in the constitution, and was convinced of the expediency of exercising it. Than this distinguished citizen, none in the Union was more admired for integrity of character and clearness of intellect. It gives me pleasure, too, to know that his Excellency the Governor of Pennsylvania, in his official character, has recognised the power.

On the fate of this bill, in my humble judgment, depends a large portion of the prosperity and glory of this country for a long time to come.

From this point we are destined to advance or to retrograde; and I most solemnly invoke the friends of the cause to act from a spirit of conciliation, and not to suffer the bill to be entangled with other objects of improvements, or to be separated into parts.

I made a similar and successful appeal on a former occasion; it was in the case of the Chesapeake and Delaware canal. That interesting and highly national object had undergone the ordeal of congressional inquiry for twenty years, succeeding alternately, in one House or the other, but always defeated in the end by a connexion with other subjects.

Many objects of a national character have been presented to the committee; but all cannot be acted on at once. When the question is fairly settled, the different sections of the country will know that their turn will come as soon as practicable. In the meantime, the state of the public mind will be in readiness for more enlarged operations, as soon as the national debt shall be extinguished. We have selected the road in question, as the fittest for the peculiar moment; it combines in a high degree the objects of war, intelligence, and inland trade—the three fountains from which the power of Congress flows. It commences in the regions where the last war began; it passes by the seat of the General Government, and it ends where the liberties and independence of our country were so gallantly maintained, in the person of our present Chief Magistrate and his brave little army.

The cause is magnifying every day in importance; and if the railroad system does succeed, as its friends anticipate, and the power of steam can be applied, as many imagine, and as some experiments seem to prove, the most comprehensive mind cannot foresee the prodigiously improved condition of the country which may be effected in the next twenty years.

Distances will become mere slight inconveniences to the pleasure and industry of the country, and the modes of conveyances over the whole civilized world will be changed.

Patriotic excitements are salutary to a society of people. They delight in noble achievements; the example of the United States may produce an influence on the rest of the world. When we are known to be inclined to reconcile national differences, rather than to excite wars, and are seen devoting ourselves to the happiness of the people, in the promotion of such public undertakings as will advance their interest, and go down to posterity as the best evidence of our solicitude for the permanency of our republic, we can never expect to see a fairer moment than the present to commence the internal improvements of the country on a scale worthy of their importance, and of the public spirit and enterprise of this great nation.

Mr. P. P. BARBOUR said that the gentleman from Pennsylvania, [Mr. HENRILL] who had led the van in this discussion, set out with the declaration, that the subject was one of great importance; in this opinion he fully concurred; but the gentleman and himself differed in this interesting particular. He thought it important in relation to the good effects which it was calculated to produce; whilst I [said Mr. B.] think it is part of a system fraught with injurious consequences to the well-being of the country. Some of the most prominent of these consequences I propose, in the progress of the remarks which I am about to make, to develop in the committee.

There are some positions which have been assumed by the gentleman, which I do not mean to contest; with a view, therefore, to present to the committee, and through them to the community, the great questions at issue between us, I will first state those points in which we do agree, and then proceed to the discussion of those in which we do not agree, but differ *totò cælo*. He first told us, that this bill, which proposes to construct a road through several of the States, does not provide for procuring their assent, because he, supposing that we have power to legislate on the subject, considered it unnecessary. As to the truth of this proposition, my mind cannot for a moment entertain a doubt; indeed, it seems to carry with it almost the force of self-evidence.

There are some few of the powers of Congress, requiring the assent of the States, in the very terms in which they are granted; with the exception of these, (and these one in question is not one of them,) every power which is granted operates by its own intrinsic force; it must, in the nature of things, so operate, or it would cease to be power. That which I have not a right to do, but by the assent of another, derives its authority, not from my will, but from that assent. The proposition may be put thus: If Congress possess the power, then the assent of the States is not necessary; if they possess it not, then that assent cannot impart it, but by the concurrence of three-fourths of the States, in the manner prescribed in the constitution: for, to give a new power, is, in effect, to alter or amend the constitution, and the concurrence of three-fourths is required for the purpose of amendment. Exemplify the argument, if you please, by the case of the war-making power; would it not excite a smile to talk of Congress asking the assent of one or more States to a declaration of war? I will not waste the time of the committee by another remark upon this point.

The gentleman tells us that the public debt soon be extinguished; that there will be, then, a large surplus revenue, which he thinks ought not to be distributed amongst the States; and that the best disposition which can be made of it, is to apply it to the purposes of internal improvement.

I shall not now stop to discuss our power to distribute the surplus revenue amongst the States, nor to inquire whether, if we had the power, that would be a judicious appropriation. "Sufficient unto the day is the evil thereof." Whenever these questions shall arise, I shall be prepared to examine them, with all the deliberation due to their importance; the view which I have taken of the subject, renders such an inquiry, at present, wholly unnecessary.

The gentleman's argument upon this point proceeds upon the hypothesis, that a large amount of surplus revenue will certainly exist. Now, sir, it is matter of astonishment to me, that this idea did not occur to the sagacious mind of the gentleman, that it depends upon our will whether there shall, or shall not, be such a surplus. I offer to him a solution of his difficulties, a relief from his embarrassment, by the simplest, the easiest of all remedies—a diminution of the revenue. This idea may be forcibly illustrated by an example drawn from the common principles of household economy. What would be thought of a man, in private life, who was about to build, and whose family required but six apartments for their accommodation, who should erect a house containing double the number, feeling, at the same time, great difficulty as to the purposes to which he should apply the useless apartments? Surely, if his own mind did not suggest the idea, some friendly adviser would tell him that he might abate the difficulty by building upon no larger a scale than the comfort of his family required. So, sir, I offer to the gentleman this advice: let us so regulate our revenue, as to suit it for the wants of the Government, and we shall be thus happily relieved from the perplexing question, what shall we do with the surplus?

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Let us, for a moment, examine the principles which ought to govern us in relation to revenue. Taxes are that portion of the substance of a people which they are required to contribute to the support of Government. True, sir, the money power confided to Congress is, as it ought to be, indefinite in its extent. But why is it so? Simply because, as the exigencies of Government cannot be foreseen, if the power of supplying them were limited, there would be a definite supply where there was an indefinite demand. But, whilst this discretion is given to us, surely every principle of justice and sound policy imperiously requires that we should draw from the people the smallest amount of contribution which will be sufficient to meet the demands upon the treasury, in the prudent and discreet management of their affairs. This is the principle which has been avowed even in monarchies, especially in the country which is our parent State. It was a maxim of Queen Elizabeth, acted upon by her minister, the celebrated Burleigh, that she did not wish to see her treasury like a swollen spleen, and that her treasury was in the pockets of her people; and, at the present day, after the lavish expenditure of millions, the Premier of Great Britain has recently assured Parliament that the taxes shall be reduced to the lowest amount consistent with the safety and defence of the kingdom. Why ought this to be always and every where done? Because, to the extent of the taxation of any country, money is drawn from a condition where it is productive, and placed in one in which it is unproductive; and because this process diminishes the productive labor of the society, and, by necessary consequences, its wealth. And shall we, in this respect, be less attentive to the interests of our constituents, than monarchs, and ministers of monarchs? We, who are ourselves a part of the people, springing from them, representing them, accountable to them, and to whom they have, with jealous caution, entrusted the care of their purse, shall we not prefer a rich people and a poor Government, rather than a poor people and a rich Government? Sir, if we pursue the policy of imposing unnecessary taxation, we may call our Government a republic; we may boast of the freedom of our institutions; yet the people will have a right to say, and will say, we go not for names, but for things; not for form, but for substance; that oppression is oppression still, no matter from what quarter it comes, no matter by what political agents it may be exercised. We learn from a treasury document, that the public debt will be wholly extinguished in 1834, and, except the seven millions of dollars due to the bank, and the thirteen millions of dollars of three per cent stock, in June, 1832. As to the debt due to the bank, it may be considered as paid, because they owe us an equal amount. With so certain and speedy an extinguishment of the public debt before us, will it not be unnecessary and oppressive taxation to continue the present amount of revenue, ten millions of dollars of which are now annually applied to that object? Let us, then, pursue the obvious, the just course of policy; let us graduate our revenue to our demands; we shall then have no surplus to perplex us in its disposition, and to lead us into a mighty scheme of expenditure, for no better reason than that we should otherwise not know what to do with it.

If my doctrine could prevail, I would reduce so much of the taxes as to have no surplus, even though it affected the protecting policy, commonly called the American system; but let not the tariff members of this House be alarmed; for an immense reduction may be effected without injury to their favorite banding. The report from the treasury informs us, that duties to an amount exceeding seven and a half millions of dollars may be repealed upon articles not at all produced or manufactured in the United States, or in so inconsiderable degree as to be utterly unworthy of notice; and, indeed, I have reason to believe that the repeal may be extended to ten millions,

without materially affecting any manufacturing interest. To this extent, then, I have a right to expect the aid, even of the tariff members of this House.

The gentleman has deemed it proper to discuss the constitutional power of Congress over this subject. In this particular, I have determined not to imitate his example, but purposely and studiously to avoid it. But let not any man suppose that I decline to enter the lists with the gentleman upon this ground, because I think the position indefensible; so far from this, sir, I feel satisfied it may be maintained against all the batteries of argument which human ingenuity can level against it. The opinion which, at an early period, I entertained, has never undergone the slightest change; on the contrary, every additional year of my life, every additional hour of reflection, has but added to the strength of my original conviction, that it was not within the sphere of our constitutional powers. Why, then, do I decline this part of the discussion? Because I myself have, on former occasions, in this House, exhausted myself upon it; because, by others, it has undergone repeated and elaborate discussions; has been so bolted down to the bran, that nothing short of inspiration itself could cast a new ray of light upon it; because my observation has satisfied me that constitutional discussions upon any point are in ill odor in this hall, and more especially this, which would be "as tedious as a three-fold tale;" and because the various considerations of justice and political expediency are ample for all the purposes of my argument.

I cannot, however, forbear to present to the committee a short retrospect of the progress of opinion on this subject, solely with a view to show the encroaching nature and onward march of power.

In the creation of the Cumberland road, Congress acted on the compact between this Government and the North-western Territory, stipulating that five per cent. of the nett proceeds of the sales of public lands should be applied to making a road within, and leading to, that territory; they charged the amount expended in the construction of the road upon that fund, and procured the assent of the States through which it was to pass. During the interval between the year 1806, when that road was commenced, and the year 1817, the public mind was in much oscillation on this subject. In this last year, the subject was brought up, and underwent elaborate discussion in this House, upon the following resolutions reported from the Committee of the Whole:

1st. That Congress has power to appropriate money for the construction of post roads, military roads, and other roads, and the improvement of watercourses. This resolution was carried: Yeas, 90—nays, 75.

2d. To construct post roads and military roads. Lost: Yeas, 82—nays, 84.

3d. To construct roads and canals for carrying on commerce between the States. Lost: Yeas, 71—nays, 95.

4th. To construct roads for military purposes. Lost: Yeas, 81—nays, 83.

5th. A fifth resolution was moved, that Congress has power to appropriate money in aid of the construction of roads and canals which shall be laid out and constructed under the authority of the legislatures of the States through which they pass. Negative: Yeas and nays not taken.

Thus, we see, that, by the solemn decision of this House in 1817, all power over this subject was repudiated in every form and shape, save only the power to appropriate money for the purpose of construction.

The bill now under consideration affirms the power to construct, in direct contravention of the recorded opinion of this House in 1817. Thus it is as true of the love of power as it is of another passion, "that increase of appetite grows by the very food it feeds upon." Under the appropriating power, let me say to the committee, that it appears by a report made some time since, that, in the ses-

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sion of 1827-'8, three millions of dollars worth of public lands were given to States and individuals; and that, at this very session, we have applications for aid to the Portland canal, the Blackstone canal, a railroad in Georgia, another in South Carolina, and a third in Maryland; for aid to the Transylvania University, the Columbian College; and, finally, for an appropriation of forty thousand dollars to establish a filature of silk in Philadelphia. I might add, deaf and dumb asylums, and a long list of other benevolent projects, including a memorial from the Colonization Society; but I forbear, from a fear of wearying the patience of the committee. And "last, but not the least," comes this bill. As we are now about to take a new latitude and departure, it behooves us, before we weigh anchor, to consider well what is the port of destination; in other words, to look along the line of time into futurity, and estimate the consequences of this system, some of the most prominent of which it is my purpose to attempt to develop.

But, first, allow me to inquire what are the advantages which are to recommend this bill to our adoption? They must be, that it is beneficial, either to commerce, or military operations, or the transportation of the mail. I will examine the subject in reference to each of these considerations. And, first, as to its commercial advantages. A glance of the eye at the map of the United States will furnish, I think, an irrefragable answer to this argument, at least in reference to the States of New York, Pennsylvania, Maryland, and Virginia, through which it is to pass. Nature has stamped upon the territory of each of these States one common indelible feature. That the streams of every size, whether great or small, flow from the mountains either eastwardly into the Atlantic Ocean, or westwardly, through the Mississippi, into the Gulf of Mexico. Now, sir, the road in question, at least throughout its whole extent, in the four States which I have mentioned, runs almost at right angles with these natural channels of commercial intercourse. Whilst, then, the produce of the country seeks its market in one direction, this road passes in another; and, indeed, if it coincided with the direction of commerce and these natural channels, that would be a stronger argument against it, by all the difference between the facility of water and land transportation. This road, then, cannot stand upon the fact of its commercial advantages.

As little can it be supported upon the ground of its necessity for military operations. When the gentleman speaks of the exposure of Buffalo and New Orleans, the two termini of this gigantic road, I call upon him to say, has he forgotten the vast and expensive system of fortifications which we have created, and with which we are surrounded, as with a wall of circumvallation? After the millions which we have expended in these, are they to be abandoned as useless, for all the purposes of defence? or, will they not be supplied with ordnance, and garrisoned in time of war for our protection? Does the gentleman suppose that troops are ever to be marched from Buffalo to defend Orleans, or from Orleans to defend Buffalo? Let the defence of Orleans during the late war answer the question; it was successfully—nay, gloriously defended by troops, not a man of whom was, I believe, marched from north of Tennessee and Kentucky. If, contrary to every rational probability, such a thing should ever occur, where are all the mighty rivers and canals which surround our borders, and penetrate our interior country? Where, for example, is the Ohio canal? Where that of New York? It is possible, that, in some twenty or thirty years hence, we may have war; say, if you please, in twenty years, for Ferguson, in his Treatise on Civil Society, thinks that a war in every twenty years is necessary to prevent a moral rust, and the dying away of the national spirit; in that event, it is also possible that troops may be marched on this road; but if this road be constructed upon these two possibilities, does it not strike the mind of every

man who hears me, that the same thing may possibly happen to every road in the Union; and that, therefore, every road may be treated as being necessary for military operations? The extent of the system, which this reasoning would justify, would be unlimited and illimitable. The gentleman alarms us with the enormous expense incurred during the late war in the transportation of provisions and the materiel of war to our northern and northwestern frontiers. Does he not remember that the two great canals of New York and Ohio have both been constructed since that period; both leading directly to these points? Does he not also remember that the frontiers of both of these States have, since that time, been overspread with an overflowing tide of emigration, covering the face of the country with arable fields, where the towering forests then stood, and intersecting it every where with the roads necessary for their own accommodation? The difficulties which then existed, have sunk beneath the enterprise of our people, and the irresistible force of circumstances. Let us now, for a short time, examine this question in relation to the transportation of the mail.

The whole length of the road, we are given to understand, will be fifteen hundred miles, which, at the estimated cost of one thousand five hundred dollars per mile, will amount to two and a quarter millions of dollars. This, sir, is the supposed cost of making the roads of convex earth, without the use of either stone or gravel. My experience here has satisfied me that what is at first estimated at the whole cost, generally turns out to be but one of several instalments, necessary to the completion of any great work; let the road be constructed in the manner provided in this bill, and, at some aftertime, we shall be told that it must be finished with stone or gravel; nay, possibly that it must be made a railroad; how many additional millions that may cost, I leave it to the committee to conjecture. Indeed, sir, during this session, I have seen a report, which, if I mistake not, (and I speak from a doubtful memory, subject to correction,) estimates the cost of this road, constructed as a proper turnpike, at eleven and a half millions. But let us take even the sum of two and a quarter millions, the estimate of the cost of the plan now proposed; the interest of that sum at six per cent. is one hundred and thirty-five thousand dollars; I state the interest at six per cent., because, though the Government could borrow at home, probably, at four and a half, and in England or Holland at three, yet the legal interest throughout the United States varies from six to eight; as the amounts will be drawn from the pockets of the people, it would be worth at least six per cent. to them. Now, sir, I learn the average cost of transporting the mail tri-weekly, in a stage coach, would not, in the more important parts of the country, exceed, if it equalled, fifteen dollars per mile. A report, however, of the Postmaster General, made in the year 1824, states the cost of thus transporting the mail from this city to Orleans, at fifty-two dollars and seventy-six cents per mile; even at this extravagant rate, the whole transportation of the mail from Buffalo to Orleans would be less than eighty thousand dollars, while the annual interest of the cost of the road, without stone or gravel, has been shown to be one hundred and thirty-five thousand dollars; thus exceeding, in annual interest, the whole cost of transportation, by more than fifty-five thousand dollars. In this respect, then, I put it to the candid consideration of the committee, whether the proposed expenditure can be judicious. The answer must be obvious to the minds of all who hear me. What, let me ask, is the equivalent promised for such a waste of money? Why, the mail will probably pass a few days sooner between these two points. In the present condition of the road, however, if I mistake not, the message of the President to this Congress was carried from Washington to Orleans in five and a half days; I am well aware that that extraordinary velocity was the result of a

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great effort to communicate to the public a document in which they felt an intense interest; but if such speed as this be possible by any effort, the committee will be able to judge how much additional time is necessary, with that diligence, which, in the ordinary transportation of the mail, is now usually practised.

I have thus far been engaged in examining the supposed advantages of this road. Suffer me now, sir, to present the other side of the question; a view of the disadvantages, of the many mighty objections founded upon the injustice, the inexpediency, the injurious political effects of this system of internal improvement, if persevered in. In doing this, I shall "nothing extenuate, nor set down aught in malice."

When I shall have finished this view, I shall only ask you to "look upon this picture, and upon this;" and to say which of the two is the most accurate representation of the case, and to decide accordingly. I beg the committee to understand, that the objections which I am now about to urge, apply to the whole system of internal improvements, embracing this road as one link in the mighty chain; if the system, as such, is to prevail, then I feel no manner of interest or concern in the defeat of this or any other particular object; for though a single object may occasionally fail, by an accidental concurrence of votes, yet all the evils which I anticipate to my country would be realized; and in the general, nay, universal scramble for the spoils of the treasury, a few millions dilapidated here or there would be but as a drop in the bucket, and the whole treasury of minor importance, compared with the injurious consequences which sooner or later, in my opinion, will follow in the train of a system calculated to affect so fatally the destinies of the republic.

The first objection which presents itself to the action of this Government, has relation to the subject of economy. A knowledge of human nature will teach us that the surest safeguard in this respect is the keen-sighted vigilance of self-interest. This principle burns with an inextinguishable ardor in the heart of man; and if it does not point to its object with as invariable certainty as the needle to the pole, it is only because we may sometimes mistake the direction. If, therefore, individual means were adequate to the effecting any given purpose, upon them we might always rely with the greatest safety; but if governmental aid be necessary, then we may rely that the object will be most economically executed under the superintendence of the States. The great advantages of embarking individual interest in such enterprises, are, first, that they will never engage in them at all, unless they will probably yield a reasonable profit; and, second, that, when they do engage in them, they will use their utmost endeavors to reduce the expense to the smallest possible amount. The State of Virginia is acting mainly upon this principle, in her system of internal improvements; they have provided, that when, to effect any given object, individuals will subscribe three-fifths of the sum required, the State will furnish the remainder; thus securing the guaranty of self-interest against the application of public money to any unproductive or visionary scheme. But the States, without the aid even of private interest, will most probably waste less than the Federal Government; they have much less scope for their action, and much fewer objects to which to direct their attention; they have fewer agents to whom to confide their management, and the supervising power is nearer the scene of operation; but, above all, the people, for whose benefit the money is expended, are the same by whose contributions the money to be expended is raised; whilst, under our system, it may happen, and often does happen, that while one portion of the community get the benefit of an improvement, they furnish no part of the means, as in the case of donations of the public lands; and even where money is advanced from the treasury, they may have furnished a very small

and unequal share. If this policy be pursued by the States, as it usually is, of always having individual interest engaged, there is a fair prospect of the money invested producing a reasonable profit; and, in that event, through the medium of dividends, there is restored to the public treasury a sum equal to the interest of the capital advanced. However this reasoning may apply to those cases in which the United States subscribe to works undertaken by individuals or corporations, it surely has no application to those which the Government undertake on its own account to have executed; and in those works which the State themselves execute by their own means, they endeavor by tolls to reimburse the treasury for the disbursement, which, in the case of the United States, is not done.

Self-interest, then, may be considered as the central point of economy; the State and Federal Governments as concentric circles drawn round that centre, the States being the smaller, and the Federal Government the larger; and it is not more true in mathematics that the radii which pass from a common centre must be longer to reach the circumference of a larger than those which will touch the one of a smaller circle, than it is that by how much the Federal Government is further removed from the point of self-interest than the State Governments, by so much is economy in the expenditure of public money diminished. For a practical illustration of this truth, I appeal to the Cumberland road, which, for a distance of one hundred and thirty miles, I suppose, must have cost between a million and a half and two millions of dollars.

I come, now, to another serious objection: I mean the inequality in the distribution of our favors. The theory of our constitution undeniably is, that the contributions of the people of the United States should, as nearly as possible, be equal. Thus it is provided that direct taxes shall be apportioned amongst the several States, according to their population; that duties, imposts, and excises, shall be uniform throughout the United States; and that no preference shall be given, by any regulation of commerce, to the ports of one State over those of another. But of what avail is it to secure equality in contribution, or to attempt to secure it, if, the moment the contribution is made, the whole effect may be instantly destroyed by gross inequality in making appropriations? This idea may be forcibly illustrated by a familiar example, drawn from common life. Suppose, sir, you and myself being about to embark in a common enterprise, each with great accuracy contributes precisely equal sums, and the very moment the fund was thus formed, you were at liberty to apply the whole amount to your own use, would it not be mockery in such a case to talk of any substantial equality? In the execution of this system, it will be in the power of this Government, at its pleasure or caprice, to increase the wealth of one portion of the Union, and to diminish that of another, without any restraint whatever. Let me suppose a case or two. Suppose the Cumberland road had been extended to Baltimore, no one will deny that the commerce of that city would have been benefited. Of this, Maryland seems to have been aware, because she has constructed a turnpike from Cumberland to Baltimore; but, if, on the contrary, that road had been conducted from some point on the Ohio to Philadelphia, then that city would have received the advantage; and thus the one or the other city might be increased in prosperity, at the expense of the other, just as the one or the other direction might be given to the road. I will put a still stronger case. Suppose New York had not been able, with her own means, to execute her great Erie canal, and that State and Louisiana had both applied to this Government for aid at the same time, the one to have made the Erie canal, so as to connect that lake with the city of New York, the other to improve the Mississippi and all its tributary streams; is it not obvious that, according as we had executed the one or the other project, we should have built up the city of Orleans, on the



one hand, or that of New York, on the other? Sir, from these examples, it is impossible not to see that the relative wealth and importance of the different portions of the Union might be made to depend upon the favor which they might respectively find here. Our revenue being raised almost exclusively by imposts, the attention of the people at large is not drawn so closely to it. To test the justice and policy of this system, I appeal to gentlemen to say whether they would venture to impose a direct tax, to the amount of millions, and then apply the proceeds to the improvement of particular parts of the country. I undertake to answer no; and, let me tell them that if they were to try the experiment, the people would soon arrest them in their course. We sometimes hear it said, that, as the United States are one great whole, whatever benefits one of the parts is a benefit to the whole. This, sir, I acknowledge, is too lofty a magnanimity, too expansive a patriotism, for me to pretend to. Say what you will, reason as you will, as long as man is man, the States, and the people of the States, will never forget their individuality; they will never consent that the fruits of their labor shall go to enrich others. Let me test this principle by a case. I suppose that some five or six millions would probably improve all the important rivers in Virginia. I call upon the members from Massachusetts to say whether they would impose a direct tax upon their constituents to effect this object. If they would not, and I am sure they have too much candor to say that they would, then this high-minded disinterestedness will do well "to point a moral or adorn a tale," but will not do for practical life.

Nor, sir, is the objection on account of inequality at all obviated by the common remark, that our resources are to be applied to national objects. National objects! Where is the criterion by which we are to decide? What comes up to this standard, and what does not? We have none but the opinions of members here; and, whenever the question comes to be decided, rest assured that each individual member will think that the project which he presents has the stamp of nationality. And what, sir, will be the necessary result in practice? I make, now, no invidious distinctions between North and South, East and West; we are all men, and have all the feelings and passions of men. Many projects will be presented at a given session; the disposable funds will not be adequate to the completion of them all. Then will come the "tug of war," and the struggle who shall succeed and who must be disappointed. No one or two of the objects can be carried by themselves, but must get their passport by the company which they are in. Sir, the inevitable result will be combinations and arrangements, so as to unite a sufficient force to carry through a number of different objects, neither by its own intrinsic weight, but all by the united weight of all. This will generate feuds and heart-burnings in those who are defeated. It will, it must be so: for it is not in human nature for either States or individuals, without murmuring or discontent, to stand by and see a fund divided, in which they have a common interest, and of which they are not allowed to participate. They will never be satisfied by telling them that their objects were not national, whilst the others were. They will think otherwise; and they will tell the participants in the spoil that they had decided the question of nationality in their own case, and then enjoyed the fruits of that decision.

Sir, I am no apostle of disunion. I look to the confederacy of these States as to the ark of our political salvation. May God grant that it may be perpetual! Sir, I go farther, and say that I come not here with any language of menace; but as the representative of a portion of the people of this country, I have a right to use the language of expostulation. In that language, then, let me warn this committee that there are already points of difference amongst the States of this Union, enough to inspire us all with a spirit of moderation and forbearance. A minority,

it is true, but a very large minority of the people have calmly protested against some of the leading principles of policy of this Government. Virginia, South Carolina, Georgia, Alabama, and Mississippi, all tell you that they feel themselves to be oppressed. Will you turn a deaf ear to their complaints? Will you pay no respect to the opinion of a large and respectable portion of the community? Will you, because you are a majority, feel puffed up, and forget right? What more could the veriest despot do? Sir, the machine of Government may for a time be propelled by a given momentum, though many of its parts work not at all in concert; but, sooner or later, it must be worn too much by excessive friction; or, possibly, it may become so disordered as to be unable to perform its functions.

What makes this system still more obnoxious is, that some of the States of this Union believe that this power does not reside in Congress, and, therefore, they cannot participate of the bounty of this Government, even if it were offered to them. Sir, I do not mean to violate my promise that I would not discuss this question; but I must, consistently with that promise, urge upon this House the propriety of a principle recommended by two distinguished American statesmen, to abstain from the exercise of a doubtful power. Suppose that you may, as has been said, "by hanging inference on inference, until, like Jacob's ladder, they reach to Heaven," come to the conclusion that the power is with you; I ask, emphatically, is it not reason enough to forbear its exercise, when so many of the States believe it to be a violation of the compact of their union with you? Will you, can you, consistently with justice, proceed in the distribution of a common fund, when so many of the joint owners must, according to their sense of duty, either be forever excluded from their equal share, or procure it only by sacrificing their solemn conviction of what is right to their interest? Though you constitute a majority, yet let me remind you of this eternal truth, that the acts of a majority, to be rightful, must be just.

We seem to have reached an interesting crisis in our political history. During the war of the revolution, the whole energies of our people were concentrated in support of that great struggle, and they went together with one heart and one hand. During the interval between that and the late war, our strenuous efforts were exerted to repair the mischiefs of the first war; to build up a new government; put it into operation; restore our public credit; and, by every means in our power, to acquire a stand among the nations of the earth. The late war again put into requisition all our civil and military energies, in vindication of our national honor. Since its termination, a new era has opened upon us. With nothing seriously to disturb us from abroad, we are left to look at home. The action of the Government has now turned inward, with an overflowing revenue, and a near approach to the extinguishment of our public debt. New schemes of policy are devised; new principles of government avowed. I fear, sir, that we may find, as other nations have found, that a period of peace, however desirable in itself, is precisely that in which our Government is to be put to its severest trial. Amidst the din of arms, or in the great effort to build up political establishments, the selfish passions are in a great degree absorbed in the more important objects to be effected. These causes being removed, there is now full scope for their action; and it calls for all our firmness and all our patriotism to prevent the injurious effects. If, if this Government would confine its action to those great objects, which, in my estimation, its founders intended, such as war, peace, negotiation, foreign commerce, &c., and leave every thing municipal in its nature to the States, we should go on in harmonious concert; and peace, content, and happiness, would prevail throughout our borders. In relation to these great questions, there is a community of interest throughout the Union; as, on the one hand, there

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must be acted upon by the Federal Government, so, on the other, its action upon them is not, in its nature, necessarily calculated to create strife and conflict amongst the different parts of this great whole. Sir, it is when we pass beyond this line, and intrude upon the field of municipal legislation; when we act on subjects in which the different States have different and opposing interests, in which the benefit we extend to one is at the expense of another, and in which each State can best act for itself; it is by this course that we are converting content into discontent, harmony into discord, and bringing into direct conflict those different interests which, if acted on internally by the States, and externally by this Government, would afford the strongest cement to the Union. The natural pursuits of the North, for example, are those of commerce and navigation; that of the South is agriculture. Let each be managed at home—I mean in their internal operation—and they are the allies of each other; the northern merchants and ship owners are the buyers and transporters of southern produce; and the South purchases the imported goods of the North; but the moment this Government attempts to control and regulate the whole, then the conflict begins; for then the regulation which advances the interest of one, by the same operation injures that of the other.

There are strong objections to this system, arising from the difficulty of executing it. If a road is to be constructed by our authority, we must have power to demand the land for its site—timber, stone, and gravel for its construction. How are these to be obtained? The constitution forbids us from taking private property without just compensation. To make this, we must, by our officers, summon juries, condemn the requisite land, value the stone, timber, &c. Is this not municipal legislation? The bill in question makes no provision for this. Suppose the owners of the soil to refuse, by contract, to supply these things, you must go into this whole process. Again, sir, after the roads shall have been constructed, they must be kept in repair. Shall it be done by a perpetual drain upon the treasury, or will you proceed to erect toll gates? Sir, this has been attempted in the case of the Cumberland road, but we have not yet sowed our courage up to this point. Here let me remind you of the solemn conviction of some of the States, that you cannot erect these gates. Will you, in the face of this, press on, and put such States in the painful dilemma of restricting your authority, or yielding up what they believe to be their rights? God forbid that the experiment should be made! I would not have one serious conflict with a single State for all the roads which you will ever make.

There is one argument addressed to the States, which charms like the siren's song, which I beg leave to examine closely, and to expose to the people at large. I wish to prove to them, and think I can, to demonstration, that they are under utter delusion in relation to it. The gentleman from Pennsylvania has given us a glowing description of the value of good roads, and other channels of communication; they enhance the value of land, they diminish the price of transportation, they almost annihilate time and space, and, in the fashionable figure of speech, they are to the body politic what the veins and arteries are to the body natural. The gentleman, not content with a mere description of their value, has held up to us, in bold relief, the thousands of miles of turnpike constructed by Napoleon; the splendid bridges, &c.; he might have added the eighteen thousand miles of turnpike in England; he might have gone further back, to the time of Louis XIV, the Grand Monarque; and described the canal of Languedoc; he might have gone further back, to Henry IV of France, and spoken of the splendid road constructed by Sully from Paris towards Brussels, adorned with triple rows of elms; nay, sir, he might have gone back further still, and spoken of the magnificent aqueduct of Rome, her Appian and Æmilian ways. This is the splendid illusion

which charms and captivates our people. Until this shall be dispelled, they can never be brought to dispassionate reasoning on the subject. I wish the gentleman had held up to our view, of the same canvas, the thousands of miles of turnpike in England, and the tens of thousands of people, who either go supperless to bed, or are driven by taxation to live on the least sustenance which will support human life; and the seven thousand Irishmen, the most brave and the most persecuted people on earth, who subsist, as O'Connell tells us, each, upon three half-pence per day; so, on the French canvas, he should have presented the roads, the canals, the bridges, and, at the same time, the ruinous, grinding, and oppressive gabelle and corvée; so, on the Roman canvas, he should have presented the splendid aqueduct and the paved ways, and, at the same time, he should have told us, in the eloquent language of a modern writer, "that the pavement and ruins of Rome are buried in dust shaken from the feet of barbarians." Let it not be supposed that I am hostile to good roads and canals; the gentleman may exhaust himself in their eulogy, and I shall not object; by rightful means, let mountains be levelled, valleys filled up—even the Appalachian mountains, if you please, subdued by the hand of man. The value of all this concludes nothing against my argument; it does not at all touch the question at issue between the gentleman and myself; that question is, not whether these things are useful—for that nobody denies—but it is how, and by whom, these improvements shall be made? The gentleman says, they should be made here; I say, they should be made by the States, when thus made. We shall enjoy all their utility, and that only. When made by this Government, I fear, I believe, for the reasons I have already stated, and others, which I shall hereafter urge, that the system will eventually destroy the independence of the States; that the States, in their erect independence, are the pillars which support our great political fabric; that, if these be weakened, the whole fabric will crumble into atoms, and fall with a tremendous crash; that, with it, will fall our political liberty, which, in the language of Cato, I value more than houses, villas, statues, pictures—and I will add, roads, canals, and bridges. Give me a people who are free, happy, and not oppressively taxed; though in the plain garb of republican simplicity, rather than one weighed down by oppression, though surrounded by all the monuments of the arts. A nation in this last condition may be aptly represented by the description which has been given of a splendid city, that, when viewed at a distance, you behold only lofty turrets, magnificent steeples, and superb edifices; but when you shall have entered in, and taken a closer view, you find wretched hovels, dark and narrow alleys, which shut out the light of heaven, and, I will add, many of those who inhabit these abodes, with famine in their eyes, and ragged misery on their backs.

I now beg leave to address myself to the sober sense, the interest, nay, the pride of the States, and the people of the States, and to say, as I will clearly show, that if, instead of heaping up their treasure here, they will keep it at home, they can execute for themselves all their splendid works, so eloquently described by the gentleman, without coming here, in the language of supplication, to beg us to do it for them; and that they will then maintain their independence, and continue to occupy their place as a respectable constellation in the political firmament, and not, like little twinkling stars, be so eclipsed by the meridian blaze of the federal sun, as not to emit light enough even to make "darkness visible."

I ask the attention of the committee, whilst I exhibit to them some plain and practical proofs of this proposition.

The revenue of the United States, which is the fund by which these improvements are to be executed, is derived by the contribution of the people of the States. It unquestionably cannot be good policy for the States to sur-

nish it to this Government, to be re-distributed by us, in the form of internal improvement, if that re-distribution be made in proportion to the respective contributions; for then it is apparent that the portion which each State would thus receive back, would be less than that which it had advanced, by the amount of the expenses of collection. What, then, is the only remaining part of the alternative? Why, sir, that the re-distribution must necessarily be unequal. To those States which may receive more than their proportionate share, I propose this solemn question: Is it reconcilable with the principles of justice, for them to make such a demand? To those which, on the contrary, may receive less than their due share, I put this question: Are you prepared thus to sacrifice your own interests, to give up the fruits of your own labor, to gratify the cupidity of those who, in the distribution of a common fund, clutch at more than the eternal principles of justice authorize them to ask? The demand of the one class would be as incompatible with the immutable principles of right, as the sacrifice of the other would be at war with their self-preservation. Sir, the force of this argument is infinitely increased by the consideration, that, as it has already happened, so it would most probably hereafter happen, that the States which contributed the least, would be precisely those which would receive the most—thus presenting the injustice of such a course in the most vivid lights of contrast. And will the States which are to be the losers by this operation, continue longer blind to the plainest dictates of interest, and act as willing instruments in the promotion of the very scheme which is thus to injure them? Do they not, must they not perceive, that it can only be pressed for by those States which are to profit by it? If they were to receive their fair portion, they would, at least, as I have said, suffer the loss of the expense of collection; if they were to receive less than their due share, this loss would be greatly increased; it is only then, because they expect, and intend to receive more, that they can desire it; but whatever they receive more than that share, some other State or States must receive just so much less.

But, I now beg leave to bring this question still nearer home, as to the interests of the States.

As soon as the public debt shall have been paid, if the present revenue shall continue, there will be an excess beyond the current disbursements of the year, probably of twelve millions of dollars per annum. This I will suppose is to be distributed in the form of internal improvements. Now, sir, I will, to illustrate my idea of the practical operation of the system, take the case of some individual States. Supposing, for the present, that each State should contribute a share of the revenue in proportion to her population, and, with the exception of the South, which contributes much more, it may serve as a tolerable basis for calculation, Virginia, containing at least one-twelfth of that population, would advance one million of dollars of this excess each year. If this excess were left at her own disposition, in the course of ten years she could cover her whole territory with turnpike roads, and intersect the whole commonwealth with improved streams and canals. What has Virginia ever received from this Government? I believe the appropriation of one hundred and fifty thousand dollars to the Dismal Swamp canal. Now this is less than one-sixth of one year's surplus of the revenue advanced by her people. Sir, let me put the case stronger. The annual amount of duty on coffee is about one million eight hundred thousand dollars, of which the twelfth part, the share paid by her, is almost precisely one hundred and fifty thousand dollars, the amount which she has received; and yet I doubt not many of my fellow-citizens in Virginia, and especially near Norfolk, seeing an immediate advantage from that article advance, have been charmed with the beneficence of this Government, and its wonderful liberality; though, as I have said, it is obvious that one year's excess of the revenue paid by that State alone, is between

six and seven times the whole amount; that, in a few years, that excess, if kept at home, would pave all her roads, and improve all her rivers; and that, if you would even let her people drink their coffee duty free for one year, when you do not want the money, even that duty or coffee would be equal to the mighty boon which she has received.

Let me say a word to my Kentucky friends, whom I value for their own good qualities, and on account of their descent; they are indeed well descended, coming, as they do, from the loins of the Ancient Dominion. She, too, "sees as in a glass darkly," in relation to this subject. For the sake of three or four cents per yard on cotton bagging, and a duty on hemp, which in practice does so much aid her, (for still Russian hemp drives hers for usage out of the market,) she has gone in support of the tariff; though, by its operation, I think her members here must admit that she does not receive more than three hundred thousand dollars, and pays an import duty of over a million. I ask pardon for mentioning the tariff; but I crossed my current of thought, and I could not forbear to advert to this fact. But to come to her supposed greatest interest in internal improvement, education, &c.: she has gotten, I believe, one hundred thousand dollars for her Portland canal, and is begging now (I hope the term does not give offence) for another hundred thousand dollars, for that object, and some land for the Transylvania university. Suppose, by importunate solicitation, in the general scramble, first for the loaf which adorns the federal table, and then the crumbs which fall from it, she succeeds in her application, and thus, in two years, squeezes through with three hundred thousand dollars, or four hundred thousand dollars: does not she perceive, do her members here not perceive, that one year's excess of the revenue, contributed by her alone, is equal to, say greater, than all she has, and will be able to get here, by two years' supplication?

What shall I say to the State of New York—yes, mighty New York—the strongest pillar of them all, upon which this Government rests for its support? If she were to contribute in proportion to her population, which may now be estimated at near a sixth of the whole people of the Union, her whole contribution would approach five millions per annum, and her part of the annual excess after the payment of the public debt, would be two millions—but call it a million and a half—and how much of the federal loaf has she gotten? Sir, out of her own gigantic means she has completed her great canal, by which the astonished Atlantic, if it has not heard Lake Erie roar, as was said by the poet of the Euxine and the Baltic, yet it has at least been made to communicate with that lake. And what, I repeat, has she gotten? Her members here can best answer the question. She, too, I believe, has some applications to us for aid. For how much? Is it for four or five hundred thousand dollars? Suppose New York, too, to succeed in procuring this mighty sum from this beneficent Government, can she be blind to the fact, that one year's excess of the revenue, paid by her own people, would be three times the amount? I could go on, and multiply similar examples, and propound similar questions; but these are sufficient to illustrate my views in relation to this branch of the subject. And now, Mr. Chairman, let me ask Virginia, Kentucky, New York, and, through them, all the States of this Union, are you willing blindly to give away your own means by wholesale, and then come here, and humbly ask that a small part may be given back to you by retail? Are you willing to exchange the certain independent command over the whole excess of your own revenue, for a doubtful hope, that, by addressing the capricious will of this body, you may have a small part returned in the form of charity or beneficence? Every consideration of interest, of pride, of State sovereignty,

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conspires to forbid such a course. Must it not be humiliating to such a State as New York, instead of disposing of her own resources, by a *sic volo, sic jubeo*, to come here with an humble petition? Let us see how it would read. The petition of the State of New York humbly represents, that whereas she has tamely and blindly poured forth her treasure into the federal lap, by the contribution of millions, she begs that Congress will be pleased to restore her some three or four hundred thousand dollars *ex speciali gratia*, and the petitioner, as in duty bound, will ever pray, &c. &c. Would she follow my counsel, I would say to her, that she owes it to her own character and dignity cheerfully to contribute to the Government, of which she is a part, her just share of the sum required to meet its necessary demands; that all beyond that she should retain, to be disbursed at her own sovereign will, and under her own exclusive control. Thus she would assume that lofty attitude for which God and nature designed her; and I would say to each and every of the other States, "go ye and do likewise."

When gentlemen talk to me about the beneficence of this Government, in this behalf, I tell them that their charity is at the expense of others: I tell them I cannot understand that beneficence, which, by evaporation, draws all the moisture from one portion of a common country, (I say moisture without a figure, because the taxes are derived from the sweat of the brow,) and then pours all its fructifying showers upon another, thus converting the one into a waste of barren desolation, and imparting to the other extraordinary fertility. If they would take their rule of beneficence from the highest of all authorities, they would learn that the rain is made to fall equally upon the just and the unjust. They might surely so far emulate this great example, as to let their showers fall upon those portions of the country, the evaporation of whose moisture produced them.

Another objection to this system is, that it utterly destroys the whole principle of representative responsibility. The whole efficacy of that principle, in relation to the disbursement of public money, consists in this: that we are to render an account of our stewardship to those whose money we expend. Is that the case in this system of internal improvement? No, it is one of its most unhappy, nay, fatal attributes, that the majority of the members here, by whose fiat the revenue is drawn from the minority of the community, owe no responsibility to that minority, but to the majority whom they represent. Of what avail then is it to make complaint of oppression? Will that complaint be regarded, though it be uttered in a tone of the deepest indignation? No, because the members who may practise the oppression owe their accountability to the very people who are benefited by the oppression, and who constitute the majority. The prospect of relief, then, rests only upon this hope: that the people thus benefited will discard from their service their benefactors, for the single reason that they are their benefactors. They who live upon such hope, must, indeed, in the language of the adage, die of despair.

Let it not be said that the same objection would lie against the action of State legislation: even if it did, I would say, that, because the people of the States must submit to possible injustice on a small scale, it cannot be right that, therefore, this Government will force them to submit to it upon a much larger scale. But the argument is wholly fallacious. There is this striking and characteristic difference between the cases. The General Government, where it makes donations for this purpose to the States, or, as in the bill now before us, constructs the road itself, draws the means from a fund belonging to all the States, and applies it to the benefit of one or more, without even pretending to offer to the others any equivalent; whilst, on the contrary, in the case of a single State, whilst the minority, who contribute to an improve-

ment of which they received no benefit, though they cannot call the members representing the majority to account, yet find their equivalent in this: that, whenever the States do (what they do not often undertake) construct a road or canal upon public account, they impose tolls which are equal to an ordinary profit upon the sum expended, and thus there is returned into the treasury, through the dividends, what is equal to the interest of the capital. The minority are thus indemnified; and though, occasionally, imprudent schemes may be engaged in, which fail to produce this result, yet this is the principle on which they act.

Another objection to this system is, that it has a direct and almost irresistible tendency to perpetuate upon us a revenue, having no reference to the ordinary demands upon the Government, but one which will always afford a large excess for the execution of these projects.

What State, or States, which expected to derive aid from the federal treasury towards the improvement of their territory, would ever be found ready to reduce the taxes? Would not the inevitable effect be, that they would thereby defeat the very means by which, and by which only, their objects could be effected? And would we not, therefore, as soon expect that a hungry man would destroy the only food by which his hunger could be satisfied, as that these States would contribute, by their votes, to dry up those fountains from which they expected copious streams to flow for their particular use? Shall we, then, by a perseverance in this course, hold out a constant motive, which shall operate directly against any reduction of the taxation of our people? There are already motives enough of this kind. I hope and trust that we shall do nothing which will either add to their number, or increase their force.

Strong as are the objections which I have already urged, there are others yet stronger, arising from the probable, I had almost said inevitable, political effects which this system is calculated to produce.

From the moment that the present constitution was formed, the public mind was divided between two opposite opinions as to the practical operation and tendency of our complicated scheme of government. The great object had been so to distribute power between the State and federal authorities, that each should be able, by its own intrinsic energy, to maintain itself, unimpaired, within its own sphere, and thus preserve the equilibrium of the political balance. The one party feared, that, notwithstanding the strength infused into the new Government, which was partly federal, and partly national, yet, that the States which composed it would, in the progress of time, become an overmatch for it, and, by encroachments upon its rightful power, produce, first weakness, then anarchy, and, finally, disunion. They reasoned from history, which, as they supposed, proved the weakness of all former confederacies, in every shape; and from what they considered the advantages which the States would possess in any contest with the federal head. The other party took the opposite ground. They argued, that, in the distribution of powers, all that were great and formidable, including, amongst others, the great powers over the purse and the sword, had been given to the Federal Government; and that, therefore, the danger was, not of encroachment, on the part of the States, upon the head, but of usurpation, on the part of the head, of the residuary powers reserved to the States. Let us now consult the oracle of experience, and see how its response settles this great question. Let not the committee be alarmed with an apprehension that I am going to violate my promise, and discuss the question as to the constitutional power over this subject. No; I have no such purpose. My purpose is, to show how even the great men of other days were in error, as to the advantages which they supposed the States to have in a struggle with this Government; and

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how powerfully this system, in its progressive course, will operate to deprive them of their power of self-support, and still more decisively to turn the scale against them.

Let us examine some of the prominent advantages which were supposed to be on the side of the States, and on which they might safely rely for self-defence, in the event of any collision.

One of these was, that more individuals would be employed under the authority of the several States, than under that of the United States.

Whoever will examine the number of officers in the army and navy, the cadets, the midshipmen, the hosts of registers and receivers, and others employed in relation to the public lands; the diplomatic corps, with all its appendages; all the executive officers, including the President and Vice President, the heads of departments, heads of bureaux, with their hundreds of clerks; the whole tribe of officers engaged in the collection of the revenue; the judges, attorneys, marshals, and others, constituting the judicial corps; the numerous mail contractors upon some eighty or ninety thousand miles of post roads, the eight thousand postmasters, besides others not reducible to any particular class, and many of whom are to be re-appointed every four years, will find that there is not a county, city, town, village, or even hamlet, in the United States, which the federal arm does not reach; he will be led to doubt whether, even in numbers, this Government does not exceed those of the States: but, if to numbers be added the dignity of office, the character of duties to be performed, and, above all, the very high emoluments of federal offices, compared with those of the States, he cannot for a moment doubt but that, in point of official patronage, that of this Government is immeasurably beyond that of the States.

But if, in official patronage, the advantage be now on the federal side, how much more is it on that side in point of pecuniary patronage, or the disbursement of money? Follow me, I beseech you, for a moment, whilst I make the comparison in this respect. I suppose that the annual revenue of the eight largest States does not average more than half a million each, and that of the sixteen others not more than a hundred thousand dollars each; some I know may considerably exceed it, but others fall greatly short: thus, for example, the revenue of Illinois, a few years ago, did not exceed sixteen thousand dollars. I exclude from this estimate county and town taxes for purposes of police; the aggregate, then, of the revenue of all the twenty-four States is about five million six hundred thousand dollars. Now, sir, we know that the average of the United States' revenue, for many years, has not been less than twenty-four millions; here, then, the advantage is more than four to one on the side of the United States.

Another advantage which the writers in the Federalist supposed the States to possess, was, that the powers delegated to the Federal Government were few and defined; those which remain in the State Governments, were numerous and indefinite. The powers of the first, say they, will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce. Those of the other, that is the States, extend to the lives, liberties, and property of the people, and the internal order, improvement, and prosperity of the State. I give almost the very words, and in the last paragraph I give them verbatim. Now, sir, if it will not be thought a violation of my promise not to make a constitutional discussion, I will remark that the last paragraph quoted, if you will admit the word "order," assigns internal improvements, in so many words, to the State authority—but no more of that. I quoted this extract in substance, to show that one of the supposed advantages of the States was, that their powers were numerous and indefinite, whilst those of the United States were few and defined.

Now, to prove the egregious error here, I need only state this singular fact, that, whilst the laws of Virginia, being emanations of powers numerous and indefinite, are contained in two ordinary octavo volumes, those of the United States, having powers but few and defined, are swollen to five large ones, exclusive of two containing general index, treaties, &c. The same writer has fallen into another error. He tells us that the operations of the Federal Government will be most extensive and important in times of war and danger: as far as its legislative operations go, they are more extensive in peace. The writer then mistakes, when he supposes that the advantage, in this respect, is on the side of the States.

All these supposed advantages, then, on which the States were to rely for their own defence, are not on their side, but against them. Now, if to this you add, that upon the system of internal improvement twelve millions annually are to be disposed of by this Government, at its will, is there any man sanguine enough to indulge even the hope, much less the expectation, that the political equilibrium between our different Governments will be preserved? Is there any man so blind as not to see that the scale of the States will be made to kick the beam, by its comparative want of weight? Let us, as a subject of curious speculation, trace the practical operation of this annual sum of twelve millions, to be distributed in farms amongst the States.

In private life, it is a proposition which no man who knows human nature would even doubt, that the person having it in his power to confer an important benefit, will control, nay command, the will and the action of one who is desirous of receiving it. Where is the difference, in this respect, between individuals and States? Are States any thing more than large masses of individuals, bringing together all their passions and infirmities? The only difference is, that the command of will and action, where the States are the subjects to be acted on, is as much more extensive and injurious in its effects, than where individuals are the subjects, as the whole population of the State exceeds an individual in number; the evil is indefinitely increased, but the principle is the same.

I will suppose, then, that the period has arrived for one of these annual dispositions of twelve millions of dollars. Various States present their humble petitions; but, according to the principle contended for, this Government has the unqualified power to make that disposition as it pleases; to give to some more, to others less; to some, or to one, the whole amount, and to the others none at all. Think you, sir, that the States which are most firm and erect in the spirit of independence, will be most likely to succeed? Or will it not be rather those which assume the garb of the greatest humility; those which are most zealous in their allegiance; those, in fine, which are most decided in their adhesion to the powers that be? Let me put a stronger case. Suppose that there is some magnificent and favorite project to be carried, and the votes of a particular State are necessary to accomplish the object, and that State shall have been a little impracticable. Think you, sir, that the time may never come when Philip's gold will be applied, and applied successfully, too, by the deceiver of a road or canal? Let our knowledge of human nature, let the experience of other nations, answer the question. That man had read deeply in the volume of human nature—if I mistake not, it was the man of Pella—who said, that an ass laden with gold would find his way through the gates of the strongest city. Look at the history of England, and learn thence a lesson of practical wisdom as to the influence of patronage. The Stuarts struggled hard to govern England by prerogative; but the sturdy spirit of that nation would not bow down before its power. No: instead of this, the result of the great conflict between prerogative and privilege was, that one of that family lost his head, and another his crown. But what the power of

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prerogative could not do, has been effected by the still small voice of influence—of influence derived from patronage. These historical facts are an exemplification, in actual life, of the instructive moral to be derived from the fable of the traveller, the wind, and the sun. The wind endeavored, with all its blustering force, to cause the traveller to throw off his cloak; by increasing efforts, he was able to retain it: but when the sun darted his rays, commencing with genial warmth, and continuing to pour upon him a gradually increasing heat, he was finally compelled to yield to the gentler force of the sun, what he did not yield to the greater violence of the wind. Compare the condition of that country at the revolution, in 1688, when the whole national debt was scarcely one million and a quarter of pounds sterling, with its condition at, and since, the close of the last great European war, with a debt then of more than eleven hundred millions, and even now of eight hundred and forty millions. Look at the lofty independence of the Parliament of the revolution, and the relation in which they now stand to the crown. That relation I forbear to describe, because it is matter of universal notoriety, and is to be found in the animated speeches of their own orators. And, tell me, what has produced the humiliating change? What has caused a Parliament, whose unconquerable spirit once "overawed majesty itself," now to be so tame, so pliant, so tractable, that a reform of Parliament has been, and still continues to be, called for by the nation, in a voice which defends the ears of Parliament itself, and makes the administration tremble "through all the classes of venality." The cause is to be found in influence—in those streams of patronage which issue from the prolific sources of office, and the disbursement of countless millions, and which so copiously overflow that kingdom. Her own illustrious Chatham said, that, entrench themselves as they pleased behind parchment, the sword would find its way to the vitals of the constitution. I say that patronage has found its way to the vitals of her constitution. We, too, are men, and cannot claim to be exempt from the infirmities of humanity. The same causes, if permitted to operate, will produce the same effects here as there. Let it be our part (the best service which we can render to our country) to avert from her borders such a calamity.

Our Government is an experiment, now in the progress of trial, to solve this great political problem, whether it is possible to unite the liberty and happiness of a republic with the strength and energy of a monarchy. Should it fail, the hopes of mankind will be lost, and lost forever. Should the States of this Union ever be brought to lose their lofty spirit of independence, and bow down, in deferential homage, before the Federal Government as supplicants for favors, our political fabric must fall, because the pillars which supported it will have declined from their perpendicular, and given way. We shall then learn, from fatal experience, that the lever of a single Government, whose fulcrum is here, and whose length is sufficient to extend over this wide spread republic, will bear with a pressure so heavy as to crush our liberty beneath it. That liberty is above all price; and, like the golden apples of the Hesperides, will be taken from us whenever the States, which are placed as the dragons to guard it, shall be lulled to sleep by the opiates which shall be poured out from the federal treasury. To preserve its spirit, requires a sleepless vigilance as did the sacred fire of Vesta, which was committed to the charge of the vestal virgins; the extinguishment of that only portended great calamities; the extinguishment of this would itself be the greatest of all calamities. That, we are told, might be rekindled by the rays of the sun; there is no sun to relume this, if it should be once extinguished, but a long night of darkness will overshadow the land. I call upon you, then, as you love your country, as you value the rights of self-government, as you wish perpetuity to the constitution, to make a pause, a solemn pause, in this dangerous career. I have

done my duty—the decision is with you—may God grant that it may be auspicious in its results!

*Note by Mr. B.*

Since delivering the foregoing speech, a report of the Canal Commissioners of New York, in relation to their great Erie and Champlain canals, has been received, from which the following facts and statements are derived:

Whole amount expended in 1826, consisting of interest on the original cost, superintendence, repairs, &c. - - - \$1,121,388 96

Cr. By whole revenue derived from canals during the same year, - - - 715,245 89

Balance against canals, - - - \$406,143 07

1827. Whole amount expended as above, - - - 993,436 59  
Whole revenue from canals, - - - 846,651 73

Balance against canals, - - - \$146,784 86

1828. Upon same principles, a balance of expenses, over the revenue from the canals. Balance against canals, - - - 92,369 81

1829. Upon same principles, a balance of expenses over and above the revenue for this year. Balance against canals, - - - \$110,623 51

It appears from that report, that the whole amount of the debt, which the commissioners thought justly chargeable to the canals at the close of the year 1826, was ten millions two hundred and seventy-two thousand three hundred and sixteen dollars and seventy-six cents; and that this debt, instead of having been reduced by the tolls on the canals, has increased each year; so that, on the 1st of January, 1830, it amounted to eleven millions three hundred and ninety-eight thousand seven hundred and ninety-six dollars and twenty-two cents. Add the deficits for the four years, with interest on them, makes the whole debt chargeable to the canals on the 1st of January, 1830, twelve millions two hundred and thirty-seven thousand three hundred and ninety-nine dollars and seventy cents.

The report adds, that, supposing the canals to have increased the duty on salt thirty-three and one-third per cent., and to have added two or three per cent. to the duties on sales at auction, still, regarding them in the most favorable light in which any reasonable calculation can place them, the canals have done nothing towards the extinguishment of their debt, together with the moneys expended upon them for superintendence and repairs. That, with respect to the tolls on the descending trade, they cannot be advantageously increased; and they only estimate every increase which can be made of the tolls on the ascending trade at thirty-five thousand dollars.

If, then, in these canals, opening the one to Lake Champlain, and the other through Lake Erie, the most extensive which can probably be constructed in the United States, and where the work has been done by State authority, this be the result, what must it be as to profit or actual benefit from those constructed by the United States? Here is a practical commentary upon the reasoning in the foregoing speech.

[Here the debate closed for this day.]

WEDNESDAY, MARCH 24, 1830.

The resolution heretofore offered by Mr. SWIFT, directing the Secretary of War to select a site for a fortification on Lake Champlain, to report estimates of expense, &c. to Congress, was taken up. The question being on Mr. DRAYTON'S amendment, proposing to direct the Secretary to report on the expediency of a fortification on the lake.

The question was put on the amendment, when there appeared to be no quorum: yeas, 49—nays, 48.

Mr. LAMAR moved to lay the whole subject on the table.

The question was put, and lost: yeas, 68—nays, 72.

The resolution was then debated until the expiration of the hour. Messrs. SPEIGHT, DRAYTON, WICKLIFFE, and POLK opposing it, and advocating the amendment; and Messrs. DWIGHT, STRONG, and SWIFT supporting the resolution, and opposing the amendment.

#### BUFFALO AND NEW ORLEANS ROAD.

The House then resolved itself into a Committee of the Whole House on the state of the Union, Mr. HAYNES in the chair, and resumed the consideration of the bill "for making a road from Buffalo, through Washington city, to New Orleans."

Mr. BLAIR rose, and remarked that the bill under discussion was one of the few, if not the only one, upon the long list of the bills of the House, which, in its consequences, promised direct benefit to his constituents; that, and the consideration of having presented the subject to the consideration of this House, and having been of the committee that reported it, furnished his apology for the trespass which he proposed to make upon the time and the patience of the committee. But [said Mr. B.] when I look around me in this House, and see the number of friends, both personal and political, from whom I am separated on this question, and with whom, on most others, it has been my pride to act; sir, when I look to the delegation from my own State, and there see, for a time, the line of separation drawn between some of my worthy colleagues and myself, for all of whom I entertain the most friendly regard, I would willingly have avoided saying any thing on this important subject; yet, when I reflect that the legislature of the State from whence I come, in often repeated instances, has called upon the delegation in this House to sustain the principles of this bill, and thrice repeated that language to us during the present session, my immediate constituents being almost undivided on that subject, and expecting me to represent their wishes on this floor, sir, I have no alternative, the path of my duty is so clearly delineated, that it cannot be mistaken. I was educated in that school in which the doctrines were considered orthodox, that the representative is bound to obey the will of his constituents; and, whilst I allow others the same freedom of will which I claim the right to exercise, I myself am determined that the sin of disobeying my constituents, knowingly, on questions of expediency, shall not attach to my skirts. They have a right to expect that I will not only sustain their principles by my vote, but to the utmost of my power, in the full use of all the legitimate means with which their kindness has invested me. In doing this, I have the consolation to feel that I am acting in consistency with my own views, and upon principles long established, as to the true character of national policy. On this much controverted question, I have dared to think that all the vital interests of our country, and particularly of the interior, loudly called for a judicious system of internal improvements. As to the constitutional power of Congress over this subject, I am equally clear, and had prepared myself to sustain the views which I had taken; but, from the high-minded, honorable course taken by the worthy gentleman from Virginia, [Mr. BARNARD] who opened this debate in the opposition, I am gratified to have it in my power to follow his example, and exempt myself from a discussion upon which there was little hope of accomplishing more than a useless consumption of public time. With him I think all has been said that could be, in support of that ground; and though no gentleman's conscience could be fettered by any precedent, yet the inutilty of such dis-

cussion should admonish us to desist. Had I been drawn into the subject, I consider this as being more defensible than most others belonging to that system; indeed, if I regard it merely as a mail road, it falls within the scope of the express power granted by the constitution. If for military purposes, it is fairly deducible from that expressly granted; else we are presented with the humiliating spectacle of a Government formed for the defence of its people, so imbecile as wholly to fail in the accomplishment of that object. But I will pass on to the subject, and meet my friend from Virginia, and take issue with him upon the expediency and necessity of constructing the road. He has not only tendered to the country his issue, but has embellished his own side with an address so imposing, as to bespeak the distinguished talents of its author. Yet with this fearful odds against me, and relying solely upon the justice of the cause, and the impartiality of the tribunal, I fearlessly stake upon the result whatever of public preferment may yet be in reserve for me.

Before, however, I enter upon this subject with the gentleman, I must be allowed to submit a remark in explanation of the reasons which induced the committee to embrace, in the same bill, the Buffalo and New Orleans roads. It is true that the surveys of these roads were separately made, and separate bills reported to the last Congress; but, on the strictest investigation, the committee could see no reason for constructing the one, that did not equally apply to the other, so far as the purposes of the General Government are concerned; they are roads of the same character, meeting at the same place—presenting the like considerations. It was therefore thought, most expedient to unite them, and construct from North to South a great interior artery in the body politic, with which, when perfected, other and less extensive interconnections might be formed by the States, or this Government, as future exigencies might require. True, a road from Buffalo to New Orleans, in a direct course, would not pass through this city, and that is the reason for the course which is made in its delineation in the bill. But Washington being to the body politic what the heart is to the natural body, (all the great operations of your Government being carried on here,) it is most obvious that this city should be upon the line of such interior arteries, if constructed for federal purposes.

I will also, before I approach the main argument, advert to the reasons operating upon the committee, in giving its preference to the western, as contradistinguished from the metropolitan and middle routes. It is only necessary to glance at the map of the country to New Orleans, in order to see that a road from this place to that city cannot be constructed upon a meridian line, because upon such line your course would intersect the summit ridges of the lofty Alleghany, where, in many instances, the foot of man has been seldom placed; and I suppose it is not expected by any one that our conduct should, in this particular, conform to the ancient Romans, in a strict adherence to direct course, regardless of all other considerations. This road, if made, must be carried north or south of the Blue ridges; and the question is, on which side shall it run? It must be admitted that, for mail purposes, the road would be beneficial on either side, beyond which little benefit could be expected from either of the southern routes. What are the facts? The southern routes, as surveyed, both cut at right angles all the navigable rivers and roads of the south, running from the mountains to the seaboard, the metropolitan at the head of sloop, and the middle at the head of boat navigation. What follows? For war and commercial uses, the benefit of such improvement on either line could only subserve those great purposes on the short distances between the points of intersection. What, furthermore, is the fact? Commerce is carried on from the mountains to the seaboard; defensive operations, in war, necessarily must run in the same direction.

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nel: this road, then, to the Carolinas and Georgia, upon either route, leads from, not to, the seaboard, to which the military arm of the South must ever be extended. Nobody can believe, that, with a seaboard so extensive as that belonging to the Carolinas and Georgia, and with a population of the character which is found amongst them, their physical force is to be furnished to Mobile, Pensacola, or New Orleans, in case of invasion. It is therefore to the section of country intersected by the western route, that Mobile and the Gulf of Mexico must look for their support. Moreover, this bill is to construct a road through the heart of the country to New Orleans; neither of these routes reach that point, but each terminates on the Tombigbee river, in Alabama, and connects with New Orleans by descending to the bay of Mobile, and thence around by water. On this plan, what would be the utility of a great part of this road, upon the supposition of Mobile or the bay being occupied by an enemy's fleet? Useless to a great extent. Sir, I now hold in my hand the map of the several surveys made by the engineers, from which it will be seen that, if an entire land communication were not the object, the western route, on account of distance, independent of every other consideration, is to be preferred. Why so? Because, if you fancy the Tombigbee river as the point of termination, the western route approximates, within some thirty or forty miles, those southern routes at that river upon which they terminate; that being the fact, it is only necessary to see the extended land communication from that point passing through part of Mississippi and Louisiana, in order to account for the reason why it is made to approximate either, as it regards distance and cost.

But, as I will have occasion to speak more at large in reference to the western route, in following my friend from Virginia, I now come to the main issue. Is this road, and upon the western route, necessary for the purposes of this country on the three great and fundamental considerations which should combine, in its construction, commercial, mail, and military purposes? Following the gentleman's own course, I will examine these considerations separately; and, first, commercial advantages. The gentleman emphatically asked, of what use is this road in a commercial point of view? and proceeded to show that it cut at right angles all the navigable rivers in its course, and would not be useful for commerce. I answer that objection by saying, if his remarks had been applied to the southern routes, there would have been some justice in them; but, as applied to the western route, his objection is altogether gratuitous, and is predicated upon a total misconception of facts. Look, for a moment, at the map of the country traversed by this road, after crossing into the valley: instead of intersecting all the navigable rivers at right angles, there is but one that is in any tolerable degree navigable, for near five hundred miles, (I mean the James river.) If I recollect, the country through which this road is to run, between Staunton, Virginia, and Knoxville, Tennessee, the only rivers upon which it touches, of any size, are the James, New river, and Holston. How is commerce now carried on throughout that section of the country? In wagons, if indeed gentlemen will agree that commerce can be carried on in that vehicle. Sir, I tell the gentleman, that my whole journey from this to my residence (except fifty miles) is upon this very road, and I can inform him, if he did not before know the fact, that the merchandise consumed, as far west as Knoxville, is now transported from the Eastern cities upon that very road, bad as it is. It is no uncommon thing to see caravans of some eight or ten wagons passing upon it to the West; and, in the nature of things, it must ever be the channel of commerce for a considerable portion of that interior section. This road, then, whether on the McAdam plan, or that more humble, as contemplated by the bill, is all that some of the gentleman's own fellow-citizens can ever ex-

pect; and to them it is what the majestic rivers so eloquently described by him are to more favored quarters. Is then, the accommodation of those who are thrown so far within the interior as to be untouched by the refreshing showers of the treasury upon the tide water, a matter of no moment to the representatives of the people? They are part of the American family; and, let me tell him, took their part, yes, a full share, in the difficulties of their country, whatever may be their portion now.

Let me tell the gentleman, moreover, that, in passing beyond the western boundary of his State, we come to a section of this Union with which the individual who now addresses you has the most perfect knowledge. That is the land of his nativity; and he takes the liberty to say that he does arrogate to himself the right to speak of the wants and necessities of that people, as well as the commercial advantages to be conferred by this road. There the bounties of nature have been bestowed in an eminent degree. Little else is wanting than commercial facilities in order to finish the picture upon which is delineated real prosperity. There you meet with a fertile soil, salubrious climate, inexhaustible mountains of iron ore, furnaces and forges, nail and steel factories, with water power and facilities for all kinds of manufactures. Within the gentleman's own State, and near to the margin of this road, the salt works, from whence an immense stretch of country, east and west, must (in the very nature of things) ever be supplied by means of this road. What is the fact? That indispensable article for animal subsistence is now transported in wagons to the Holston river, within the district from whence I came; and then, relying upon the bounty of heaven to furnish rain to swell the tide, is now transported to all that stretch of country above the Muscle shoals. The advantages of that section of our common country do not stop here. Its facilities in producing subsistence for live stock, and all the necessary means of human comfort, are not surpassed by any other quarter. Yet, what is the fact in relation to that highly favored country? They have nature's rude works to contend with in their intercourse with their fellow-citizens of adjoining States. Need I tell this committee that the edge of industry and enterprise is blunted, for the want of some channel through which to dispose of the surplus products of that valley? Let facts speak for themselves. When wheat, that indispensable article of man's subsistence, commanded from a dollar to a dollar and a quarter per bushel in other quarters of this Union, its current price there was from thirty-three and a third to fifty cents. Why was this? Because of the want of outlets to market. So in relation to iron and all the other products and manufactures in that quarter; and what has been the consequence? Many of the citizens of that part of East Tennessee from whence I came, have sacrificed their lands and surrendered their local attachments, and have gone to other less eligible situations (in most respects) in order to gain a location where the products of the labor of the husbandman would promise a just equivalent, by reason of being permitted to enter into the markets of the seaboard. Thus much, without going minutely into detail, in answer to the gentleman's question, as to the necessity and commercial utility of this road.

The gentleman next examined into the utility of this road for mail purposes. In that point of view, he has conceded, to some extent, its utility; but, upon counting, in dollars and cents, its cost and income, has also pronounced upon it his unqualified negative. If the gentleman imagines that the most sanguine friend of this measure ever calculated upon the road, when completed, either upon the plan proposed by the bill, or any other, being the productive source of revenue to the Government, I tell him that he is laboring under a most gross delusion. Sir, it was never dreamed of by any one of its friends. But it was believed that this, combined with the other cardinal



inducements for such work, (I mean the military and commercial uses,) would, when taken together, present almost irresistible inducements to the National Legislature. Do gentlemen calculate the nett income of all their weighty appropriations to the maritime defence of the country? Did they, in the construction of the great Cumberland road, keep in view the restoration of its cost in dollars and cents? No! Like this, it was a matter of national concernment, and was embarked in upon more liberal and enlarged views than those which the gentleman would now extend to this. But let us look at it as a mere post road. What is now the rate of mail transportation upon that route? If I am not misinformed, it will average about fifty dollars a mile. What, is it probable, would be the reduction upon the road when completed? Upon a fair calculation, one-half the present amount of transportation would be saved, taking into consideration the increased travel upon it, and other advantages to result from its improvement. This of itself would produce some forty thousand dollars of a saving to the Government, to say nothing of the importance of reducing the time of travel.

I now pass on to the use of this road to the military operations of the Government in time of war. Sir, whatever the gentleman may think of it, this, to me, is the primary inducement. What I have said in relation to the local benefits, in a commercial point of view, to result from the measure, I wish to be distinctly understood as being accessory to, and consequent upon, this paramount consideration, national defence. This, instead of furnishing an objection to such improvements, on the contrary, establishes their importance in a national point of view. When was it, or where, that a work of improvement, conducing to the general good, did not also address itself to the local interests of more or less of the citizens of this confederacy? This follows inevitably, because, as a general rule, your men and munitions of war are transported upon such roads, rivers, and canals, in time of war, as are used for commerce in peace. This is obvious, because, in the nature of things, attack will be made at the same places at which are your great commercial deposits. The gentleman has asked if troops and munitions of war would ever be transported from Buffalo to New Orleans, and *vice versa*. I answer, no. Nobody ever thought of such thing. But it was believed that, in case of war, and Buffalo again becoming the theatre of that war, men and munitions could be transported from the interior of Pennsylvania and the adjacent States, to that quarter. It was also believed, and confidently, too, sir, that, in the event of Orleans being again attacked, troops from Western Virginia and Eastern Tennessee could be marched upon this road to its intersection with the Tennessee river, and, when improved for navigation, could thence be transported to the defence of Orleans; whilst those parts of Alabama, Mississippi, and Louisiana, could be marched upon this road. Sir, it was furthermore believed that Mobile being the point of attack, West Virginia and East Tennessee were not only interested in it as their natural channel of commerce, but, from their geographical position, were the legitimate allies of that defenceless point. This road, and this alone, opens to the southern part of Alabama the most speedy, natural, and efficient means of defence.

But, suppose, for argument's sake, I were to admit that this road, running nearly equi-distant between the southern seaboard and the Ohio, and part of the Mississippi river, would not of itself furnish the full means of reaching all the exposed parts on the Gulf of Mexico. What then? Would it follow that this road ought not to be constructed? Surely not. It would only prove that, when constructed, the full means of facilitating the defence of the country were incomplete. I will now ask the gentleman from Virginia, and all who stand in opposition to the passage of this bill, where, on this continent, can they point the finger to a portion of the Union through which

a road can be made, combining the advantages that this will afford. I said, in the commencement of my remarks, that it was intended for a great interior communication from North to South, with which this Government or the States might, from time to time, connect other and less important ones, and thereby attach to them much of the value of this great improvement. Construct this road, pass the bill for the road from Zanesville, Ohio, to Florence, in Alabama, and you do—what? You place the States of Tennessee and Kentucky, the troops of which are disposable, because that they have no frontiers of their own, in the condition in which a skillful commander would the interior force in the square of his encampment. You keep them in readiness to push to either point where danger threatens.

This being a question submitted by the gentleman from Virginia to the American people, I shall have failed in presenting it in its true character, if I stop here.

I say to the gentleman, and proclaim to the American people, that this road, and upon the route delineated, a part, in the bill, so useless, in his opinion, for military purposes, is the identical road traversed by the East Tennessee troops for more than three hundred miles, in search of the enemies of their common country. On the margin of this road it was, where your gallant troops encountered the appalling horrors of famine, when upon its line, and not farther distant than three hundred miles from the scene of their sufferings and woe, there was bread, and to spare. Has the gentleman forgotten, or does he suppose you have, that, for the want of this very road during the war, and other facilities in defence, countless millions of the public money were squandered in the article of transportation? Sir, I will call to the recollection of my friend a single fact connected with this subject. In the vicinity of this road, in the southern part of Alabama, the Government was compelled to pay from fifty to sixty dollars a barrel for flour, when, at the same time, the current price, in that part of East Tennessee in which I reside, and which is intersected by this road, has never, to my knowledge, exceeded from three to five dollars. Let this fact, without comment from me, speak for itself.

But, sir, the enormity of the price attached to articles of subsistence, during the war, was not all; your exhausted treasury, by reason of improvidence and prodigality, might, and has been, replenished. Sir, more than money wasted, was the melancholy jeopard of human life, occasioned by the exposure consequent upon wading rivers, creeks, and swamps, on account of the want of the very means of defence now contemplated, and upon the very track delineated in this bill, which, in the estimation of the gentleman, presents so useless a project as to merit an appeal to the source of all power, the people. I ask my friend from Virginia, what estimation he places upon human life? Would he coldly sit down and calculate its worth in dollars and cents, as he has done the cost of this road? Sir, I answer for him; I know him too well; he would not. But, sir, all the arguments and inducements flowing from the practical results of the late war are to be obviated by assumptions of supposed results, which I deny. The gentleman says that things are not again to transpire as they did during the late war; and why? Because [said he] the density of our population will enable the frontier to defend itself. This delves into futurity beyond my ken, and my objection to it is, that it bids defiance to experience, that surest guide. It is quite too flattering, and is based upon speculative opinion, against established facts. In matters of every day concern, confidence might be elicited; but in a matter of such interest as the safety of the republic, I have been instructed at that school, in which it was an established maxim, "judge the future by the past;" to do which, most effectually, in time of peace, prepare for war; construct this great road from North to South, upon which you will be enabled to

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throw your disposable forces from the centre to the extremities, without jeopardizing life and treasure—save your high-minded countrymen and yourself from the humiliating recurrences of the late war, here, as well as elsewhere.

I am not one of those who believe that we should act upon the supposition that this country is destined to enjoy eternal peace. My prayer to God is, that that may be the case, without sacrificing too much for it; but, until I can satisfy myself that our country is able to withstand the combined opposition of the world, without the use of preparatory means, I will select the time of peace as being the most appropriate to prepare for war.

The gentleman asks what is the use of the extensive line of fortifications, if we are not to depend upon them for our defence? This question brings to my recollection a document which has been placed upon our tables, during this session, detailing the number of fortifications, and the appropriations toward that system of defence, since the termination of the war. If I am not mistaken, that document exhibits that nearly nine millions of the public moneys have been appropriated to that use. Now, as the gentleman has asked the use of these fortifications, and if they are not to be relied on for defence, I will answer him. Such fortifications as have been erected at the points and places where there is a great concentration of wealth, necessarily must be of great importance in resisting the avarice and cupidity of an enemy in time of war, and no doubt will subserve the end for which they were constructed; but when he asks me to rely upon all the balance, useless as he has pronounced this road to be, I must say to him that I think his great chain of fortifications still more useless. The utility of them is not all. They lay the sure foundation for raising and maintaining a standing army in time of peace in order to man them; and worse than all, in time of war, your regulars and disciplined troops, who, in the estimation of some gentlemen, are "the salt of the earth," are to display their prowess in defending those monuments of extravagance, instead of bringing them to bear upon the defence of the country. Sir, this is not fiction. It must be true. An invading fleet, having the choice of our coast extending itself for thousands of miles, think you that within shot of one of these fortifications would be the point of attack? Not so. Their attempt would be elsewhere; and what follows? The militia of your country will be called upon to re-act the scenes of New Orleans again. This very disposable force from the interior, and for whose accommodation this road is intended, would again redeem the flag of their country.

It may be thought strange that the appropriations to the splendid sea-wall or chain of fortifications, and the folly of such system, has inclined my mind to lean more strongly to the system of internal improvements, as a more appropriate mean of defence; but I confess, that, notwithstanding the gentleman has so unsparringly repudiated that system, such is the fact. I take, for example, the base line of this road, when completed. Upon it this Government or the States, necessarily, must hereafter intersect other and less important roads, upon which the military operations of the country can be carried on. They will then be brought to subserve the twofold purpose of roads and fortifications. Had the nine millions, which are now buried under piles of rocks in the form of fortifications, been judiciously applied to the construction of military roads and canals, and the opening of important rivers, it occurs very forcibly to my mind that our expenditures in that respect would have imparted vitality to the industry and enterprise of the country, and happiness and prosperity to parts of this highly favored Union, now left comparatively destitute.

I have now followed the gentleman through the course of his remarks as being applicable to this particular bill. How far I have succeeded in sustaining my side

of the issue joined upon the expediency of this measure, I leave to this committee to determine; and will now advert to the attack which he has thought proper to make upon the general system of internal improvements.

It would seem that an attack upon this particular proposition ought to have sufficed, and that it should have been allowed to stand or fall upon its own intrinsic merits. But the gentleman has not been content with that course, but has, with all his eloquence and ingenuity, endeavored to fix upon this system that deformity which would subject it to the primeval curse. Sir, if we were to accredit the gentleman, every evil, when traced to its source, would be found to be the offspring of this corrupt and corrupting system. It is to build up a colossal Government here, the shadow of whose wide-spread wings must wither and blight the sovereignty of the States. Whole States are to be bought up, and bow before this Moloch of internal improvements; the chains of despotism and bondage are to be riveted upon the country, by oppressive exactions to sustain this cormorant system. Is this picture real, or is it the product of the gentleman's high-wrought fancy, calculated to intimidate the members who have taken their seats in the present Congress, and stand uncommitted on this great question? I ask the gentleman to point his finger to the fact which would justify this severe sweeping, and, I must say, unmerited denunciation. I, too, regard the sovereignty of the States. I cherish their union as the palladium of our liberties, and would join the gentleman, and resist any incipient measures by this Government to abridge their sovereignty. I ask him to retrace the progress of this system, and to give us a single fact calculated to sustain him in presenting to the country the gloomy picture which he has so unsparringly delineated. If he can do so, I, for one, am not so fond of the pride of consistency as to persevere in error. I will join him most heartily, and strangle the monster before it shall have attained to maturity. But, in the absence of facts, the gentleman must excuse me if I will not run at the cry of "wolf! wolf!" when, at every stage of this great question, that cry has been made.

The tariff is lodged into this discussion, and its deformity is to be reflected upon this measure. We are called upon to strike at the root of this evil, and repeal that odious system of exaction which robs one portion of the community to enrich another. I answer, that effort has been made. I have acted with the gentleman from Virginia, and we have been in the minority. Thus far, we agree; and the point at which we separate is, the use to which this redundant revenue, raised without our consent, shall be applied. He is for having none to appropriate. Agreed. But what are we to do with that which has accrued, and will hereafter arise, under the present tariff? Shall it follow the countless millions which have gone, from year to year, to the building of useless fortifications to keep up a standing army; to the building of ships to decay before they shall be called into use; barbers, bays, inlets, and the thousand other projects upon tide water; or shall a small rivulet be diverted from that channel, and be directed to the interior to fructify a quarter of this Union in which the operations of this Government have been felt only in its requirements and exactions, without the first act of parental care being extended to much the greater portion? Will my friend from Virginia tell me how, and in what way, the State from whence I come can ever expect a return of the money indirectly taken from the pockets of its citizens, unless it be under this very system? Does he calculate upon a diminution of revenue, until the public debt shall have been paid; and, when reduced, that there will be a foresight and sagacity sufficient to so regulate that complicated machine, as to bring its operation just to the point of ordinary disbursement? Acting upon the principles by which I am governed, I need not look forward to the extinction of the public debt;

sufficient for the day is the evil thereof; we have now revenue to be used, over and above the necessary expenditures of the Government, and the operations of the sinking fund, and the question is narrowed down to a mere choice of alternatives. I have thought that it could not be so beneficially applied in any other manner, as in constructing this great interior highway, which, in time of war, would be a secure route for carrying on with activity the operations of the Government, as well as intercourse among the States. Believing that Congress does constitutionally possess the power to construct roads and canals for national purposes, what would the gentleman do, were he from the State from whence I come? Would he stand with folded arms, and see the revenue, raised, if you please, without his consent, poured out in an unremitting sluice upon those sections of this Union to which the kindness of Providence had given much; and to accomplish for them still more, the little must be taken from those who were forced to contend with nature's parsimony? Sir, I may be under delusion upon this subject; if so, I wish to be corrected. I have said, that, under the system of internal improvements, and that alone, can the interior parts of this Union participate in the disbursements of this Government? I ask the citizens of my own State what has been the course of things heretofore? More than three hundred millions of revenue, collected since the war—where has it gone? I mean that, over the ordinary expenses of the Government, and the public debt? To the seaboard. How much has been expended since the war, amongst you? The salaries of your federal officers, and no more. What, aside from opening your roads and rivers, can you expect hereafter? Nothing.

I am not so credulous as to believe that that sluice, which was kept running when the public debt was at its maximum, is now to be closed, when it is reduced to a mere point. As, then, one of the Representatives from the interior, I will attempt to divert a part of the great current running to the seaboard, and, by my influence, send a rivulet to fructify that goodly land, which has been neglected. I speak feelingly; it has, emphatically, been overlooked.

If I am correct in the view which I have taken of the disbursements of the Government for the past; and if it be true that from three to five millions of the treasury, common to all, have, year after year, regardless of the public debt, when at its maximum, been diverted to purposes less important to the Union than this great road; what is the fair, nay, inevitable inference? Surely it is, that, before the close of this Congress, the sum embraced in this bill will be appropriated to the object to which it refers, or, in the event of its failure, will be hypothecated to some other project, if not altogether useless, greatly inferior to it in point of national importance.

I look upon the attempt to throw upon this measure the weight of the tariff, as being altogether gratuitous. That policy, as I before hinted, has been settled, at all events until the extinction of the public debt. Why has it been dragged into this debate? The reason must be obvious to every one; and, without charging it to mal-motive in the gentleman, whose candid, fair, and open course in debate I have always admired, I will say it was calculated, if not designed, to unite, in common cause, all who were hostile to either measure.

We have been gravely asked if we would levy upon our constituents a direct tax, in order to carry on this system. I can only speak for myself; I answer, no. I go much further; I tell the gentleman now would I for much the greater number of projects which have been the objects of peculiar care to this Government. I would not, by my vote, levy a direct tax to continue the gentleman's splendid sea-wall, or chain of fortifications; the building of useless ships to decay in time of peace; the military academy; the mammoth pension bills; in short, for none of the

paraphernalia of seaboard extravagance. Answering this question to his satisfaction, is no reason for rejecting this bill. Having answered what I would not do, I will not tell him what I would. A wise and prudent individual, as the management of his own concerns, will act with reference to his resources. When circumscribed, he will contract his expenditures; when redundant, they will be more enlarged. So of a Government; if possessed of the means, I would build this road; deprived of them, I would, from necessity, abandon it.

We are pathetically asked by the gentleman, how it is to be gotten clear of? and will we, because we have the power, continue its exercise, when that course is calculated to produce discontent and heart-burnings. As to the getting clear of this system, I can only say to the gentleman, the remedy is with the American people, to whom his eloquent appeal has been made. This system is the workmanship of their hands, reared up against the technicalities of constitutional disquisitions, though, under the most embellished pictures of the expediency of such a system—to the revolution which the gentleman is attempting to produce, I can assure him that I will bow with the most profound respect. I am on the safe side on that subject. When it shall happen that the people, to whose will I shall always yield obedience, become tired of this system, there will be no such spectre in the path of obedience as the ghost of the constitution; no, it will be a mere question of expediency.

As to "discontent and heart-burnings," I can assure the gentleman that I regret the necessity of such a state of things as much as he can; but does not his own experience teach him that that is the inevitable result of all legislation which relates to matters of great interest? (As he suppose that man, in his imperfect state, prompted by ambition, interest, or whatever passion may be addressed—when brought in conflict with an antagonist feeling, as has failed in the attainment of his object, should be exempt from that condition? Are we then to surrender that for which we have contended for years; and which in our deliberate judgments, conduces to the elevation and permanent interests of the country, because of the minority being dissatisfied? Far as I would advance to give satisfaction to any quarter of this country, this would be going too far. It would, when carried out to its full extent, prevent legislation from being enforced; and, therefore, none should be adopted. I ask, what would have been the consequence of yielding to discontent on the part of the minority, when your Government thought it expedient to lay the embargo, declare war, pass a tariff, or a mammoth pension bill? Surely the answer is, that none of these measures would have been enforced. Different opinions are entertained by different gentlemen, as the tribunal provided by the constitution for determining upon the constitutionality of laws passed by Congress. If, however, it should turn out to be a *casus omnis* in that instrument, I would then say, that, in the absence of a more appropriate tribunal, I am, until the case can be better provided for, content to refer the legislation of this House to the ordeal of the source of all power, at the ballot boxes—I mean the people. If no where else, there is there a redeeming spirit, that will not long suffer their servants to be the willing instruments of unjust oppression, "heart-burnings, and discontent," to any portion of their fellow-citizens. If this system had been what it has been characterized by the gentleman from Virginia, that of plunder, bargain, intrigue, and corruption, a virtuous people would, before this, have frowned into retirement the actors in a work so unholy. But I must repose my friend from Virginia, by informing him that there are two sides to this picture, and he has only looked upon one. I turn him to the other, and ask him who looked upon it. I hold up to his view that which was commenced by him who had been styled "the Apostle of Liberty."

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mean the illustrious Jefferson, and "though he is dead he yet speaketh." On his side of the picture, he represented roads and canals as great foundations of union and prosperity. All who have succeeded him to the office of Chief Magistrate entertained the same opinion as to the expediency and utility of such works; the high authority of their names are furnished us, in opposition to the appalling picture drawn by the gentleman. Again, for his comfort under this "new era" of improvement, I beg to refer him to the discussions of 1824 upon the surveys bill, which, by all, was considered the entering wedge to this much abused system, and he will there see that this road, now considered so superlatively useless, was avowed openly as a component part of it. It was surveyed and reported upon, amongst the first works of that day, and has been ever since considered worthy of occupying a place on the calendar of business in this House. So far, then, as this particular branch of that system extends, it is no "new era" in improvements. I recur to the celebrated report of Mr. Gallatin, in 1801-'2, and I there see a forcible recommendation, not of this particular road as delineated, but of a great interior communication from North to South; but I will dismiss the subject, by remarking that this Government, when men had not become so refined in constitutional disquisitions, did construct a road from Nashville to New Orleans, the trace of which yet remains; to the period of constructing which I refer the learned gentleman from Virginia, as the "era of internal improvements," to which this branch may be referred. That road was constructed by the money and troops of the Federal Government, through the territory of the States, and without their consent.

I ask, were there no patriots then to warn us of the yawning gulf of "consolidation?" No friend to State rights to raise the veil of futurity, and paint the gloomy picture of masters bowing, and cringing, and begging to their servants for a crumb from their own table? No! All was silence. It was reserved to other men and better days to espy the evil, and save the republic.

Having followed my friend from Virginia through such of his remarks as I thought it my duty to answer, and having feebly attempted to sustain this measure against one whose skill and tact in debate I cannot too highly compliment, I must draw to a close my crude remarks. If I have succeeded in showing the utility of, and necessity for, this road, need I say that the States would never construct it on their own resources? Need I say that a project uniting in interest seven States, acting only within their local limits, could not act in unison, so as to accomplish its construction? To which, I would ask, would it suggest itself as an object of primary importance, when viewed alone, as a highway for the State? None. It is one of those great objects eminently stamped with the impress of nationality, and which, alone, the comprehensive grasp of federal legislation can accomplish.

But the cost is objectionable. We have been told that, whilst the bill appropriates two millions and a quarter, this sum will only blaze out the way for this mammoth undertaking—that countless millions must follow to its final completion. Sir, it seems that this dish cannot be rendered savory to the appetites of our opponents. This bill, which has been drawn with more than ordinary care, to steer clear of the very objection of the gentleman, so much so as to require an estimate of the cost of each mile, bridge, and causeway, and that estimate to be submitted to the President of the United States, and must fall within the average of fifteen hundred dollars a mile, or the road is not to be constructed—this abundant precaution will not satisfy the gentleman. I must be allowed to say, that, in my humble opinion, as regards this objection, the defect is in the appetite of the gentleman, and not in the aliment provided. If commenced under such estimate, falling within fifteen hundred dollars a mile, it is to be

completed, as a road of the description specified in the bill. I entertain no doubt of the perfect adaptation of such road to all the exigencies of the country through which it is to pass. I know, upon part of that road, the application of stone would not only be useless, but detrimental.

But I will not disguise my views as to the ultimate destination of this improvement. I have said that I believe it will subserve all the purposes of the Government, upon the plan proposed; but if, upon actual experiment, the increased necessities of the country should demand its construction upon a more elevated plan, we have it in readiness for the application of metal, or rails, whenever the resources of the treasury, and the importance of the work, shall suggest itself to the wisdom of our successors as being advisable; not under any pledge upon the face of this bill, or the consummation of the present projected plan, but resting alone upon the future developments of its high utility.

I have now done with this subject; but, before I take my seat, I must say a word to the friends of internal improvements. Seven years ago I took my seat in this hall; since when, I have been an advocate for such improvements as addressed themselves to the exigencies of the nation at large. I have doubted neither the constitutionality nor expediency of that measure.

We have been told by the gentleman from Virginia, that this was a system, the operation of which was to buy up not only Representatives, but States and communities. I beseech you to contradict, by your disinterested votes, the fearful anticipations of the opponents to the measure. This is a subject which does not address itself to the local interests of many of you, in as much as it traverses States, to the greatest extent, in which our doctrines were not received as orthodox; and the majority of the Representatives of those States, upon this floor, are aiming a vital stab at the system for which you have been contending, in the overthrow of this measure. Let it not be said that you exchange your vote for the gilded bait which a measure of local interest may hold up to your view. It has so happened, that, for the first time since I had the honor of a seat here, a great national measure, including, also, local interests, has been presented for my support. Having voted for the continuation of the Cumberland road, upon which neither myself, nor, as I suppose, any of my constituents have travelled, being hundreds of miles from me at its nearest approach, it was to have been supposed that I would have supported this, which must pass through some part of my district. All that I can ask, is, that you look at this subject as statesmen, giving to it that importance which it merits, in a national point of view; and if you should then withhold your support, you will have done right. Let us convince our adversaries that the prosperity of our common country is the leading inducement in the exercise of the power which we claim. I speak with freedom on this subject, as I have nothing to disguise. Let the opponents to this system succeed in their opposition to this bill, and, though I am not a prophet, nor the son of a prophet, yet I predict that you may bid a long farewell to that system for which we have so zealously contended.

Mr. CARSON made a few observations in relation to an amendment he heretofore offered, which [he said] he would discuss more at large on a future occasion. He yielded the floor to

Mr. ISACKS, who said that he would, on this occasion, follow the example of the gentleman from Virginia, [Mr. BARBOUR] in declining a discussion of the constitutional power of Congress to pass this bill, were it not from a belief that there were others who were not, like him, prepared to deny the expediency of the measure, but who had become persuaded that Congress did not possess that power, and who would entrench themselves behind the supposed barriers of the constitution; from whence it

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might be convenient to sally forth, upon the position he had long occupied in these controversies. Some defence of that position—some vindication of his own course, in favor of the construction of this road, on constitutional ground, would therefore be attempted.

The federal constitution was, [said Mr. I.] in the language of the convention, "ordained and established for the United States of America." It was made with a perfect knowledge of the wants and resources, the condition and extent of country over which it was to operate. Its energies and benefits were intended to be felt alike, through all the members of the Union, and the geographical features which mark the territory of its domain. The craggy summit, the sloping sides, the long, winding valleys of the Alleghany—its rivers descending to the ocean, as well as the coasts and plains of the Atlantic, were present to the minds of those who set in motion the principles of this Government; and those principles, to be equal and useful in their effects, must have been adapted to the situation of all. And however we may differ about the meaning of terms, in one thing we must all agree, that this constitution, as it is, was made for the whole United States, as they are. This general view of the subject may not be wholly unprofitable to those who have not "ordained and established" their opinions upon the controverted points which I will now proceed to examine.

Among the enumerated powers of Congress is the power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." It cannot be denied that this regulating power over commerce may act as well upon that which relates to internal commerce among the States, as that which relates to foreign; and whatever may be done as to one may, in adapting the means to the nature of the thing and the end to be attained, be done as to the other; for the power is applicable to both, and is precisely the same. It is admitted, that, whatever is incidental to the specific power, is comprehended in the grant, and may properly be done under it. The constitution has, however, removed all cavil on this point, by expressly giving to Congress the right "to make all laws which shall be necessary and proper for carrying into execution the powers by it vested in the Government of the United States, or any department or officer thereof." The constitution means, and it can mean nothing else, that Congress may take into its own hands the management of all these concerns. It is not to stop satisfied with attending to the commerce, or exchange of commodities with foreign nations; it must, when necessary, go further, and regulate trade between different States, and even the traffic with the Indian tribes in furs and peltry; for that, too, is commerce, in the meaning of the constitution. And it is no matter whether this trade is carried on upon seas or rivers, upon land or water, in East India merchantmen, in river boats, Indian bark canoes, or road wagons; these are all but the different mediums and vehicles of conveyance, and are alike subject to the action of Congress, in such manner as may be necessary and proper. But it is said that, to execute these regulations, nothing is necessary and proper to be done, but to make rules—revenue laws, and the like something, on paper. I will not go to a dictionary for the meaning of the word "regulate." I will go to the history of legislation, commencing with the foundation of this Government, and continued without interruption or objection, on constitutional principles, down to this day, to prove what the undoubted right of Congress, under the power in question, is. It has been the work of every year to make harbors, build custom-houses, warehouses, seawalls, light-houses, and do every thing which the convenience of external trade requires. If, then, it is constitutional to do all this for commerce with foreign nations, I demand a reason why it is unconstitutional to make a road or canal, when that shall be necessary and proper for the commerce "among the several States."

In that clause of the constitution which gives to Congress the power "to establish post offices and post roads," as I understand it, the right to make a post road is expressly given in terms, and there is no need to resort to any incidental matter "to carry into execution" this power. The very act forms the substance of the thing granted, authorized to be done. To establish means to found, to erect, to build, to render permanent; and this action of the power, according to the principles of common sense, and the fair construction of language, may be applied and brought to bear as well upon the road over which the mail is carried, as the office or officer created for its safety and distribution. But it is said that the right to designate a pre-existing road is all that is conferred. There is, I think, too much refinement, not to say absurdity, in this argument. Suppose a mail route to be indispensable for the communication of intelligence between two points where there is no road, and where none would ever be made by the local authorities, must Congress wait till the road is made? The establishment of the office is not, or cannot, be a mere designation of it. It had no previous existence. It is and must be made, out and out, by the power of establishment. And why shall the road not be subject to the same power?

To carry into execution the powers "to declare war and support armies," it is "necessary and proper" that Congress should possess and exercise jurisdiction competent to the construction of roads and canals. These, if properly located, will be among the most efficient means of national defence. In marching armies, in transporting provisions, munitions of war, and intelligence, these may be as necessary to the interests and safety of the country as the armies themselves, or any of the mighty agents of the war-making power. To be convinced on this point, is only to look at the face of the country, and the great extent and exposure of its frontier. And if a doubt or scruple remains, let experience point to the expense, the sufferings and disasters of the last war. Then let reason and patriotism take the place of polemic sophistry, and answer whether the right to construct these communications does not belong to the war-making power of Congress.

These, together with the power to appropriate money, are the grounds on which I rest the constitutional power of Congress over subjects of internal national improvement. Nor do I admit that the appropriating power is general or undefined. It is, and ought to be, limited and applied only to the subjects of legislation confided to Congress, and cannot be extended to any other without a violation of the constitution, and the risk of producing the utmost confusion. I yield the point that the assent of a State cannot extend or add to the power of Congress any thing which, in virtue of the constitution, it does not possess. The question, now and at all times, must be, is the right to act contained in the constitution or not? If it is the assent of a State is useless. If it is not, then a State cannot give it. I would go further, sir, and maintain that a State cannot withdraw any portion of the power, jurisdiction, and sovereignty, which, by the federal compact, has been conferred on the Government of the Union. As to the rights of the States and the rights of this Government respectively, neither should encroach on the other. Neither can give, nor take away, unless by an amendment of the constitution, in the appointed mode. I am on advocate either for the American system or the nullifying system; and, much as I respect the authority and opinions of others to the contrary, I must continue in the belief that no State, as a member of the Union, in any attitude that it can assume, has the right to supersede or annul a law of this Government. That would be emphatically making a State the judge in its own case. Neither do I believe in the plan I have heard proposed, that the veto of a State shall oblige this Government and its Executive, whose duty it is to execute the laws, to stand still till the

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matter can be adjusted in some way unknown to the constitution, if I have read it right. I am not convinced that the discussion of these theories can be at all profitable; and, following the example of the gentleman from Virginia, [Mr. BARNSON] on another topic in this debate, I here enter my solemn protest against all these doctrines and discoveries, at least in the sense in which I understand them.

I will now return to the subject before us, and briefly remark, that, for my own part, I do not claim for Congress the right of exclusive legislation over the territory within the States on which a road or canal may be constructed. This right is specifically given in regard to what is now the District of Columbia, and all places purchased for the erection of forts, magazines, and so on. The express mention of it as to these, and the silence as to other places, if there were no other reasons, would seem to argue that jurisdiction was not intended to be given, except in those cases where it is so expressed. But the power of Congress being competent, as I conceive, to the execution of such works, I would extend it that far, leaving, in the hands of the States, the care of their preservation, and the advantage of their use; and this course has the additional recommendation of policy and convenience.

Let me also notice what I must, with great deference, call an error into which some have fallen. They deny that we have power to make internal improvements, but admit that we can subscribe stock to incorporated companies, and appropriate money or land to States for the same purpose. This I consider a distinction without a difference. Can we enable others to do that which we cannot do ourselves? The difference between doing and causing to be done, is too subtle for fundamental rules of action. The argument amounts to this: that, as a partner with others, Congress can do that which it could not do alone; or, that it may employ an agent, and entrust him with the means of doing that which it could not do itself. I, too, admit that Congress can, in proper cases, make these subscriptions and appropriations—not because it could not otherwise accomplish the object; precisely the reverse: because, as principal, it could do the act, and therefore may avail itself of the co-operation and agency of others. I cannot see upon what principle this proposition can be based, unless it is supposed that Congress has the unlimited right to appropriate money without regard to the constitutional purposes of legislation. The answer to that would be: You say that internal improvements do not belong to the jurisdiction of Congress; the States reserved to themselves the right of making them. And will it be pretended that money can be appropriated and applied to any other purposes than those within the rightful legislation of Congress? I know of no power that could be assumed on the part of Congress more uncertain and dangerous than the unrestrained appropriation of money to objects not within the scope of its authority. On the score of economy and accountability, I think it generally much better that the money for public works should be expended under our immediate direction and control, than be placed in the hands of others, as to whom we could neither exercise coercion nor remedy.

I will now proceed to show that the construction of this road would be a proper exercise of the constitutional power on which I rely. The bill directs its location on the western route; and I will, by the way, advert to some of the advantages of that route over those of the others. I do not expect to say the half that is due to this part of the subject; and the very thorough examination already given to it by the chairman of the Committee on Internal Improvements, [Mr. HENRILL] who opened this debate, and my colleague, [Mr. BLAIR] renders it unnecessary that I should; and what I shall feel it my duty to say will be confined to that line of road between this place and New Orleans, leaving to those much better acquainted with the

other portion than I am, the task of doing justice to its claims.

What, then, are some of the commercial advantages of the western part of this road? It has always been, now is, and, perhaps, will be to the end of time, the fact, that much the greater portion of all the merchandise for the supply of Western Virginia and Eastern Tennessee is, and must be, carried from Baltimore and the more eastern cities, over the very ground that this road should occupy. Nor do I mean, by Eastern Tennessee, that part of our State only, which is technically called East Tennessee. A great extent of most valuable country west of the Cumberland mountain, and embracing the broad, rich valley of Northern Alabama, in a high degree realizes the same condition. And when you add to this, the extraordinary capacity of this whole region for the production of iron, salt, and flour, cotton, and other manufacturing and agricultural produce, every statesman must be at once struck with the immense importance of convenient communication, not only to that country, but to all others dependant on its supplies. And how would the advantages of a road east of the Blue ridge, through the Southern States, in this respect compare with those I have hinted at rather than described? Nature, and the unalterable direction of trade, will answer this question. There the road would run nearly parallel with the sea-coast. The direction of their trade is from the coast to the upper country, and vice versa, not along the course of the road, but crossing it almost every where at right angles. Except for the mere conveyance of commercial intelligence, the road could be of no advantage to trade, worth calculating, and so the report of the engineers states.

To show that this improvement is necessary for a mail road, I need only remind the House that, from the centre to the extreme points, it traverses the very interior of the republic. Among the advantages to the speedy conveyance of intelligence that it will afford, there is one that cannot escape observation, when it is remembered that New Orleans is the mart of the whole country through which this road passes, for the distance of eight hundred miles. The gentleman from Virginia [Mr. BARNSON] informed us that the average cost of carrying the mail, three times a week, from this place to Orleans, was fifty-two dollars a mile; that the average cost generally in the United States was fifteen dollars a mile. The report of the late Postmaster General, Mr. McLean, informs us, that, if this bad road was made good, the mail, to Orleans, could be carried in about half the time it then required; and I infer for, at least, the average price elsewhere. These facts, I think, are worth something for my purpose, if doubling the speed of the mail the distance of a thousand miles, and saving to the department the sum of thirty-seven thousand dollars a year, are matters deserving our attention. On the western route, we present you a surface that invites by every argument the improving hand of art. Though the country may vie with any other in good and substantial qualities, yet, like others, it has its inconveniences. There we have hills, and mountains, and limestone rocks to contend with; to overcome these, we need the helping hand of the Government. Not so on the eastern route. There, on a continued plain, nature has given you a road of sand; and I have yet to learn how it is to bear much improvement, or where the materials to better it are to come from. The time that the mail to Orleans might be carried, on either of the routes, is about the same. The distance nearly so, except that of the eastern, which is thirty or forty miles longest. As to the important requisites, health, abundance, and cheapness of provisions, and the number and price of horses, the advantages are universally known to be greatly in favor of the West.

If it is unwise in time of peace to neglect preparations for defence in war, the construction of this road ought to attract particular attention. The lower country on the

H. of R.]

Buffalo and New Orleans Road.

[March 24, 1861.]

Gulf of Mexico must always depend chiefly on the fighting men and supplies from the upper country for its defence. Kentucky and Tennessee is the natural strength of that vulnerable frontier, but their position is far distant. Our rivers, more than half the year, are too low to afford water conveyance: hence the necessity of a convenient communication by land. Nothing but the sudden and extraordinary rise of the Cumberland, in November, 1814, seconded by extraordinary efforts, enabled the Tennessee troops to reach the scene of action in the very juncture of time. But for that, New Orleans must have fallen, without a miracle in aid of the unsurpassed skill and bravery with which it was defended.

As a military road, New Orleans must be deprived of all advantage from it, should its location be through the Southern States, each of which has cities and seaboard frontiers of its own to defend. The local forces and supplies of those States ought not, and will not, be drawn elsewhere. In any war we are likely to have with a foreign enemy, the South will have enough to do to take care of itself; and it will give a good account of that, or any other trust, for its arms have always equalled the highest expectations of valor and patriotism—nor would such a location be greatly serviceable, even for southern warfare. The march of troops, the transportation of provisions there, like the course of trade, must generally be across, rather than along the road.

The reports of the engineers, already referred to, give the decided preference to the western route; and should the commissioners to be appointed select for the location of the road the most western branch of that route, as the bill authorizes them to do, and as they undoubtedly will do, if my views are correct, there will then be some plain and prominent advantages attained, peculiar to that location, which must put to rest all further comparison. It will unite East and West Tennessee, separated by the Cumberland mountain. It will pass within forty miles of the Cumberland river, crossing one of its navigable streams, the Caney fork. It will cross the Tennessee river probably a little above the Muscle shoals, connecting with the canal about to be made there; and, above all, it will intersect, a little south of Tennessee, the road branching off from the Cumberland road at Zanesville, in Ohio, passing through Kentucky and West Tennessee to Florence, in Alabama, and ultimately to New Orleans.

Here there is at once united the double advantage of bringing together these two great avenues of communication, and the expense of making two roads, that point to New Orleans, from a distance of four hundred miles, is saved by one-half. One road, instead of two, will be the result of such a location. For let the road now in question be located on any other route, it will not meet the road from Zanesville, till they both terminated at Orleans by different directions. These considerations, to whomsoever they are known, must be conclusive on the subject of preference. And I will only add that this branch of the Cumberland road has been surveyed in the direction I have stated. A bill has been reported by the Committee of Internal Improvements for its establishment and construction, and now awaits the action of the House.

The leading argument levelled by the gentleman from Virginia [Mr. Bassou] at the whole system of internal improvement, appears to consist in the assumed inequality which the system will produce in the disbursement of the revenue, and the remedy proposed for the correction of that inequality. A successful reply to that must greatly impair the force of his very able speech. This reply is all that I shall, at present, undertake. And, for success in this, I will depend on matter of fact and experience, rather than theories and speculations. It is the inequality of disbursement, without this system, of which I complain, and to effect something like equality in this respect, I hold the steady pursuit of it to be indispensable. What

has been the revenue of the Government during the last fourteen years? By whom has it been paid? And when has it been expended? The annual receipts into the treasury in that time have averaged at least twenty-two millions, amounting to more than three hundred millions. The gentleman has truly said, that population is the rub by which contributions should be levied; and as to impose the consumers, as a general rule, pay the duties. It is also true that this revenue has chiefly been raised by duties. The Western country, comprising Western Pennsylvania, Western Virginia, and the nine Western States, contains about one-third of the population of the United States. Upon these conceded principles, then, the people of this portion of the Union have contributed to the general fund, in the short period of which I am speaking, the enormous amount of one hundred millions of dollars. Yes, sir, they have contributed much more: for, in addition to their common share, they have, since the settlement of the new States, paid directly into the treasury more than forty millions of dollars in the purchase of public lands. And where have these contributions gone? It is, perhaps, easier to tell where they have not gone. They have not returned to the country from which they were drawn, except the miserable pittance dealt out to some old pensioners, a few salaries to federal officers, and a little aid for particular public works, lately drawn through the fist by the efficacy of this same internal improvement operation. But the road on which the heavy wholesale appropriations have travelled to the seaboard is broad and beaten. It needs little improvement. Its track can be seen far off. The by-ways on which the retail business is carried on in the same direction are more difficult to trace. The actual expenditures in the same period, for the increase of the navy, for navy yards, dock yards, and wharves, for fortifications and light-houses, amount to twenty-four millions; and how many millions more have, in the same quarter, been laid out upon sea-walls, harbors, and the like, I have not been at the pains to compute. To the sea-coast and commercial cities are drawn almost the whole contents of the sinking fund chest, which is annually replenished with ten millions to defray the public debt, to say nothing of the officers and agents of the Government in every description of service, who spend their compensation there, and the many inventions sought out to relieve the treasury of its surplus, with some of which I have no acquaintance, except by the appropriation bills. In a word, the interior is tributary to the exterior. The treasury communicates vigor to the one, while the other languishes under its continual exactions. No wonder our condition is intolerable; the wonder is that we have endured it so long. Nothing but the freshness and fertility of our soil has upheld us till now; but the fitness of the land must fail, without something to encourage and repay the toil of the dispirited farmer. I will give you, for example, my own State. Its population is about one-twenty-second part of the national census; of course, according to general principles, it pays about one million annually in the shape of indirect tax. How many dollars of that million usually find their way back again? That which pays a district judge, two district attorneys, two marshals here and there a pensioner his ninety-six dollars, or less, with the little savings of the members of Congress; and all told. We do not expect this whole million to be returned, nor half of it. It would be unreasonable and impracticable if we did. We have no Government creditors there. Our people had no money to lend for the war. They did their share in fighting. Neither have we any use for fortifications, navy yards, breakwaters, nor any of the apparatus of foreign commerce: but we have some internal commerce, and would with suitable internal improvements have much more. And we humbly conceive that the Government has an equal interest with us in making these to answer its purposes. In accomplishing these

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